

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Adoption of Ordinance No. 823 - Vacating an Unopened Portion of 25th Avenue NW Right-of-Way

DEPARTMENT: Public Works

PRESENTED BY: Robert Earl, Engineering Manager

ACTION: ☒ Ordinance ☐ Resolution ☐ Motion
 ☐ Discussion ☐ Public Hearing

PROBLEM/ISSUE STATEMENT:

Petitioner Marvin Lee submitted a Street Vacation Petition and Affidavit on January 23, 2018 to vacate a 120 foot by 30 foot (3,600 square feet) unopened portion of the 25th Avenue NW right-of-way. On March 26, 2018, staff presented Mr. Lee's petition to Council. The Council adopted Resolution No. 426 to initiate the right-of-way vacation process and fixed a date for a public hearing before the City's Hearing Examiner. The Hearing Examiner held a public hearing on this right-of-way vacation on April 17, 2018. Both written and oral public comments were submitted, with 11 residents testifying at the hearing. The Hearing Examiner submitted his Findings, Conclusions and Recommendation to "approve with conditions" the right-of-way vacation on May 3, 2018. Mr. Lee has also agreed to additional conditions of the vacation approval that have been incorporated into Ordinance No. 823. Those conditions are that Mr. Lee will not object to any City-initiated vacation of adjacent right-of-way and that a native growth protection easement of 15 feet in width be over the vacated portion of the right-of-way that is adjacent to the City's right-of-way.

Tonight, the Council will consider the recommendations of the Hearing Examiner and City staff, along with comments from the public. The Council may adopt, reject, or modify the recommendation of the Hearing Examiner. Adoption of proposed Ordinance No. 823 would approve this right-of-way vacation.

RESOURCE/FINANCIAL IMPACT:

In accordance with SMC 12.17.030, the petitioner has agreed to pay the appraised amount of \$50,000 for the 3,600 square feet of vacated right of way, plus additional City review fees, closing and surveying costs. In accordance with SMC 12.17.30, one half of the proceeds shall be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the City.

RECOMMENDATION

Staff recommends that Council accept the Hearing Examiner's recommendation of approval and adopt Ordinance No. 823 vacating the Westerly 30 feet of 25th Avenue

NW subject to the condition that Petitioner shall, in addition to all other duties and expenses of vacation as set forth in SMC 12.17, provide and pay for a boundary survey of the combined Lot 8, Block 4, Richmond Reserve Addition and the portion of the right of way of 25th Avenue NW that is vacated.

Approved By: City Manager **DT** City Attorney **MK**

BACKGROUND

Petitioner Marvin Lee submitted a Street Vacation Petition and Affidavit on January 23, 2018, referenced by file number PLN18-0009, to vacate a 120 foot by 30 foot (3,600 square feet) unopened portion of the 25th Avenue NW right-of-way. Mr. Lee owns 100 percent of the property directly abutting the area to be vacated. The City owns the parcel abutting the opposite side of the right-of-way, which is an open-space area known as Richmond Reserve. Mr. Lee is proposing that the City vacate the thirty (30) feet directly abutting his property, which is Lot 4, Block 8 of the Richmond Reserve Addition (King County Tax Parcel 7284900270).

The process for reviewing right-of-way vacations is described in the Shoreline Municipal Code (SMC) 12.17 and Chapter 35.79 RCW. Additionally, Section 197-11-800(2)(h) of the Washington Administrative Code (WAC) specifically states that vacation of road or street right of way is exempt from SEPA review.

On March 26, 2018 City Council adopted Resolution No. 426, setting April 17, 2018 as the date for a public hearing on this matter. The staff report for this action can be viewed at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2018/staffreport032618-7d.pdf>. Subsequently, staff posted public notices in four public places, and two public notices at the area to be vacated, as required by SMC 12.17.020.C.

