

**FINDINGS, CONCLUSIONS AND DECISION  
OF THE HEARING EXAMINER FOR  
THURSTON COUNTY**

**CASE NO:** PW-VAC-11-002 (Bayside Investments road vacation petition)

**PETITIONER:** Bayside Investments, L.L.C.

**SUMMARY OF REQUEST:**

The Petitioner requests vacation of a segment of the Old Primary Highway 9 right-of-way abutting its property.

**LOCATION OF PROPOSAL:**

5628 Old Highway 410 SW, in Thurston County Assessor's Parcel No. 49900000605. The legal description of the area proposed to be vacated is set out on Exhibit (Ex.) 1, pp. 1 and 2 and shown on the map at Ex. 1, Attachment (Att.) C.

**SUMMARY OF DECISION:**

The petition for road vacation is recommended to be granted.

**HEARING AND RECORD:**

The hearing on this request was held before the undersigned Hearing Examiner on October 3, 2011. The following exhibits are admitted as part of the record:

Exhibit 1. Staff Report by Thurston County Public Works Department for Case No. PW-VAC-11-002, prepared by Dale R. Rancour and dated October 3, 2011. This Exhibit includes the 5-page Staff Report and Attachments a through g, listed on Page 5 of the Staff Report.

Exhibit 2. Statement dated September 14, 2011 by Ron Thompson, authorizing Brandon Thompson to represent him and Bayside Investments, L.L.C. in this matter.

At the hearing, the following individuals testified under oath:

Kelli Larson  
Real Estate Services  
Thurston County Public Works Department  
2000 Lakeridge Drive SW  
Olympia, WA 98502

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Brandon Thompson  
1319 Summit Lake Shore Road  
Olympia, WA 98502

After consideration of the testimony and exhibits described above, the Hearing Examiner makes the following findings of fact, conclusions of law, and decision.

### FINDINGS OF FACT

1. The Petitioner requests that the County vacate the southern one-half of the right-of-way of Old Primary State Highway 9, abutting the majority of the northern boundary of Petitioner's property. Petitioner's property is described at Ex. 1, pp. 1-2. The area to be vacated is described at Ex. 1, pp. 1-2 and is depicted at Ex. 1, Att. c.

2. The area to be vacated is described in the evidence as lying "northerly of" the Petitioner's property and as being located "adjacent" to it. Therefore, the Petitioners apparently do not own the fee or underlying property interest over which the right-of-way passes. The evidence does not disclose the identity of any underlying owner. Therefore, it must be presumed that the County owns the area to be vacated in fee.

3. The original petition requested vacation of a 35-foot wide strip of this right-of-way, instead of the 50 feet needed to comprise the southern half of Old Primary State Highway 9. See Ex. 1, p. 3. The Petitioner subsequently realized that its intent was to vacate the full southern half, and the Department and the Petitioner have processed and considered the request to be for the full southern half. The public notice for this hearing described the vacation as the full southern half. Therefore, this petition is deemed to request vacation of the full southern half, as described in Finding No. 1, above.

4. The right-of-way at issue was used as a State highway prior to the construction of U.S. 101. In 1960 it was transferred to Thurston County by quit-claim deed.

5. The right-of-way to be vacated is partially fenced and is either cleared or covered with native grasses and shrubs. The right-of-way to be vacated is a Class B road, for which no public expenditures have been made for acquisition, improvement or maintenance. Ex. 1, p. 3. The County has not used or maintained this right-of-way since it was conveyed in 1960. The County Engineer states at Ex. 1, p. 3 that there is no future need for the area to be vacated and that it is not advisable to preserve it for future use as a County road.

6. The public would be benefited by the requested vacation in a number of ways. Through fencing and maintenance, the Petitioners will prevent further use of the area for dumping. The County will no longer have the responsibility or expense of maintenance or administration for it and will be free of potential future liability for it. The vacated right-of-way will also increase the County tax base to a small degree when returned to the tax rolls.

7. The Mud Bay Water Homeowners Association states at Ex. 1, Att. g that it has a 6-inch water main "running under the road in question" and a water valve box "adjacent to the road". Any question about the location of the valve box was cleared up by Ms. Larson, who

testified that it lies in the area to be vacated. The Association expresses concern that the valve box be kept clear to allow access and states its understanding that all utility easements will be honored in the proposed vacation. Ex. 1, Att. g. The Staff Report stated at Ex. 1, p. 3 that utility easements would be addressed by the standard easement retention language in the vacation resolution.

8. If the vacation is approved by the Board of County Commissioners, the Petitioner will obtain an appraisal and pay the County 100% of the appraised fair market value, as described in the Staff Report.

### **CONCLUSIONS OF LAW**

1. As set out in RCW 36.87.040, the criteria which must be examined in deciding whether to vacate a public right-of-way are

"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 . . ."

2. The Findings above show that each of these considerations indicates that the requested vacation should be approved.

3. The proposed vacation will have no effect on any utility easement held by the Mud Bay Water Homeowners Association. Therefore, the vacation would not reduce or affect the legal rights of the Association to keep, maintain or have access to the water main or valve box.

### **RECOMMENDATION**

The Board of County Commissioners should approve the vacation of a portion of the Old Primary Highway 9 right-of-way requested by Bayside Investments, L.L.C., as described above.

Dated this 20<sup>th</sup> day of October, 2011.

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Thomas R. Bjorgen  
Hearing Examiner