



COUNTY COMMISSIONERS

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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of) NO. 2021100959
)
Christophe T. and Sonia A. Allen) FINDINGS, CONCLUSIONS,
) AND RECOMMENDATION
For Vacation of a Road Right-of-Way)

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the request to vacate a 20-foot segment of an 80-foot unopened Thurston County right-of-way lying adjacent to tax parcel number 35900902000 be **APPROVED**.

SUMMARY OF RECORD

Request

Christophe T. and Sonia A. Allen (Applicants) seek to vacate a 20-foot segment of an 80-foot Thurston County right-of-way described as follows:

The southern 20-feet of 76th Way NE (platted Seventh Avenue North) abutting the northern property line of Lots 20 through 23 in Block 9 of the Plat of Boston Harbor, Division 1, as recorded on October 24, 1907, in Volume 8 of Plats at Page 30, Auditor’s File No. 38315, records of Thurston County, Olympia, Washington. Being in Section 11, Township 19 North, Range 2 West, W.M. Lying adjacent to parcel number 35900902000.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on May 25, 2021. The record was held open through May 27, 2021 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comment was submitted, and the record closed on May 27, 2021.

Testimony

The following individuals submitted testimony under oath at the open record public hearing:

Craig Sisson, Real Estate Services Manager, Thurston County Public Works
Todd Mason, Development Review Manager, Thurston County Public Works
Thomas Patrick Allen, Senior Engineer, KPFF Consulting Engineers, Applicant Agent
Christophe T. Allen, Applicant

Exhibits

The following exhibits were admitted in the record through the open record public hearing:

EXHIBIT 1 Public Works Staff Report including the following attachments:

- A. Notice of Public Hearing
- B. Copy of Application
- C. Vicinity Map
- D. Section/Township/Range Map
- E. Plat Map
- F. Aerial Photo (vacation request area in red)

After considering the testimony and exhibits submitted through the virtual open record hearing process, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. Christophe T. and Sonia A. Allen (Applicants) seek to vacate a 20-foot segment of an 80-foot Thurston County right-of-way to bring their non-conforming lot into compliance with zoning setbacks. The right-of-way is described as follows (hereafter referred to as “subject right-of-way”):

The southern 20-feet of 76th Way NE (platted Seventh Avenue North) abutting the northern property line of Lots 20 through 23 in Block 9 of the Plat of Boston Harbor, Division 1, as recorded on October 24, 1907, in Volume 8 of Plats at Page 30, Auditor’s File No. 38315, records of Thurston County, Olympia, Washington. Being in Section 11, Township 19 North, Range 2 West, W.M. Lying adjacent to parcel number 35900902000.

The purpose of the vacation request is to create more conforming setbacks consistent with zoning, where the current property lines result in a nonconforming structure as to setbacks. The requested vacation would change Applicants’ north property line to match that on the parcel adjacent to the east, which has already had a similar vacation approved. *Exhibits 1 and 1.B (site plan); Christophe Allen Testimony.*

2. The Applicant’s residential parcel is the last lot on 76th Way NE before it dead ends at the Budd Inlet shoreline. The portion of right-of-way requested for vacation ends approximately 15 to 20 feet from the existing bulkhead at the shoreline, meaning any future public access to the shoreline would not be impeded by the proposed vacation.

Testimony of Thomas Patrick Allen, Christophe Allen, and Craig Sisson. The subject right-of-way has never been opened or used for public travel and does not abut a body of water. No access permits for the right-of-way have been issued. It is covered primarily in lawn and decorative trees. There are no regulated natural features on site, and there are no other properties abutting the segment of right-of-way requested for vacation. *Exhibits 1, 1.B, and 1.D.*

3. The subject right-of-way is classified as Class B roads, wherein no public funds have been spent in the acquisition, operation, or maintenance of the rights-of-way, and compensation is payable to the Thurston County general fund. *Thurston County Code (TCC) 13.36.020.* The right-of-way was dedicated to the County on the plat of Boston Harbor, recorded on October 4, 1907. The total area of Class B roads requested for vacation is 2,400 square feet. *Exhibits 1 and 1.F.*
4. Zoning in the vicinity, including the subject right-of-way, is LAMIRD (RL 1/1). *Exhibit 1.*
5. The County Engineer identified several public benefits that would result from vacation of the subject right-of-way, including relief of liability for the County for the subject portion of right-of-way and the County's receipt of compensation pursuant to TCC 13.36.030. *Exhibit 1.*
6. The County Engineer recommended approval of the requested right-of-way vacation, on compliance with the following conditions applicable to Applicants: providing compensation to the County pursuant to TCC 13.36.030 for Class B roads; field locating the water and sewer lines demonstrating the requirements for 10-foot clearance on either side will be met; providing a perpetual access easement to Thurston County for operation, maintenance, and repair of septic tanks, pump chambers, pressure sewer connection lines, and pump electrical services for the STEP system; and relocating the water meter to the new right-of-way line. *Exhibit 1.* The Applicants waived objection to the recommended conditions. *Christophe Allen Testimony.*
7. Notice of the open record public hearing on the vacation request was published in The Olympian on May 11 and May 18, 2021. Notice was also posted in the vicinity of the subject right-of-way on May 4, 2021, at least 20 days in advance of the hearing, consistent with RCW 36.87.050. There are no adjacent property owners. There was no public comment on the application before or during the public hearing. *Exhibits 1 and 1.A.* Following expiration of the announced two-day post-hearing comment period, the Hearing Clerk confirmed no post-hearing comments were submitted.

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear this request for a vacation of a right-of-way and to make a recommendation to the Thurston County Board of County Commissioners

pursuant to the 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:

“...The [vacation request] must show the land owned by each [Applicant] and set forth that such county road is useless as part of the county road system and that the public will be benefited by its vacation and abandonment.” *RCW 36.87.020*

“...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.” *RCW 36.87.060(1)*

“No county shall vacate a county road or part thereof which abuts on a body of salt or fresh water unless the purpose of the vacation is to enable any public authority to acquire the vacated property for port purposes, boat moorage or launching sites, or for park, viewpoint, recreational, educational or other public purposes, or unless the property is zoned for industrial uses.” *RCW 36.87.130*

Conclusions Based on Findings

1. The subject right-of-way is not useful as part of the County road system. *Findings 2, 3, 5, and 6.*
2. With conditions requiring payment of compensation for the Class B roads and requiring a perpetual easement to Thurston County for required access for maintenance purposes, the public would benefit as a result of the requested right-of-way vacation. *Findings 3, 5, and 6.*
3. The subject right-of-way to be vacated does not abut a body of water. *Finding 2.*

RECOMMENDATION

The Hearing Examiner recommends that the request to vacate a 20-foot segment of an 80-foot of unopened Thurston County right-of-way lying adjacent to tax parcel number 35900902000 be **APPROVED** subject to the following conditions:

1. The Applicant shall field locate the water and sewer lines and shall confirm that the vacation will not encroach into the required 10-foot clearance on either side.
2. The Applicant shall provide a perpetual easement for five-feet beyond each side of the tank to Thurston County for the STEP tank, using a form approved by Public Works Water Resources Division.

3. The Applicants shall relocate the water meter to the new right-of-way line, under the supervision of Public Works Water Resources Division.
4. The Applicants shall pay compensation as set forth in TCC 13.36.030.

Recommended June 9, 2021.



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

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 decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$777.00** for a Request for Reconsideration or **\$1,054.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center 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 and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____ Appeal Sequence No.: _____

Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

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

Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
 on this _____ day of _____, 20___, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on _____, 20___, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(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 decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.