Prior to the public hearing, staff notified City and franchised utilities with facilities in the area of the proposal to vacate and requested information regarding existing or future, planned infrastructure that may require easements. Verizon, Puget Sound Energy, Seattle Public Utilities and Seattle City Light did not respond within 30 calendar days after notices were sent. Ronald Wastewater District and the City's Surface Water Utility have no plans to use the area to be vacated for future facilities. At the same time, staff also notified Shoreline Police and the Shoreline Fire District of the proposal to vacate and requested comments from the public safety agencies within 30 calendar days. No objections to the proposal or requests for easements were received.

On April 17, 2018, a Public Hearing was held by the City's Hearing Examiner in the City Council Chambers. Staff provided the required hearing notice and request for written comments. Written comments were received expressing concern regarding the vacation and development of the abutting property. Public testimony at the hearing, with the exception of the testimony of Mr. Lee, raised concerns regarding loss of this portion of the right-of-way to private use, and its loss as part of the Richmond Reserve, along with additional issues such as impacts to views. Materials submitted at the Public Hearing, including the staff report and public comments, can be viewed at the following link: <http://www.shorelinewa.gov/government/departments/city-clerk-s-office/hearing-examiner/-folder-846>.

On May 3, 2018, the Hearing Examiner issued his Findings, Conclusions and Recommendation to City Council. The Hearing Examiner's recommendation was to approve the requested vacation, subject to a specific condition requiring a recorded survey of the property to be arranged and paid for by Petitioner Lee. The Hearing

Examiner's Findings, Conclusions and Recommendation are included with this staff report as Attachment A.

DISCUSSION

Tonight, the Council will consider the recommendations of the Hearing Examiner and City staff, along with comments from the public. Adoption of proposed Ordinance No. 823 (Attachment B) would approve this right-of-way vacation.

The criteria for approving street vacations are described in SMC 12.17.050(A) through SMC 12.17.050(D). The Hearing Examiner's recommendation of approval is based on these criteria. As provided in SMC 12.17.020(F), the Council may adopt, reject, or modify the recommendation of the Hearing Examiner. Each criterion is listed below followed by the conclusion made by the Hearing Examiner.

SMC 12.17.050(A) -The vacation will benefit the public interest.

- Hearing Examiner Conclusion No. 2:
The Public will benefit from the economic payment of approximately \$50,000 by the petitioner for the value of the vacated right of way. As required by SMC 12.17.030(B), 50% of these proceeds shall be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects. The public will benefit from the economic value of future property taxes paid for the vacated area. The City will also not be required to expend substantial resources to open the right-of-way due to its topography, maintain the area, or be liable for the area.
- Hearing Examiner Conclusion No. 3 (in relevant part)
The area proposed for vacation has not been opened for street or utility uses since platted in 1907. It is steeply sloped upward from its intersection with 191st Place NW to a mid-point, whereupon it becomes steeply sloped downward to its intersection with 22nd Avenue NW and is unsuitable as a street use without unjustified expenditure of substantial City funds for regrading.

SMC 12.17.050(B) - The proposed vacation will not be detrimental to traffic circulation, access, emergency services, utility facilities, or other similar right-of-way purposes.

- Hearing Examiner Conclusion No. 3 (in relevant part):
The surrounding area is adequately served by other streets, such as 25th and 22nd Avenues NW and NW 191st Place, which are constructed to provide access across, and not down, the sloped terrain. No existing access or emergency services routes would be affect nor rendered better or worse by the vacation. No parcel will be landlocked due to this vacation.

- Staff Note

This criterion also speaks to utility facilities which the Hearing Examiner's conclusion does not address. As noted above, the City contacted utilities within the area and no objections or requests for easements were received.

SMC 12.17.050(C) - The street or alley is not a necessary part of a long-range circulation plan or pedestrian/bicycle plan.

- Hearing Examiner Conclusion No. 4:

The area to be vacated is a small residential right-of-way classified as a Local Secondary Street, is not included in the City's Pedestrian Facilities Plan nor the City's Bicycle Facilities Plan of the Transportation Element of the Comprehensive Plan, and is not identified in any long range circulation plans. The platted unopened alley adjacent to Lee's property will not be impacted by the vacation.

