

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

CASE NO: PW-VAC-08-003 (Ayers road vacation petition)

PETITIONERS: Steve Ayers, Ronald Rosenow, Barry Avery, Sabrina Novarra and Daniel Holm.

SUMMARY OF REQUEST: The Petitioners request vacation of an alley and portions of two roads in Rochester.

LOCATION OF PROPOSAL: The legal description of the area petitioned to be vacated is in the Staff Report at Ex. 1, p. 1.

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

HEARING EXAMINER DECISION IN NO. PW-VAC-08-003

December 19, 2011. The following exhibit is admitted as part of the record:

Exhibit 1. Staff Report by Thurston County Public Works Department for Case No. PW-VAC-08-003, prepared by Dale R. Rancour and dated December 19, 2011. This Exhibit includes the four-page Staff Report and Attachments a through g, listed on Page Four of the Staff Report.

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

Steve Ayers
18214 Pendleton Street SW
Rochester, WA 98579

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 Petitioners request vacation of the following public rights-of-way:

(a) the alley running in an east-west direction through Block 13 of Wright's Addition to Rochester, Division No. 1, as recorded in Volume 8 of Plats, page 48, records of the Thurston County Auditor;

(b) the entire 60-foot width of platted First Street, now known as 182nd Way, running in an east-west direction immediately south of Block 13; and

(c) the westerly half of platted Uhlin Avenue, now known as Roseburg, immediately east of Block 13 and extending south to the north line of Block 14 of the same plat.

These proposed vacations are shown as the cross-hatched areas on the map at Exhibit (Ex.) 1, Attachment (Att.) c.

2. The easterly half of Roseburg, contiguous with the portion here requested to be vacated, was vacated in 1995. The map at Ex. 1, Att. c shows that the portions of the Roseburg right-of-way to the north and south of the segment to be vacated have also been vacated. Thus, the portion of Roseburg proposed to be vacated is isolated and does not connect with any other public rights-of-way.

3. The alley proposed to be vacated connects with Pendleton Street on the west and the portion of Roseburg proposed to be vacated on the east. As noted, this portion of Roseburg is isolated and does not connect with other public rights-of-way. Thus, the alley does not connect Pendleton with other portions of the public right-of-way network and

basically is a dead-end which bisects much of Mr. Ayers' property in Block 13. As discussed below, Mr. Ayers is in the process of obtaining short subdivision approval for his property in Block 13. The proposed short plat at Ex. 1, Att. g shows that this alley would not serve the proposed short plat in any way.

4. Similarly, 182nd Way immediately south of Block 13 runs from Pendleton Street on the west and the portion of Roseburg proposed to be vacated on the east. It is not needed to provide access to the properties bordering it to the south. Access to the east is discussed below. As noted, this portion of Roseburg is isolated and does not connect with other public rights-of-way. Thus, this portion of 182nd does not connect Pendleton with other portions of the public right-of-way network and is a dead-end.

5. The Staff Report at Ex. 1 states that the County has never opened the rights-of-way proposed for vacation and that they have never been used for public travel. The Staff Report states the opinion of the County Engineer that it is not necessary to preserve these rights-of-way for use as County roads or alleys and that they are not needed as part of the County road system. Ex. 1. These rights-of-way are classified as Class B roads, for which no public expenditures have been made for acquisition, improvement or maintenance.

6. The public would be benefited by the requested vacation by eliminating the County's responsibility and expense of maintenance and administration and by eliminating the County's potential future liability for these segments. The vacated right-of-way will also increase the County tax base to a small degree when returned to the tax rolls.

7. The rights-of-way at issue are not useful as a part of the county road system,

and the public will be benefited by their vacation.

8. The County Engineer and Public Works Department recommend approval of this vacation request, subject to a condition. Lots 1 through 4 and 45 through 48 in Block 9 of the Factory Addition lie immediately east of the segment of Roseburg proposed to be vacated. Without the proposed vacation, these lots would have access over the portions of 182nd Way and Roseburg proposed to be vacated, if those portions were opened. The vacation would deprive these lots of that access, leaving them landlocked.

