

ENGINEER'S REPORT

PETITION REQUEST # 19-115451 RWE VACATED PORTION OF 99TH Ave NW REQUEST TO AMEND ORDINANCE 21-036

INTRODUCTION

Chapter 36.87 Revised Code of Washington (RCW) gives county legislative authorities broad authority to vacate and abandon land that was acquired for county road purposes. Chapter 13.100 Snohomish County Code (SCC) provides that Snohomish County (the County) also has the authority to vacate and abandon public road right-of-way (ROW) independent of the statutory vacation provisions of RCW 36.87. The County's legislative authorities' use of this broad authorities must be made under the advice and supervision of the Snohomish County Engineer ("County Engineer").

SCC 13.100.010 provides that the road or ROW vacation and abandonment procedures may be initiated either in response to Council request or when the County Engineer determines that the criteria for the road or ROW vacation and abandonment exists. Vacation and abandonment procedures may also be initiated independently at the discretion of the County Engineer or in response to a frontage owner's petition. This proposed vacation is in response to a frontage owner's petition.

FACTS/BACKGROUND

1. In October 2019, Petitioners Gary and Gayeann Buse, Thomas Stephenson, and Greg Brown jointly petitioned the County to vacate a portion of an unopened ROW for 99th Ave NW which abuts each of the petitioners' properties in the Warm Beach area of unincorporated Snohomish County. (See Exhibit1)
2. Pursuant to RCW 36.87.040 and SCC 13.10.040, the County Engineer prepared a report dated June 4, 2021, examining the unopened County Road ROW proposed to be vacated and abandoned supporting the vacation.
3. In preparing the Engineer's Report, the Department of Public Works (DPW) asked local utilities to determine if any utilities were installed or planned for the ROW proposed to be vacated. (See Exhibit 2)
4. As noted in the Engineer's Report dated June 4, 2021, Ziplly Fiber responded that it had utilities in the unopened ROW. (See Exhibit 3 Page 3)

5. RCW 36.87.140 and SCC 13.100.100 allow the County to retain an easement in respect to the vacated ROW for the construction, repair, and maintenance of utilities and services. The County Engineer's Report recommended the vacation be conditioned on the petitioner's granting an easement to the County over the vacated ROW for the construction, repair and maintenance of public utilities and services within the vacated ROW due to Ziply Fiber's representation that it had utilities in the unopened ROW.
6. The County Engineer recommended the vacation be conditioned on Petitioners Gary and Gayeann Buse granting an access easement over that portion of the ROW abutting the Buses' property benefitting both Petitioners Stephenson and Brown, owners of Lots 50-53 Block 12, C.D. Hillman's Birmingham Waterfront Addition to the City of Everett, and Lots 3-5 Block 11 and Lots 46-49 Block 12 C.D. Hillmans Birmingham Waterfront Addition to the City of Everett, respectively, to prevent those properties from becoming landlocked due to the vacation.
7. On August 18, 2021, the Snohomish County Council adopted Ordinance 21-036 vacating a portion of 99th Ave NW, a Snohomish County road ROW. Ordinance 21-036 was conditioned on the access easement and utility easement recommended by the County Engineer.
8. Ordinance 21-036 has not been recorded in the Auditor's Office to date because DPW staff are waiting for the petitioners to provide the required easements.

FINDINGS

Since the adoption of Ordinance 21-036, Petitioner Brown proposed amending the Ordinance to remove the requirement that the County retain a utility easement, and to modify the requirement that Petitioners Gary and Gayeann Buse provide an access easement to Brown. The amendments are supported by the following:

- Ziply Fiber has determined that its initial response to DPW was incorrect and that they do not have any utilities in or planned for the vacated ROW, as confirmed in their April 18, 2022, letter to DPW (See Exhibit 4). Therefore, there is no need to retain a utility easement as required under Ordinance 21-036.
- Petitioner Brown informed DPW that he no longer needs an access easement from Petitioners Gary and Gayeann Buse and instead will execute and record a covenant and agreement related to the vacation of ROW (See Exhibit 5). This covenant and agreement will ensure that vehicular access will be provided to DPW's satisfaction to all of Brown's real property if his property were to be partitioned and sold independently in the future. (See Exhibit 6)

RECOMMENDATIONS

Based on the above findings, DPW recommends that Ordinance No. 21-036 be amended as proposed by Petitioner Brown based on the following conditions.

CONDITIONS

1. Section 6 of Ordinance No. 21-036 adopted on August 18, 2021, is deleted in its entirety, and replaced with:

Within three (3) months of the effective date of Ordinance No. 23-____, Petitioners Gary and Gayeann Buse shall grant and record with the Snohomish County Auditor an access easement over the vacated portion of 99th Avenue NW abutting Lots 1-2, Block 11 C.D. Hillman's Birmingham Waterfront Addition to the City of Everett benefitting Lots 50-53, Block 12 of C.D. Hillman's Birmingham Waterfront Addition to the City of Everett, Petitioner Thomas Stephenson's property.

2. A new section is added to Ordinance 21-036 to read:

Within three (3) months of the effective date of Ordinance No. 23-____, Petitioner Greg Brown shall execute and record with the Snohomish County Auditor the "Covenant and Agreement Related to the Vacation of a Portion of 99th Avenue NW, an Unopened Snohomish County Right-of-Way" attached to this ordinance as Exhibit A to ensure that no portion of his real property becomes land-locked in the future due to the potential independent sale of portions of his real property.

3. Section 7 of Ordinance No. 21-036 is deleted in its entirety.

Approved by:

Douglas W. McCormick P.E.
Deputy Director/County Engineer

Date

Prepared By:

Maria Acuario
ROW Investigator III

Date