- Hearing Examiner Conclusion No. 5:

As noted, the Public Works Department states that the right-of-way to be vacated is not a necessary part of a long-range circulation plan or pedestrian/bicycle plan.

SMC 12.17.050(D) - The subject vacation is consistent with the adopted comprehensive plan and adopted street standards.

- Hearing Examiner Conclusion No. 6:

The proposed vacation is consistent with the Comprehensive Plan and adopted street standards.

Neighborhood Engagement

After the close of the Public Hearing, the City encouraged Mr. Lee (Petitioner) and testifying members of the neighborhood to meet and discuss ways that the vacation may be acceptable to the community. These discussions were productive and on May 29, 2018, staff met with Mr. Lee and Christine Gildow, a commenter on the proposed vacation. At the meeting, the View Preservation Easement that burdens Mr. Lee's property was discussed, along with conditioning the vacation on Mr. Lee's agreement not to object to a City-initiated vacation of adjacent right-of-way and placing a native growth protection easement of 15 feet in width over the vacated portion of the right-of-way. Both of these actions would be applicable to future owners of the property. The no-object and easement were acceptable to Mr. Lee and Ms. Gildow. Staff has revised Ordinance No. 823 to include both agreed actions.

RESOURCE/FINANCIAL IMPACT

In accordance with SMC 12.17.030, the petitioner has agreed to pay the appraised amount of \$50,000 for the 3,600 square feet of vacated right of way, plus additional City review fees, closing and surveying costs. In accordance with SMC 12.17.30, one half of the proceeds shall be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the City.

RECOMMENDATION

Staff recommends that Council accept the Hearing Examiner's recommendation of approval and adopt Ordinance No. 823 vacating the Westerly 30 feet of 25th Avenue NW, subject to the condition that Petitioner shall, in addition to all other duties and expenses of vacation as set forth in SMC 12.17, provide and pay for a boundary survey of the combined Lot 8, Block 4, Richmond Reserve Addition and the portion of the right of way of 25th Avenue NW that is vacated.

In addition, Staff recommends that Council supplements the conditions set forth in the Hearing Examiner's recommendation with two additional conditions agreed to by the Petitioner – a Waiver of Objection and a Native Growth Protection Easement.

ATTACHMENTS

Attachment A: Hearing Examiner's Findings, Conclusions & Recommendation
Attachment B: Proposed Ordinance No. 823
Attachment B, Exhibit A: Vicinity Map and Depiction of the Area to Be Vacated

ATTACHMENT A

Hearing Examiner's Findings Conclusions & Recommendation

RECEIVED

MAY 03 2018

9:01 a.m.
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**CITY OF SHORELINE HEARING EXAMINER
FINDINGS, CONCLUSIONS AND RECOMMENDATION**

CITY CLERK
CITY OF SHORELINE

PROPOSAL INFORMATION SUMMARY

Project: Vacation of a portion of 25th Avenue NW right-of-way

File Number: PLN18-0009

Petitioner: Marvin Lee

Recommendations: Department: Approve with conditions
Hearing Examiner: Approve with conditions

Public Hearing: April 17, 2018

Introduction

Marvin Lee petitioned the City Council to vacate a strip of right-of-way approximately 3,600 square feet in size along a portion of 25th Avenue NW. The City Council passed Resolution 426 to initiate the street vacation process and fix the date for the Hearing Examiner's public hearing on the proposed vacation. The hearing was held on April 17, 2018, and the Hearing Examiner inspected the site on the same day. The Department was represented at the hearing by Robert Earl, Engineering Manager.

For purposes of this recommendation, all section numbers refer to the Shoreline Municipal Code ("SMC" or "Code") unless otherwise indicated. After considering the evidence in the record, the Examiner enters the following findings of fact, conclusions and recommendation on the proposed vacation.