9. To provide access, the Department asks that Mr. Ayers provide an easement or platted access for ingress, egress and utilities to those lots. Mr. Ayers is in the process of short subdividing his property in Block 13. The lots in his plat would have private access over the vacated 182nd Way, which would be improved from Pendleton to a point 70 to 80 feet shy of the Roseburg right-of-way, according to Ex. 1, Att. g. The Department asks that Mr. Ayers provide an easement or platted access to Lots 1 through 4 and 45 through 48 in Block 9 over the portions of 182nd Way and Roseburg to be vacated. Test. of Larson. Mr. Ayers testified that he is willing to provide the access, but wants to avoid the additional expenses of a survey and road improvement beyond that needed for his short plat.

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. Under Thurston County Code (TCC) 13.36.070, the Hearing Examiner

"shall render a written recommendation which shall include findings and conclusions based upon the record as to whether the subject county road and/or right-of-way is not useful as a part of the county road system and whether the public will be benefited by the vacation."

3. The Findings above show that the rights-of-way proposed to be vacated are not useful as a part of the county road system and that the public will be benefited by their vacation. With one qualification, each of the considerations in RCW 36.87.040 and TCC 13.36.070 indicates that the requested vacation should be approved.

4. The one qualification lies in the fact that the requested vacation would deprive Lots 1 through 4 and 45 through 48 in Block 9 of the Factory Addition of their only right of ingress or egress. A vacation that deprives existing, legal lots of any access does not benefit the public and should not be approved under the above standards. However, the condition requested by the Department would assure that the vacation did not deny these lots a right of access. Because it is the minimum needed to assure mitigation of this direct, adverse effect of the vacation, the condition is consistent with the requirements of

Nollan v. California Coastal Commission, 483 U.S. 825, 97 L.Ed.2d 677, 107 S.Ct. 3141 (1987), Dolan v. City of Tigard, 512 U.S. 374, 129 L.Ed.2d 304, 114 S.Ct. 2309 (1994), and RCW 82.02.020, to the extent applicable. However, the proposed vacation and short plat has no effect on any actual road improvements, since none of the rights-of-way to be vacated have been opened or improved. Therefore, requiring Mr. Ayers to actually build or improve the access to these lots could violate RCW 82.02.020. The proposed condition only requires Mr. Ayers to provide the right of access, not to actually build or construct access to these lots. Therefore, the condition should be adopted.

5. The Department recommends that the Petitioners not be required to compensate the County for the area vacated, because the Petition was submitted prior to the effective date of the ordinance requiring compensation. As I read this ordinance, TCC 13.36.030 does not require compensation in all cases, but authorizes the County to require it. Be that as it may, it is reasonable, especially by analogy to the vested rights doctrine, to exempt vacation petitions filed before the recent amendments to this provision from the scope of those amendments. Therefore, this decision adopts the recommendation by the Department not to require compensation in this instance.

RECOMMENDATION

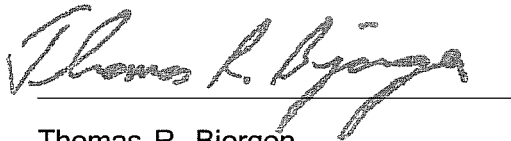
The Board of County Commissioners should approve the vacation of the rights-of-way requested by the Petitioners and described above, subject to the following conditions:

Petitioner Ayers shall provide an easement or platted access for ingress, egress and utilities to Lots 1 through 4 and 45 through 48 in Block 9 of the Factory

Addition.

For the reasons above, the recommendation by the Department not to require compensation in this instance is adopted.

Dated this 3rd day of January, 2012.

A handwritten signature in cursive script, reading "Thomas R. Bjorgen", is written over a horizontal line.

Thomas R. Bjorgen

Hearing Examiner



Project No. <u>PW VAC 08-003</u> Appeal Sequence No. _____

RECONSIDERATION OF HEARING EXAMINER RECOMMENDATION

THE REQUESTOR, after review of the terms and conditions of the Hearing Examiner's recommendation hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 13.36.090 of the Thurston County Code.

