

1 **BEFORE THE HEARING EXAMINER FOR JEFFERSON COUNTY**

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4 **RE: Petition by David and Audrey) File No. Willow Street RW**
5 **Guettinger to vacate portion of)**
6 **Willow Street, adjacent to Lot 23,)**
7 **Block A, of Paradise View Estates)**
8 **) FINDINGS, CONCLUSIONS,**
9 **)**
10 **) AND RECOMMENDATION**
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10 **BACKGROUND**

11 Willow Street is an undeveloped right-of-way extending north of
12 Paradise Bay Road for approximately 150 feet to its intersection with
13 Oak Street, which is also undeveloped and connects between Willow
14 Street and Hood Canal. The Petitioners own property on both sides of
15 the petitioned area of Willow Street. Please see Illustrations at
16 page 5.

17 **PROCEDURAL INFORMATION**

18 **Notices: Mailed:** September 26, 2002
19 **Posted:** October 26, 2002
20 **Publication:** October 25 and November 5, 2002 (Peninsula
21 Daily News).

22 **Site Visit:** November 5, 2002.

23 **Hearing Date:** November 5, 2002.

24 **TESTIMONY:**

25 The public hearing was opened on November 5, 2002 at 1:00 p.m. in the
26 Courthouse First Floor Conference Room. After the procedures for the
27 public hearing were explained, testimony was accepted. All testimony
28 was taken under oath. A verbatim recording of the public hearing was
29 made and is maintained in the Jefferson Permit Center file.

1 **PARTICIPANTS:**

2 Wendy Ward, Administrative Secretary, Public Works Department

3 Jerry Smith, Associate Planner, Community Development Department

4 David Guettinger, Petitioner

5 Franz Gruber, Manager, Water District Water District #1

6 Allen Kloske, Neighboring property owner

7 **Present but not testifying:**

8 Audrey Guettinger, 4212 NE 203rd St., Lake Forest Park, WA 98155

9 A.J. Kloske, PO Box 805, Freeland, WA 98249

10 Pat Bamen, 161 W. Maple, Port Ludlow, WA 98365

11 Joe Thorsen, 3203 Paradise Bay Rd., Port Ludlow, WA 98365

12 **The public hearing was closed at 1:50 p.m.**

13 **TABLE OF EXHIBITS:**

EXHIBIT-ATTACHMENT	DOCUMENT	DATE
1	Staff Report together with Attachments A - L	No date
A	Memo from County Engineer	10/28/2002
B	Appraisal from Vernon Frykholm, MAI	5/13/2002
C	Memo from Community Development Department	10/2/2002
D	Letter from Water District #1	10/11/2002
E	Comments from Qwest	9/27/2002
F	Memo from Allen & AnneLiese Klotske	10/10/2002
G	Petition from adjacent property owners	10/18/2002
H	Assessor's & Vicinity Map	No date
I	Posting Notice Verification	10/15/2002
J	List of Adjoining Property Owners	No date
K	Petition for Vacation	9/27/2002
2	Petition for Non-Vacation	11/4/2002
3	Memo from David & Audrey Guettinger	11/5/2002
4	Annotated Survey Map to describe features	No date
5	Two letters from T. Martin, Attorney, to Ralph Heino and Marilyn Davis, dated 2/10/1992	Received 10/18/2002
6	Public Hearing Sign-In Sheet	11/5/2002

1 **FINDINGS OF FACT**

2 **The Petition:**

3 1. The request is to vacate that portion of platted Willow Street
4 being approximately 80-feet long and 30-feet wide, adjacent to Lot 23,
5 Block A, of Paradise View Estates as recorded in Volume 4 of Plats,
6 page 8, records of Jefferson County, WA.

7 Located in Section 22, Township 28 North, Range 1 East, WM.

8 2. The Petitions, David and Audrey Guettinger, own both sides of
9 that portion of Willow Road being petitioned for vacation, and state:¹

10 *The reason for this request is to make the two pieces of property*
11 *contiguous thus making it more suitable for placing a reserve*
drainfield and remodeling the current structure.

12 **Agency Reviews:**

13 3. The Paradise View Estates was recorded on September 19, 1955; and
14 therefore, is not vacated under RCW 36.87.090. That portion of Willow
15 Street lying north of Paradise Bay Road has not been opened and no
16 public expenditures have been made for the area requested for
17 vacation.² The County Engineer recommends the Petition be denied.

18 4. Vernon Frykholm, MAI, values the subject area at \$1.945.³

19 5. The Community Development Department originally recommended
20 approval, but revised their recommendation based on the location of
21 the deep ravine to recognize that physical barrier.⁴

22 6. Jefferson County Water District #1 requested that the petition be
23 denied, but would consider removing their line in Willow Street and
24 replacing the line along Paradise Bay Road to a blow-off valve point—
25 provided that the Petitioner pay the cost of such relocation.

26
27 ¹ See Attachment K to Exhibit 1

28 ² See County Engineer Memo, Attachment A to Exhibit 1

29 ³ See Attachment B to Exhibit 1

⁴ See Attachment C to Exhibit 1 and testimony by Jerry Smith

1 7. Qwest responded with no objection.⁵

2 8. The following agencies made no response:

- 3 o Jefferson County Sheriff's Office/Emergency
- 4 o Puget Sound Energy
- 5 o Fire Protection District No. 3
- 6 o Washington State DOT
- 7 o Jefferson County Parks Advisory Board.

