

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

CASE NO: PW-VAC-11-004 (Faber road vacation petition)

PETITIONERS: John V. Faber and Ted N. Faber.

SUMMARY OF REQUEST:

The Petitioners request vacation of an alley in Rochester.

LOCATION OF PROPOSAL:

Block 16, Junction Addition to Rochester, as recorded on March 13, 1911 in Volume 8A of Plats, Page 58, records of the Thurston County Auditor.

SUMMARY OF DECISION:

The petition for road vacation is recommended to be granted.

HEARING EXAMINER DECISION IN NO. PW-VAC-11-004

HEARING AND RECORD:

The hearing on this request was held before the undersigned Hearing Examiner on December 19, 2011. Because the Applicants did not appear at the hearing, the record was held open until December 27, 2011 to allow them to submit evidence or request that the hearing be reopened. John Faber responded by telephone to Cami Petersen on December 22, 2011, see Ex. 3, below, and stated that he had no additional information to provide, but would answer any questions the Hearing Examiner might have. The Examiner had no questions, and the record closed on December 27, 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-11-004, prepared by Dale R. Rancour and dated December 19, 2011. This Exhibit includes the four-page Staff Report and Attachments a through f, listed on Page Four of the Staff Report.

Exhibit 2. Procedural Order, dated December 19, 2011.

Exhibit 3. E-mail sent December 22, 2011 from Cami Petersen to Thomas Bjorgen, summarizing telephone statement from John V. Faber.

At the hearing, the following individual testified under oath:

Kelli Larson
Real Estate Services

Thurston County Public Works Department
2000 Lakeridge Drive SW
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 Petitioners request vacation of the entire alley in Block 16, Junction Addition to Rochester, as recorded on March 13, 1911 in Volume 8A of Plats, Page 58, records of the Thurston County Auditor.

2. This alley is depicted on the map at Exhibit (Ex.) 1, Attachment (Att.) c and e, and its location is also shown on the aerial photograph at Ex. 1, Att. f. Its western terminus is the former Railroad Avenue, which has been vacated. Its eastern terminus is a portion of Olympic Avenue which also has been vacated. Thus, the alley does not connect any public streets or rights-of-way and, if opened, would be inaccessible to the public. As stated at Ex. 1, p. 2 and shown on the aerial photograph at Ex. 1, Att. f, the alley area is part of an open gravel or dirt lot and has at least one building constructed over its location.

3. The County has never opened this alley right-of-way and it has not been used for public travel. This alley is classified as a Class B road, for which no public expenditures have been made for acquisition, improvement or maintenance.

4. The County Engineer states at Ex. 1, p. 2 that there is no future need to retain the alley as a public right-of-way.

5. The public would be benefited by the requested vacation by eliminating the County's responsibility and expense of maintenance and administration for it and by eliminating the County's 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.

6. The alley at issue is not useful as a part of the county road system, and the public will be benefited by its vacation.

7. The County Engineer and Public Works Department recommend approval of this vacation request, subject to the requirements that the Petitioners obtain a fair market value appraisal by a certified general real estate appraiser of the area being vacated and pay the County 100% of the appraised fair market value, as described in more detail in the Staff Report at Ex. 1.

8. According to the Thurston County GeoData Center website on December 28, 2011, John V. Faber owns the property to the south of the alley and a portion of the property to the north. Ted N. and Rhonda Faber own the remaining property to the north of the alley.

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 alley at issue is not useful as a part of the county road system and that the public will be benefited by its vacation. Each of the considerations in RCW 36.87.040 and TCC 13.36.070 indicates that the requested vacation should be approved.

4. The recommendation by the County Engineer that the Petitioners obtain an appraisal and compensate the County for 100% of the fair market value of the area vacated is authorized by TCC 13.36.030 and is reasonable under these circumstances.

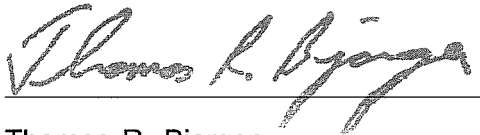
RECOMMENDATION

The Board of County Commissioners should approve the vacation of the alley requested by the Petitioners and described above, subject to the following condition:

Petitioners shall obtain a fair market value appraisal by a certified general real estate appraiser of the area being vacated and shall pay the County 100% of the appraised fair market value, as described in more detail in the Staff Report at Ex.

1.

Dated this 3rd day of January, 2012.

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

Thomas R. Bjorgen

Hearing Examiner



Project No. <u>PW-VAC 11-004</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.