



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. 2020102067
)	
Larry Weaver et al.)	FINDINGS, CONCLUSIONS,
)	AND RECOMMENDATION
<u>For Vacation of a Road Right-of-Way</u>)	

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the request to vacate five areas of unopened Thurston County right-of-way lying adjacent to tax parcel numbers 56001500100, 56010000900, 56000901400, 56000900900, 560009000700, 70100900400, 70100900700, 70100401900, 70100401700, and 56001500100 be **APPROVED**.

SUMMARY OF RECORD

Request

Larry Weaver, Deguise Family Partnership, and Stella-Jones Corporation (Applicants) seek to vacate five areas of Thurston County right-of-way described as follows:

Areas A & B - All of platted "F" Street, now known as Foster Street, lying between blocks 9 and 10, southerly of the south line of Lot 21 of Block 9 extended west; and all of the East/West alley within Block 9, all in James Replat filed in Volume 8 of Plats, Page 52, AFN 50743, records of Thurston County Auditor, Olympia, WA; Area C- All of the North/South alley within Block 9 (also shown as the alley within Block 9 of Railroad Addition to Rochester filed in Volume 7 of Plats, Page 3, AFN 2060) all in James Replat filed in Volume 8 of Plats, Page 52, AFN 50743, records of Thurston County Auditor, Olympia, WA; Areas D & E - All of the North/South alley between Lots 7 through 21 in Block 4, and all of platted "I" Street lying easterly of Block 3, all in Railroad Addition to Rochester filed in Volume 7 of Plats, Page 3, AFN 2060, records of Thurston County Auditor, Olympia, WA. Lying adjacent to tax parcel numbers 56001500100, 56010000900, 56000901400, 56000900900, 560009000700, 70100900400, 70100900700, 70100401900, 70100401700, 56001500100.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on May 11, 2021. The record was held open through May 13, 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 13, 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

Kelli Root, Right of Way Agent II

Larry Weaver, Applicant

Exhibits

The following exhibits became part of the official 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 of Railroad Addition to Rochester
- F. Plat of James Replat of Railroad Addition to Rochester
- G. List of applicants

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. Larry Weaver, Deguise Family Partnership, and Stella-Jones Corporation (Applicants) seek to vacate five areas of Thurston County right-of-way described as follows (hereafter referred to as “subject rights-of-way”):

Areas A & B - All of platted “F” Street, now known as Foster Street, lying between blocks 9 and 10, southerly of the south line of Lot 21 of Block 9 extended west; and all of the East/West alley within Block 9, all in James Replat filed in Volume 8 of Plats, Page 52, AFN 50743, records of Thurston County Auditor, Olympia, WA; Area C - All of the North/South alley within Block 9 (also shown as the alley within Block 9 of Railroad Addition to Rochester filed in Volume 7 of Plats, Page 3, AFN 2060) all in James Replat filed in Volume 8 of Plats, Page 52, AFN 50743, records of Thurston County Auditor, Olympia, WA; Areas D & E - All of the North/South alley between Lots 7 through 21 in Block 4, and all of platted “I” Street lying easterly of Block 3, all in Railroad Addition to Rochester filed in Volume 7 of Plats, Page 3, AFN 2060, records of Thurston

County Auditor, Olympia, WA. Lying adjacent to tax parcel numbers 56001500100, 56010000900, 56000901400, 56000900900, 560009000700, 70100900400, 70100900700, 70100401900, 70100401700, 56001500100.

Exhibits 1 and 1.B.

2. None of the subject rights-of-way have ever been opened or used for public travel, and none abut a body of water. With the exception of private driveways in portions of Areas A and C, the rights-of-way are primarily covered in trees and brush. *Exhibits 1, 1.B, and 1.D.*
3. The rights-of-way contained in Areas A, B, and C are 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. These rights-of-way were dedicated to the County on the James Replat of Railroad Addition to Rochester, recorded on February 20, 1911. The total area of Class B roads requested for vacation is 26,300 square feet. *Exhibits 1 and 1.F.*
4. The rights-of-way contained in Areas D and E are classified as Class C roads. These rights-of-way were dedicated to the County on the Railroad Addition to Rochester, which was recorded on June 22, 1891, and are subject to the non-user provision of RCW 36.87.090¹ because they were not opened within five years of the authority granted for opening them. The County has lost its right to open the rights-of-way, so compensation cannot be collected for their vacation. The total area of Class C roads requested for vacation is 27,250 square feet. *Exhibits 1 and 1.E.*
5. Area A (known as Foster Street SW and shown as F Street in the James Replat) serves as a privately maintained access to the properties owned by the Applicants. Area A is 70 feet wide by 350 feet long. While the parcels owned by Applicants Larry Weaver and Stella-Jones Corporation have direct access to Highway 12, Applicant Deguise Family Partnership relies on Area A/Foster Street SW for access. The Applicants propose to grant an easement to the Deguise Family Partnership to ensure uninterrupted access to its property. *Exhibits 1, 1.B, and 1.F.*
6. Area B is a 15-foot wide by 120-foot long east-west alley running from Area A/Foster Street SW to the alley identified as Area C. Area B is not used for access but contains an easement to Rochester Water Association for a water service line. This easement would remain in place. *Exhibits 1, 1.B, and 1.F.*

