



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 Applications of)	NO. PW-VAC-12-002
)	
Bowen Properties LLC)	REVISED
)	FINDINGS, CONCLUSIONS,
)	AND RECOMMENDATION
)	
For Request for Road Vacation)	
)	

REVISION

Upon issuance of the Findings, Conclusion, and Recommendation in the above-referenced case, a representative of Petitioner, Bowen Properties LLC, Lisa Klein, by letter dated December 17, 2012, made a Request for Clarification. The Request was for clarification with respect to the referenced legal description of the area to be vacated, to wit:

“Finding of Fact #1 lists the legal description of “the parcel”. The referenced legal description is that of the original petitioned area to be vacated. Subsequent to the original application, staff requested that the area be reduced and the applicant submitted a revised legal description and depiction. A copy was provided with the staff report as Attachment E. We respectfully request clarification that the area to be vacated is as described in Attachment E of the Staff Report.”

Accordingly, the Findings, Conclusion, and Recommendation are REVISED insofar as Finding of Fact No. 1 is amended to reflect the area described in Attachment E of the Staff Report and the Recommendation is revised to reference Finding of Fact No. 1.

SUMMARY OF REQUEST:

Petitioner Bowen Properties LLC requests vacation of the County’s interest in a portion of Country Club Drive NW adjacent to 3636 Country Club Drive NW, Olympia, Washington 9808.

LOCATION OF THE PROPOSAL:

The subject right-of-way lies adjacent to and abutting the property located at 3636 Country Club Drive NW, Olympia, Washington 98508.

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 December 3, 2012. 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-12-002, prepared by Dale R. Rancour, P.E., County Engineer and dated December 3, 2012. This Exhibit includes the five page staff report and Attachments a through g, which are listed on page five of the Staff Report.

Exhibit 2: Electronic communication dated November 30, 2012, from Phil Tenkahoff.

Exhibit 3: Maintenance Agreement between Thurston County and Bowen Properties, LLC for Thurston County Project No.PW-VAC-12-002.

Exhibit 4: Power Point presentation titled “Olympia country & Golf Club, ROW Vacation Hearing – Monday, December 3, 2012.”

At the hearing, the following individuals testified under oath:

- Kelli Larson, Thurston County Public Works.
- Angela Bowen, representative for Bowen Properties, LLC.
- Lisa Kline, representative for Bowen Properties, LLC.
- Tim Boyd, a member of the public.
- Linnea Brenner, a member of the public.

After considering 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 segment of Country Club Drive NW that Petitioner requests be vacated, is located at 3636 Country Club Drive NW, Olympia, Washington 9808, and is described as follows:

THOSE PORTIONS OF COUNTRY CLUB ROAD NW LYING WITHIN GOVERNMENT LOT 4, SECTION 33, TOWNSHIP 19 NORTH, RANGE 2 WEST OF THE WILLAMETTE MERIDIAN IN THURSTON COUNTY, WASHINGTON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AREA A

COMMENCING AT THE INTERSECTION OF THE NORTHERLY LINE OF PARCEL B OF BOUNDARY LINE ADJUSTMENT No. BLA-0294, AS RECORDED UNDER AUDITOR'S FILE No. 8507250124, WITH A POINT ON A CURVE, SAID CURVE ALSO BEING THE WESTERLY MARGIN OF COUNTRY CLUB ROAD NW, OF WHICH THE RADIUS POINT BEARS SOUTH 73°13'19" WEST A DISTANCE OF 543.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°40'28" A DISTANCE OF 129.60 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID CURVE NORTH 86°53'47" EAST A DISTANCE OF 4.99 FEET TO INTERSECT A LINE 25.00 FEET WESTERLY OF AND PARALLEL WITH THE CENTERLINE OF SAID ROAD AND THE BEGINNING OF A CURVE FROM WHICH THE RADIUS POINT BEARS SOUTH 86°53'47" WEST A DISTANCE OF 548.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID PARALLEL LINE THROUGH A CENTRAL ANGLE OF 25°34'02" A DISTANCE OF 244.53 FEET TO AN ANGLE POINT IN SAID WESTERLY MARGIN; THENCE LEAVING SAID PARALLEL LINE NORTH 67°32'11" WEST ALONG SAID WESTERLY MARGIN A DISTANCE OF 5.00 FEET TO INTERSECT THE EASTERLY LINE OF SAID PARCEL B AND THE BEGINNING OF A CURVE FROM WHICH THE RADIUS POINT BEARS NORTH 67°32'11" WEST A DISTANCE OF 543.00 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID EASTERLY LINE THROUGH A CENTRAL ANGLE OF 25°34'02" A DISTANCE OF 242.31 FEET TO THE POINT OF BEGINNING.

