

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF PORT ANGELES**

In the Matter of the Application of)		No. PZ 20-24
))	
Eric Walrath, on behalf of))	City Corporation Yard
the City of Port Angeles))	Partial Plat Vacation
Public Works & Utilities Department))	
))	
For a Plat Vacation _____))	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a partial plat vacation of 54 lots within the Townsite of Port Angeles subdivision, to create—together with streets and associated alleys previously vacated by ordinance—a single parcel measuring 472,294 square feet north of W. Lauridsen Boulevard, between B Street and the S. Tumwater Truck Route, is **APPROVED**.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on December 3, 2020, using remote technology in light of the ongoing COVID-19 pandemic.

Testimony:

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

Kevin Bagwell, City Assistant Planner
Shailesh Shere, City Deputy Director of Power Systems

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated November 25, 2020
2. Application Materials:
 - a. Petition to Vacate the Lots Comprising the City’s Corporation Yard, dated March 23, 2020
 - b. Area Map, dated January 10, 2020
 - c. Revised Code of Washington (RCW) 58.17.212
 - d. Routing Slip, dated March 20, 2020
3. Letter of Incomplete Application, dated April 8, 2020
4. Title Report Information
5. Ordinance No. 3663, published October 2, 2020

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6. Ordinance No. 3664, published October 2, 2020
7. SEPA Determination of Nonsignificance (DNS), dated October 23, 2020; SEPA Cover Page, dated May 7, 2020; SEPA Environmental Checklist, dated April 17, 2020, with City Staff Review; DNS Final Audit Report, dated October 23, 2020
8. Determination of Completeness Letter, dated October 26, 2020
9. Notice of Application Classified Proof, *Peninsula Daily News*, dated November 2, 2020, with ad published November 5, 2020
10. Notice of Public Hearing, undated
11. Affidavit of Noticing, dated November 9, 2020
12. Email from Kevin Bagwell to City Departments, dated November 3, 2020
13. Comment from Mike Sanders, Assistant Chief/Fire Marshal, dated November 5, 2020
14. Comment from Angel Torres, City Electrical Engineering Specialist, dated November 12, 2020
15. Staff PowerPoint Presentation

The Hearing Examiner enters the following findings and conclusions based upon the admitted testimony and exhibits:

FINDINGS

Application and Notice

1. Eric Walrath, on behalf of the Public Works & Utilities Department of the City of Port Angeles (City) (Applicant), requests a partial plat vacation of 54 lots within the Townsite of Port Angeles subdivision, specifically Blocks 448 and 443, lots 6-15 of Block 444, and lots 7 – 10 of Block 447. The 54 lots, together with streets and associated alleys previously vacated by ordinance (specifically, portions of A Street, 17th Street, and associated alleys within the Townsite) would create a single parcel measuring 472,294 square feet. The property is located directly north of W. Lauridsen Boulevard, between B Street and the S. Tumwater Truck Route. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2; Exhibit 4.*
2. The City Department of Community and Economic Development (DCED) determined that the application was complete on October 26, 2020. On November 2, 2011, DCED mailed notice of the application and associated public hearing to property owners within 300 feet of the subject property and posted notice on-site and at City Hall, with a 14-day comment period. The next day, DCED notified reviewing City departments of the application and requested comments. On November 5, 2020, DCED published notice of the application and associated hearing in the *Peninsula Daily News*. DCED did not receive any public comments in response to its notice materials. Assistant Chief/Fire Marshal Mike Sanders and City Electrical Engineering Specialist Angel Torres noted that they had no comments on or objections to the proposal. *Exhibit 1, Staff Report, page 3; Exhibits 8 through 14.*

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State Environmental Policy Act

3. DCED acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington RCW (RCW).¹ DCED provided notice of the SEPA application on September 8, 2020, by mailing notice to property owners within 300 feet of the subject property, by publishing notice in *Peninsula Daily News*, and by posting notice on-site and at City Hall. DCED did not receive any public comments in response to its notice materials.² DCED reviewed the Applicant's environmental checklist, and other information on file, and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, DCED issued a Determination of Nonsignificance (DNS) on October 23, 2020, with an appeal deadline of November 6, 2020. DCED provided notice of the DNS with the notice of application and associated public hearing. The DNS was not appealed. *Exhibit 1, Staff Report, pages 3 and 4; Exhibit 7; Exhibit 9; Exhibit 10; Exhibit 15.*