Findings of Fact

1. The street vacation process is controlled by Chapter 35.79 RCW and Chapter 12.17 SMC, which largely duplicates certain provisions of state law.
2. If approved, the vacation would release 3,600 square feet from the right-of-way. The petitioner owns the adjacent property, and seeks to utilize this area for setbacks, landscaping, and an access driveway, in association with the development of a single-family home on his property.
3. In the area of the proposed vacation, 25th Avenue NW is bordered by property owned by Lee, legally described as Lot 8, Block 4, Richmond Reserve Addition (King County Tax Parcel 7284900270), and addressed as 2501 NW 191st Place ("Property"), and property owned by the City of Shoreline, the site of the Richmond Reserve Park (King County Tax Parcel 7284900360), with this

parkland being dedicated to the public in the original 1907 Plat. Exhibit 1, Attachment 3.

4. The neighborhood immediately surrounding the area to be vacated is occupied by single-family residences. No other properties are accessed by the area to be vacated.
5. The Richmond Reserve is an open space/natural area within the City's park System, and is located adjacent to the right-of-way area concerned. The area proposed to be vacated is viewed by the community as an extension of the reserve.
6. The general area is encumbered by steep slopes of varying degrees. The area proposed for vacation is steeply sloped upward from its intersection with 191st Place NW to a mid-point, whereupon it becomes steeply sloped downward to its intersection with 22nd Avenue NW. Due to the slope, the area proposed for vacation would be classified as a Very High Hazard Landslide Area pursuant to SMC 20.80, the City's Critical Area Regulations. Exhibit 1 Attachment 6.
7. There are no known utilities within the area proposed for vacation. The City notified utility providers with facilities in the vicinity of the area to confirm their current or future use. Verizon, Puget Sound Energy, Seattle Public Utilities and Seattle City Light, did not respond within 30 calendar days after notices were sent. Ronald Wastewater District, Comcast, and the City's Surface Water Utility indicated that they have no infrastructure within the proposed vacation area and have no plans to use the vacation area for future facilities.
8. City Public Works staff reviewed whether there was any present or future use of the portion of the unopened 25th Avenue NW that has been requested for vacation. Public Works foresees no present or future use. Exhibit 1 Attachment 11.
9. The parcel proposed for vacation has never been opened, paved, or used for vehicular travel.
10. The City provided the requisite hearing notice and request for written comments. Written comments were received expressing concern regarding the vacation and redevelopment of the adjacent property. Exhibits 2-5. Members of the public spoke at the hearing, including Christine Gildow, Marvin Lee, Anne Heron, Chris Gildow, Lela Jamieson, Jeff Hill, Sherry Hill, Dean Jameson, Gala Lindvall, and Karen Weber, and raised concerns regarding the loss of this portion of the right-of-way to private use, and its loss as part of the Richmond Reserve along with additional issues such as questions about impacts to views.

11. The City's Comprehensive Plan does not specifically address street vacations. The area in question is not identified within the Comprehensive Plan, or the adopted City street standards. However, two Comprehensive Plan policies are relevant to the proposed vacation:

LU 139: Restrict water runoff to predevelopment levels and restore water quality to predevelopment levels for all new development and redevelopment. Additional requirements for Low Impact Development (LID) on residential parcels, which are more restrictive than this general policy will apply to any permitted development within the area to be vacated.

ED 4: Encourage and support revitalization and construction spending within the City. This vacation would facilitate construction of a new, single family home on the petitioner's abutting parcel.

12. The City's SEPA official determined that the proposed street vacation is categorically exempt from SEPA, as provided in WAC 197-11-800.
13. The Department recommended approval of the vacation subject to the reservation of necessary utility easements.
14. Washington courts have long held that streets may be vacated for several reasons but regardless of the reason, the vacation must have within it some element of public use. *Youngs v. Nichols*, 152 Wash 306 (1929); *Yarrow First Assoc. v. Town of Clyde Hill*, 66 Wash 2d 371 (1965); *London v. City of Seattle*, 93 Wn.2d 657 (1980). The courts have also held that the fact that one private party may benefit directly or indirectly from the vacation does not mean the vacation will not also serve a public use. *Banchero v. City of Seattle*, 2 Wn.App. 519 (1970).