AREA B

ALSO BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE PROPERTY DESCRIBED IN THE SURVEY, AS RECORDED UNDER AUDITOR'S FILE No. 8812070039, WITH THE EASTERLY MARGIN OF COUNTRY CLUB ROAD NORTHWEST, SAID POINT BEING THE BEGINNING OF A CURVE FROM WHICH THE RADIUS POINT BEARS NORTH 86°11'44" WEST A DISTANCE OF 613.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID EASTERLY MARGIN THROUGH A CENTRAL ANGLE OF 8°17'24" A DISTANCE OF 88.69 FEET TO AN ANGLE POINT IN SAID EASTERLY MARGIN; THENCE NORTH 77°54'20" WEST A DISTANCE OF 10.00 FEET TO THE BEGINNING OF A CURVE FROM WHICH THE RADIUS POINT BEARS NORTH 77°54'20" WEST A DISTANCE OF 603.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE AND ALONG

SAID EASTERLY MARGIN THROUGH A CENTRAL ANGLE OF 10'22'09" A DISTANCE OF 109.13 FEET TO AN ANGLE POINT IN SAID EASTERLY MARGIN; THENCE NORTH 67'32'11" WEST A DISTANCE OF 5.00 FEET TO INTERSECT A LINE 25.00 FEET EASTERLY OF AND PARALLEL WITH THE CENTERLINE OF SAID ROAD AND THE BEGINNING OF A CURVE FROM WHICH THE RADIUS POINT BEARS NORTH 67'34'30" WEST A DISTANCE OF 598.00 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID PARALLEL LINE THROUGH A CENTRAL ANGLE OF 18'37'14" A DISTANCE OF 194.34 FEET TO INTERSECT A RADIAL LINE OF SAID CURVE TO THE POINT OF BEGINNING; THENCE SOUTH 86'11'44" EAST ALONG SAID RADIAL LINE A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING.

2. The Petitioner, Bowen Properties LLC, owns property abutting Country Club Drive NW, with the subject right-of-way abutting Petitioners' property, which is located at 3636 Country Club Drive NW, Olympia, Washington 9808 Ex. 1, p. 2.
3. The purpose of this request is to vacate certain areas of Country Club Drive NW to allow for improvements that will be required of the petitioner as part of their facility upgrade (Project 2012101195 ZM). Ex. 1, p. 2.
4. The County's interest in this right-of-way was established by dedication deed recorded July 7, 1937 at Auditor's File No. 295255. Ex. 1, p. 2.
5. Country Club Drive NW is currently open for public travel. Ex. 1, p. 3. Country Club Drive NW provides access to the country club and to twenty eight residences south of the club. It terminates approximately 2,400 feet south of the property at a road barricade. Ex. 1, Attach. b.
6. Notice of Public Hearing was published in The Olympian on Monday, November 19, 2012 and on Monday, November 26, 2012 and the notice was posted in the vicinity of the requested vacation on Friday, November 9, 2012, at least 20 days prior to the hearing per RCW 36.87.050. The petitioner is the only property owner adjacent to the road vacation request area. Ex. 1, p. 3. The road where the posted is the only access into the neighborhood into which Country Club Drive NW terminates. Ms. Linnea Brenner personally delivered notice of the proposed vacation and the hearing to all homes contained in the neighborhood where Country Club Drive NW terminates. Testimony of Linnea Brenner.
7. There were no witnesses appearing at the hearing who objected to the proposed vacation of Country Club Drive NW. Approximately fifty to seventy five individuals from the audience stood during the hearing to show their support for the proposed vacation. The audience contained approximately fifty to seventy five individuals.