Comprehensive Plan and Zoning

4. The subject property is designated "Industrial" under the City Comprehensive Plan. The Industrial designation provides maximum flexibility within the City's zoning ordinances in regulating types of industrial uses and their permitted locations. *City Comprehensive Plan, Chapter 3.* The property is located within the City's Industrial, Light (IL) zoning district. The IL zone is intended "to create and preserve areas for industrial uses that are largely devoid of exterior nuisances in close proximity to airports and highways." *Port Angeles Municipal Code (PAMC) 17.32.010. Exhibit 1, Staff Report, page 1.*

Background

5. The original survey of the Townsite of Port Angeles was established by the Commissioner of the General Land Office on February 2, 1864, and is recorded at the Library of Congress. The original lots, blocks, and sublots for the Townsite of Port Angeles are shown in an 1891 survey recorded at the Library of Congress. The site of the proposed plat vacation has historically been used as a Corporation Yard for the City's operations division and is comprised of eight buildings built over the 54 lots and associated streets and alleys. Access to the property is currently provided from W. Lauridsen Boulevard and B Street. The City Council previously vacated all streets and

¹ DCED analyzed the environmental impacts of the proposed partial plat vacation in conjunction with its review of the environmental impacts of a separate but associated proposal to construct a 21,450 square foot building on the property to serve as the City's new Light Utility Operations Center. The level of development associated with the new building did not trigger the need for review by the Hearing Examiner. *Exhibit 7; Exhibit 15.*

² DCED received a comment from the Washington State Department of Ecology in response to its SEPA notice materials that related only to the proposed construction of the Light Operations Center and not the proposed partial plat vacation. *Exhibit 15; Testimony of Kevin Bagwell.*

alleys within the proposed vacation area through Ordinances 2096, 2778, 3183, and 3197. Granting the request for a partial plat vacation, together with the previous street and alley vacation ordinances, would result in a single parcel measuring 472,294 square feet that would allow the existing buildings on the property to meet required setbacks and would facilitate future improvements and projects on-site. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2; Exhibit 4; Exhibit 15; Testimony of Kevin Bagwell.*

6. On October 2, 2020, the City Council passed Ordinance 3663, which amends PAMC 2.18.060, to provide the Hearing Examiner with authority to hear and decide applications for plat vacations and alterations. The City Council also passed Ordinance 3664 the same day, which adds a new chapter to the City municipal code, Chapter 16.14 PAMC, addressing the procedures and approval criteria for plat vacations and alterations. Specifically, per Ordinance 3664, the newly enacted provisions under PAMC 16.14.010 provide that applications for a plat vacation must comply with Chapter 58.17 RCW and must include the following:
- A statement of reasons for the proposed vacation and the signature of all parties that have an ownership interest in the portion of the subdivision to be vacated;
 - An agreement signed by all parties documenting agreement to the proposed termination or alteration of covenants and conditions of approval if the proposed vacation would affect any covenants or would alter the terms and conditions of plat approval;
 - A statement of facts demonstrating that the proposed vacation would not adversely affect the public health or safety and would be in the public interest; and
 - A statement of facts demonstrating that the proposed vacation would comply with PAMC 17.94.050 and with provisions of state law, including but not limited to RCW 35.79.030, RCW 35.79.035, and RCW 36.87.130.

Exhibit 5; Exhibit 6.

7. DCED staff reviewed the application for compliance with the requirements for a plat vacation stated above and determined:
- The Applicant submitted a request for a plat vacation with the signature of the City Public Work and Utilities Director who oversees the operation and management of the Corporation Yard. Included with the application is the initialing by the City Assistant Attorney, who manages the City owned property.
 - There are no covenants or conditions of plat approval, as demonstrated in the title report submitted by the Applicant.
 - The Applicant provided a statement of facts on November 17, 2020, which stated, “The vacation of the lots will allow for the construction of improvements to the City’s Corporation Yard over time that will enhance the City’s Public Works Department[’s ability to] better serve its customers and the community as a whole.” This statement demonstrates that the public interest would be served by

the proposal. The health and safety of the public would be served by further improvements to the City's public works facilities that enhance the City's ability to deliver sewer, water, and power services to its utility customers.

- There are no proposals for the vacation of streets, roads, or bridges. All streets within the vacation areas have been previously approved under ordinances 2096, 2778, 3183, and 3197. Under PAMC 17.94.050, the previously approved street vacations have already assumed the IL zoning designation.
- DCED staff provided notice of the plat vacation application and associated hearing consistent with the requirements of RCW 58.17.080.

Exhibit 1, Staff Report, pages 4 through 7.