(If more space is required, please attach additional sheet.)

REQUEST FOR CONSIDERATION BY THE BOARD

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW:

_____ on this _____ day of _____ 200____,
 as an AGGRIEVED PARTY in the matter of a Hearing Examiner's recommendation rendered on
 _____, by _____ relating to _____.

THE AGGRIEVED PARTY, after review and consideration of the reasons given by the Hearing Examiner for his recommendation, does now, under the provisions of Chapter 13.36.100 of the Thurston County Code, give written notice of REQUEST OF CONSIDERATION by the Board of Thurston County Commissioners of said recommendation and alleges the following errors in said Hearing Examiner's recommendation:

Specific section, paragraph and page of law:
 Road and Bridges--Vacation, RCW Chapter 36.87

(If more space is required, please attach additional sheet)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such recommendations will upon review of the record of the matters and the allegations contained in this request, find in favor of the aggrieved party and reverse the Hearing Examiner's recommendation.

Signature required for both Reconsideration and Board Consideration Requests

 AGGRIEVED PARTY NAME PRINTED

 SIGNATURE OF AGGRIEVED PARTY

Address _____

 Phone _____

Please do not write below - for Staff Use Only:

Fee of \$595.00 for Reconsideration or \$820 for Board Consideration Received (check box): Initial _____ Receipt No. _____
 Filed with the Development Services Department this _____ day of _____, 20____.

THURSTON COUNTY

PROCEDURES FOR RECONSIDERATION OF HEARING EXAMINER RECOMMENDATION AND REQUEST FOR CONSIDERATION BY THE BOARD

- ROAD VACATION -

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the recommendation of the Hearing Examiner, there are two (2) ways to seek review of the recommendation. They are described in A and B below and can also be found in Chapter 13.36 of the Thurston County Code (TCC).

A. RECONSIDERATION BY THE HEARING EXAMINER

1. Any aggrieved party who disagrees with the recommendation of the Examiner may request reconsideration.
2. Written request for reconsideration and the appropriate fee must be filed with the Permit Assistance Center of the Thurston County Development Services Department within twenty (20) days of the date of the written decision. The form to file such a request is provided on the opposite side of this notification.

B. CONSIDERATION BY THE BOARD OF THURSTON COUNTY COMMISSIONERS

1. Any aggrieved party may file a request for consideration of the Examiner's recommendation with the Board of Thurston County Commissioners. The form to file such a request is provided on the opposite side of this notification.
2. A written request for consideration and the appropriate fee must be filed with the Permit Assistance Center of the Thurston County Development Services Department within twenty (20) days of the date of the Examiner's written recommendation. If the Examiner was requested to reconsider the recommendation, the written request to the Board for consideration must be filed within ten (10) days of the date of the Examiner's decision on the reconsideration request.
3. The request for consideration shall specify the error or issue which the Board is asked to consider, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. Issues which are not so identified need not be considered by the Board. The request shall be accompanied by any written memorandum which the requesting party may wish considered by the Board. The request shall not include the presentation of any new evidence and shall be based only upon facts presented to the Examiner.
4. The Thurston County Roads and Transportation Services Department shall notify parties of record pursuant to TCC 13.36.100(a)(2) that a request has been filed and that copies of the request may be obtained from the Clerk of the Board.

- C. FILING FEES AND DEADLINE.** If you wish to request a reconsideration or consideration by the Board of the Examiner recommendation, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$595.00** for a request for reconsideration or **\$820.00** for consideration by the Board. Any request for reconsideration or consideration by the Board must be **received** in the Permit Assistance Center of the Thurston County Development Services Department on the second floor of Building #1 in the Thurston County Courthouse complex no later than **4:00 p.m.** per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee as well as completed application form is not filed by this time, you will be unable to request reconsideration or a consideration by the Board of the Examiner recommendation. This deadline may not be extended.