Conclusions

1. The criteria for approval of a street vacation are set forth in SMC 12.17.050. Each of the following criteria must be met:
 - A. The vacation will benefit the public interest;
 - B. The proposed vacation will not be detrimental to traffic, circulation, access, emergency services, utility facilities, or other similar right-of-way purposes;
 - C. The street or alley is not a necessary part of a long-range circulation plan or pedestrian/bicycle plan; and
 - D. The subject vacation is consistent with the adopted comprehensive plan and adopted street standards.


2. The public will benefit from the economic payment of approximately \$50,000 by the petitioner for the value of the vacated right of way. As required by SMC 12.17.030(B), 50% of these proceeds shall be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects. The public will benefit from the economic value of future property taxes paid for the vacated area. The City will also not be required to expend substantial resources to open the right-of-way due to its topography, maintain the area, or be liable for the area.
3. The area proposed for vacation has not been opened for street or utility uses since platted in 1907. It is steeply sloped upward from its intersection with 191st Place NW to a mid-point, whereupon it becomes steeply sloped downward to its intersection with 22nd Avenue NW and is unsuitable for street use without unjustified expenditure of substantial City funds for regrading. The surrounding area is adequately served by other streets, such as 25th and 22nd Avenues NW and NW 191st Place, which are constructed to provide access across, and not down, the sloped terrain. No existing access or emergency services routes would be affected nor rendered better or worse by the vacation. No parcel will be landlocked due to this vacation.
4. The area to be vacated is a small residential right of way classified as a Local Secondary Street, is not included in the City's Pedestrian Facilities Plan nor the City's Bicycle Facilities Plan of the Transportation Element of the Comprehensive Plan, and is not identified in any long range circulation plans. The platted unopened alley adjacent to Lee's property will not be impacted by the vacation.
5. As noted, the Public Works Department states that the right-of-way to be vacated is not a necessary part of a long-range circulation plan or pedestrian/bicycle plan.
6. The proposed vacation is consistent with the Comprehensive Plan and adopted street standards.

Recommendation

The Hearing Examiner recommends that the City Council **APPROVE** the proposed right-of-way vacation subject to the following condition:

Petitioner shall, in addition to all other duties and expenses of vacation as set forth in SMC 12.17, provide and pay for a boundary survey of the combined Lot 8, Block 4, Richmond Reserve Addition and the portion of right of way of 25th Avenue NW that is vacated. Such survey shall be performed by a Land Surveyor licensed to practice in Washington State and shall be recorded with King County consistent with Chapter 58.09 RCW.

Entered this 2 day of May, 2018.



Ryan P. Vancil
Hearing Examiner

ORDINANCE NO. 823

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON
GRANTING THE VACATION OF A PORTION OF PUBLIC RIGHT-OF-
WAY GENERALLY DESCRIBED AS 25TH AVENUE NW.**

WHEREAS, pursuant to RCW 35.79.010, the City Council has the legislative authority to vacate a portion of the public right-of-way and SMC 12.17 sets for the applicable procedures; and

WHEREAS, the act of vacating a street is categorically exempt from environmental review per WAC 197-11-800(2)(h); and

WHEREAS, 25th Avenue NW was originally dedicated to the public in 1907 with the recording of The Richmond Reserve in Volume 16 , Page 48, King County Plats; and

WHEREAS, the City received a petition from Marvin Lee, the owner of more than two-thirds of the property abutting 25th Avenue NW, to vacate a portion of said right-of-way; and

WHEREAS, on March 26, 2018, the City Council adopted Resolution No. 426 fixing the date and time for an open record public hearing; and

WHEREAS, the City Clerk posted and published appropriate notice of the public hearing as required by SMC 12.17.020; and

WHEREAS, on April 17, 2018, the Shoreline Hearing Examiner held an open record public hearing on the vacation petition; and

WHEREAS, on May 3, 2018, the Shoreline Hearing Examiner issued a recommendation for approval with conditions of the vacation petition; and

WHEREAS, an appraisal for that portion of the right-of-way to be vacated was prepared and accepted by the City, showing the fair market value of the property is \$50,000; and