Testimony

8. City Assistant Planner Kevin Bagwell testified generally about the application and how it would comply with all requirements for approval under PAMC 16.14.010 (Ordinance 3664). He described the history of the Townsite of Port Angeles, noting that the site was originally established in 1864, with the original layout recorded in 1891, and has historically been used by the City's operations division as a Corporation Yard. Mr. Bagwell noted that DCED analyzed the environmental impacts of the proposal in conjunction with its review of a separate proposal to construct a Light Operations facility on the property. He stated that the Washington State Department of Ecology provided a comment on the associated proposal to construct a Light Operations facility but that the comment did not pertain to the proposal for a partial plat vacation. Mr. Bagwell noted that DCED issued a DNS for the proposal, which was not appealed. He also explained that future site development would require additional permit review, including additional review under SEPA, if necessary. *Testimony of Mr. Bagwell.*
9. Shailesh Shere, Deputy Director of Power Systems, represented the City's Public Works & Utilities Department at the open record hearing. Mr. Shere testified that the Public Works & Utilities Department concurred with planning staff's assessment of the proposal. *Testimony of Mr. Shere.*

Staff Recommendation

10. Mr. Bagwell testified that DCED staff recommends approval of the application for a plat vacation. *Testimony of Mr. Bagwell; Exhibit 1, Staff Report, page 8.*

CONCLUSIONS

Jurisdiction

The City of Port Angeles Hearing Examiner is authorized to hold hearings and decide plat vacation applications. *PAMC 2.18.060.A.3.d (Ordinance 3663).*

Criteria for Review

PAMC 16.14.010 (Ordinance 3664) provides:

- A. Any person may submit for city review and approval an application to vacate a subdivision or short subdivision plat, or portion thereof, or any area designated for public use.
- B. The application shall include, at the minimum, the following:
 - 1. The application shall state the reasons for the proposed vacation and shall contain the signatures of all parties that have an ownership interest in the portion of the subdivision to be vacated;
 - 2. If the proposed vacation would affect any covenants or would alter the terms and conditions of plat approval, an agreement signed by all parties shall be submitted documenting agreement to the proposed termination or alteration of the covenants and conditions or approval;
 - 3. A statement of facts demonstrating that the proposed vacation will not adversely affect the public health or safety, and is in the public interest;
 - 4. A statement of facts demonstrating that the proposed vacation will comply with the provisions of state law, including but not limited to RCW 35.79.030, 35.79.035, and 36.87.130, and with PAMC 17.94.050; and
 - 5. The application must in all respects comply with the requirements of Chapter 58.17 RCW.
- C. When the vacation application is specifically for a city street, the procedures for street vacation in RCW 35.79 will be used. When the application is for the vacation of the plat together with streets, the procedure for vacation in this chapter will be used, but vacations of streets may not be made that are prohibited under RCW 35.79.030.
- D. Except as provided in this Chapter, Applications for plat vacations shall be processed as provided in RCW [58.17.212].

The criteria for review adopted by the City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions

The proposed plat vacation meets all criteria for approval under PAMC 16.14.010 (Ordinance 3664), including compliance with applicable requirements under the State Subdivision Act, Chapter 58.17 RCW. The application for a partial plat vacation contains the signature of City Public Works and Utilities Director Thomas Hunter, who oversees the

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operation and management of the Corporation Yard, and has been initialed by City Assistant Attorney Christopher Cowgill, who manages the City-owned property. The Applicant stated in its application materials that the partial plat vacation is required for existing buildings in the Corporation Yard to comply with required setbacks. The Applicant submitted title-report information demonstrating that there are currently no covenant or conditions of plat approval that would be affected by the proposed vacation. The Applicant provided a statement of facts noting that the vacation would allow for the construction of improvements to the City's Corporation Yard to allow the City Public Works Department to better serve its customers, which demonstrates that the proposal would not adversely affect the public health or safety and that the proposal is in the public interest. DCED analyzed the environmental impacts of the proposal, determined that it would not have a probable significant adverse impact on the environment, and issued a Determination of Nonsignificance, which was not appealed. All streets and associated alleys within the proposed plat vacation area have previously been vacated through ordinances. DCED provided notice of the application and associated public hearing in compliance with the requirements of Chapter 58.17 RCW. DCED did not receive any public comments on the proposal, and no members of the public attended the properly noticed public hearing. *Findings 1 – 10.*

DECISION

Based on the above findings and conclusions, the request for a partial plat vacation of 54 lots within the Townsite of Port Angeles subdivision, to create a single parcel measuring 472,294 square feet directly north of W. Lauridsen Boulevard, between B Street and the S. Tumwater Truck Route, is **APPROVED**.

DECIDED this 17th day of December 2020.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center