¹ RCW 36.87.090: Any county road, or part thereof, which remains unopen for public use for a period of five years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time: PROVIDED, That this section shall not apply to any highway, road, street, alley, or other public place dedicated as such in any plat, whether the land included in such plat is within or without the limits of an incorporated city or town, or to any land conveyed by deed to the state or to any county, city or town for highways, roads, streets, alleys, or other public places.

7. Area C is a 20-foot wide by 325-foot long north-south alley. The southern segment runs between parcels owned by Applicant Larry Weaver, and a portion is used for parking by one of Mr. Weaver's business tenants. North of the Weaver ownership, the alley runs between the Deguise Family Partnership property and property owned by a non-party to the ROW vacation request, neither of which take access from the alley. *Exhibits 1 and 1.B.* With regard to the adjacent owner who did not join in the vacation application, Larry Weaver testified that they were contacted and informed about the proposal, but did not join in the application. Shortly thereafter, that owner sold the property. The new property owner has not yet returned attempts at communication. Their fence line does not enclose any of the right-of-way proposed to be vacated. *Larry Weaver Testimony.*
8. Area D (one of the areas subject to the non-user statute) is 20 feet wide and 250 feet long. It runs between parcels owned by Applicants Larry Weaver and Stella-Jones Corporation. *Exhibits 1 and 1.B.*
9. Area E (also subject to the non-user statute) is 50 feet wide and 315 feet long. It runs between parcels owned by Applicant Stella-Jones Corporation. *Exhibits 1 and 1.B.*
10. 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, the County's receipt of compensation pursuant to TCC 13.36.030, and the increase in adjacent property values. *Exhibit 1.*
11. The County Engineer recommended approval of the requested right-of-way vacation, on condition that the Applicants provide compensation to the County pursuant to TCC 13.36.030 for Class B roads (Areas A, B, and C), provide an access easement for the property owned by the Deguise Family Partnership, and maintain the easement within area B to Rochester Water Association. *Exhibit 1.* The Applicant s waived objection to the recommended conditions. *Larry Weaver Testimony.*
12. Notice of the open record public hearing on the vacation request was published in The Olympian on April 27 and May 4, 2021 and posted in the vicinity of the subject right-of-way on April 20, 2021, at least 20 days in advance of the hearing, consistent with RCW 36.87.050. Notice was mailed to the one adjacent property owner who did not sign the application on April 29, 2021. There was no public comment on the application before or during the public hearing. *Exhibits 1, 1.A, and 2.* 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 rights-of-way are not useful as part of the County road system. *Findings 2, 5, 6, 7, 8, and 9.*
2. With conditions requiring payment of compensation for the Class B roads, requiring an easement to the Deguise property, and providing for the continuation of the Rochester Water Association easement, the public would benefit as a result of the requested right-of-way vacation. *Findings 3, 5, 6, and 11.*
3. The subject rights-of-way to be vacated do not abut a body of water. *Finding 2.*

RECOMMENDATION

The Hearing Examiner recommends that the request to vacate five areas of unopened Thurston County right-of-way lying adjacent to tax parcel numbers 56001500100, 56010000900, 56000901400, 56000900900, 560009000700, 70100900400, 70100900700, 70100401900, 70100401700, and 56001500100 be **APPROVED**, subject to the following conditions:

1. Payment of compensation for the Class B roads;
2. Applicants' delivery of an easement granting access to the parcels currently owned by The Deguise Family Partnership, their heirs and assigns; and

3. Provision in the final resolution for continuation of the Rochester Water Association easement within the area identified as Parcel B, in addition to the standard reservation for utilities.

Recommended May 18, 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___.