WHEREAS, on June 11, 2018, the City Council considered the recommendation of the Shoreline Hearing Examiner, the recommendation of staff, and all public comment received on the vacation petition at its regularly scheduled meeting; and

WHEREAS, the City Council has determined that vacating a portion of 25th Avenue NW is in the public interest and satisfies the criteria set forth in SMC 12.17.050; and

WHEREAS, the City Council has determined that the vacation should be subject to certain conditions of approval, above and beyond those noted by the Hearing Examiner;

THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Findings and Conclusions. The City Council concurs in the findings and conclusions set forth in the recommendation of the Shoreline Hearing Examiner issued on May 3, 2018 and adopts the same by reference.

Section 2. Vacation of Public Right-of-Way. That portion of 25th Avenue NW as described below and depicted on Exhibit A is vacated subject to the conditions set forth in Section 3:

The westerly 30 feet of 25th Avenue NW abutting Lot 8, Block 4 of the Richmond Reserve Addition to Richmond Beach, lying between the westerly line of NW 191st Place on the east and the easterly line of the alley of Block 4 of the Richmond Reserve Addition to Richmond Beach on the west, all as recorded in Volume 16, Page 48 of King County Plats.

Section 3. Conditions of Public Right-of-Way Vacation. This Ordinance and the vacation authorized herein shall not become effective until the following conditions are satisfied:

- A. Petitioner shall pay compensation to the City of Shoreline in the amount of \$50,000 along with all expenses related to the transfer of the property, including recording fees, on or before August 31, 2018. Monetary compensation shall be deposited in the General Fund with one-half placed in a restricted amount for future appropriation by the City Council for acquisition, improvement, development, and related maintenance of public open space or transportation capital projects in compliance with SMC 12.17.030(B).
- B. Petitioner shall, at his sole cost and expense, have a boundary survey of that portion of 25th Avenue NW that is vacated. The survey shall be performed by a land surveyor licensed to practice in the State of Washington. A copy of the survey shall be provided to the City on or before August 24, 2018, for recording.
- C. Petitioner shall enter into a Waiver of Objection Agreement with the City waiving all rights provided in SMC 12.17.040(B) to object to any future city-initiated vacation of that portion of 25th Avenue NW abutting the portion vacated by this Ordinance. A copy of this Agreement shall be recorded, at the Petitioner's sole cost and expense, on the title of Petitioner's property on or before August 31, 2018. The Waiver of Objection shall be binding on all successive owners of the property.
- D. Petitioner shall enter into a Native Growth Protection Easement with the City for a 15 feet wide by 120 feet long strip of land over the vacation portion of 25th Avenue NW abutting the City's right-of-way. The easement shall be recorded, at the Petitioner's sole cost and expense, on the title of Petitioner's property on or before August 31, 2018.

Section 4. Directions to the City Clerk. After the conditions set forth in Section 3 above have been satisfied, the City Clerk shall certify this Ordinance and forward it, along with the boundary survey, to the King County Recorder's Office for recording upon the property records. Prior to certifying and recording, the City Clerk is authorized to make necessary corrections to this ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 5. Directions to Director of Public Works. Upon the satisfaction of the conditions in Section 3 and the recording of this Ordinance as provided in Section 4, the Director of Public Works shall cause to amend the official maps to reflect the vacation of that portion of 25th Avenue NW.

Section 6. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any person or situation.

Section 7. Publication and Effective Date. The effectiveness of this Ordinance is subject to satisfaction of the conditions set forth in Section 3. If such conditions are not satisfied on or before the dates set forth in Section 3, this Ordinance shall become null and void and be of no further effect. If such conditions are satisfied on or before the dates set forth in Section 3, a summary of this Ordinance consisting of the title shall be published in the official newspaper and become effective five days thereafter.

PASSED BY THE CITY COUNCIL ON JUNE 11, 2018

Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik-Smith
City Clerk

Margaret King
City Attorney

Date of Publication: , 2018
Effective Date: , 2018