8. The County has a fifty foot (50') right of way, wherein there is a constructed chipseal surfaced road that varies in width, between 14 and 26 feet wide, including paved shoulders. Ex. 1, p. 3.
9. The county requested that the Petitioner reduce the initially proposed area of the vacation request to include only the areas needed for their project. Petitioners submitted an abbreviated proposal, agreeing to provide the county Public Works Department with a new description and depiction of the amended area (set forth in 'Attachment e'). While the road is open to public travel, and there is less than the desired sixty foot right of way, because of the nature of the petitioner's property that lies adjacent to the right of way, the release of the County's interest in these areas would not reduce or limit the functionality of the road. Ex. 1, p. 3.
10. As a condition of recommending the requested road vacation for approval, the County requested that Petitioner enter into an Agreement to Maintain Road and Storm Water Facilities. The agreement provides for the upkeep and maintenance of road and stormwater facilities, as they are essential to the protection of water resources in Thurston County, requiring that all property owners conduct business in a manner that promotes environmental protection. This Agreement contains specific provisions with respect to maintenance of road and stormwater facilities, with the authority of the County being able to require maintenance and pollution source control deriving from the Thurston County Code. Ex. 3.
11. The public will be benefitted by the petitioners making upgrades to the road in conjunction with their property improvements. The road will be designed to meet or exceed county standards, including a reconstructed twenty-six foot paved roadway section with rolled curb. In addition, a sidewalk and landscaped planter strip will be provided on the west side and pedestrian crosswalks will provide safe crossings between the club facilities. The proposed improvements to this property that can be made with the approval of the vacation will add to the assessed value of the property, thereby adding to the county tax base. Ex. 1, p. 3.
12. Petitioner has provided information regarding the exact extent of the proposed road improvements and how it will address tributary drainage, slope stability adjacent to the county road, and pedestrian accommodation through the site. Ex. 1, Attachments f and g.
13. Petitioner's parcel is zoned Rural Residential Resource 1/5 (RRR 1/5), surrounding parcels are the same, RL1 / 1 (Residential Limited Areas of More Intense Residential Development) or RL 1 / 2.
14. Country Club Drive NW is a Class A road, as defined by TCC 13.36.020, wherein public expenditures have been made for acquisition, improvement or maintenance of the right-of-way. If the Petitioner's request is recommended for being granted, Petitioner will be

required to obtain a fair market appraisal of the area being vacated, by a certified general real estate appraiser on file with the Washington State Department of Licensing. Petitioner will then be required to present the appraisal to the Public Works Real Estate Services section for review. Providing the appraisal is found to be acceptable to both the petitioner and the County, Petitioner would be required to pay compensation in the amount of one hundred percent of said fair market appraisal value prior to a final vacation resolution being presented to the Board of County Commissioners.

CONCLUSIONS OF LAW

1. RCW 36.87.060 allows a hearing officer to conduct a public hearing to consider the report of the road engineer for the proposed road vacation, to prepare a record of the proceedings, and to make a recommendation to the Board of Commissioners on the proposed vacation.
2. This procedure is implemented, under Thurston County Code (TCC) 13.36.060, which provides that “Except where the board specifically retains jurisdiction, a hearing examiner will be used to conduct a public hearing and make a recommendation to the board of county commissioners in all cases. Hearings shall be scheduled and conducted pursuant to Chapter 36.87 RCW. On the day fixed for the public hearing, the hearing examiner shall consider the report of the county road engineer, and take testimony and evidence relating to the proposed vacation.” Thus, both state and county law require the Hearing Examiner’s decision to be in the form of a recommendation to the Board of County Commissioners.
3. A road may be vacated by the county only if (1) the road is useless as part of the county road system and (2) that the public will be benefitted by its vacation and abandonment. RCW 36.87.020. If the county road is found to be useful as part of the county road system, it shall not be vacated. But if it is not useful and the public will be benefitted by the vacation, thereof, the county may vacate the road, or any portion thereof. RCW 36.87.060(1).
4. Based on finding of fact Nos. 1 through 14, it is concluded that the area proposed to be vacated is not needed as part of the Thurston County road or right-of-way system and is not useful for those purposes. The public will be benefitted by the requested vacation.
5. For these reasons, the proposed road vacation meets the standards of RCW 36.87.020 and RCW 36.87.060 and should be granted subject to the condition that the Maintenance Agreement (Ex. 3), be recorded on the title of the subject property at the County Assessor’s office and that it run with the title of the subject land.

RECOMMENATION

The Hearing Examiner recommends that the Board of Commissioners should GRANT the vacation of a segment of the unimproved Country Club Drive NW that is adjacent to Petitioners' property, which is located at 3636 Country Club Drive NW, Olympia, Washington 9808, and as described in Finding of Fact No. 1, under file number PW-VAC-12-002. This recommendation is subject to the condition that the Maintenance Agreement (Ex. 3), be recorded on the title of the subject property at the County Assessor's office and that it run with the title of the subject land.

Dated this date of December 26, 2012.



Jacqueline Brown Miller
Thurston County Hearing Examiner *pro tem*