8 **Land Regulations and Site Conditions:**

9 9. The area is designated Rural Residential in the Comprehensive
10 Plan. Zoning is Rural Residential (RR 1:5), 1 residence per 5-acres.

11 10. Paradise Bay Road parallels Hood Canal with the lots in Block A
12 in between. Paradise Bay Road continues north through the plat of
13 Tala Shores with a pattern of deep lots between the road and Hood
14 Canal. The platted rights-of-way in the immediate vicinity of the
15 subject petition include Willow Street and Oak Street. See
16 Illustration 1.

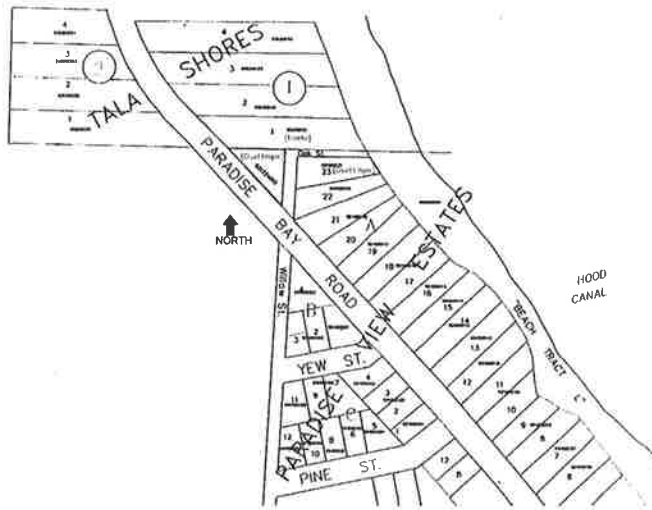
17 11. The map in Illustration 2 shows the significant features:

- 18 o The Willow Street right-of-way is 30-feet wide and extends
19 approximately 145-feet at its centerline from Paradise Bay Road
20 to the Oak Street right-of-way.
- 21 o Oak Street borders the north line of Lot 23 and a portion of the
22 south line of Lot 1 in Tala Shores. The Oak Street right-of-way
23 is about 14 feet wide and extends from Willow Road about 200 feet
24 to "Beach Tract L" on Hood Canal.
- 25 o A drainage ditch beginning in Tala Shores runs along the west
26 side of Paradise Bay road to a culvert that carries drainage to a
27 ravine draining to the beach on Hood Canal.

28
29 ⁵ See Attachment E to Exhibit 1

ILLUSTRATION 1: Vicinity

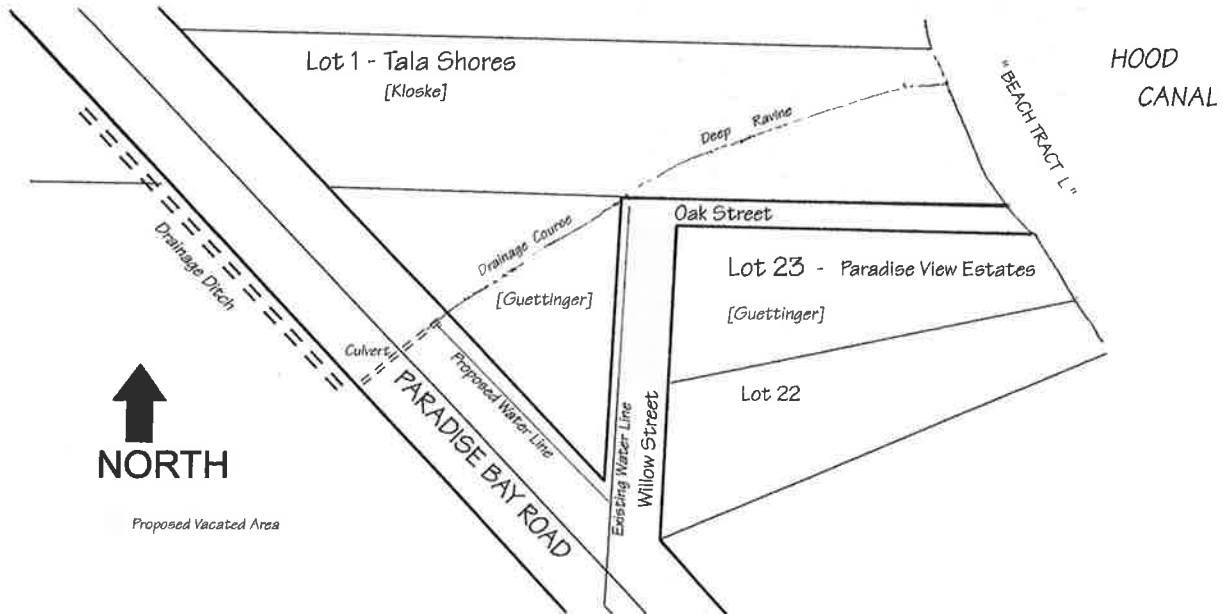
o Water District #1 has a water main along the southwest side Paradise Bay Road to a point aligned with the west side of the Willow Road right-of-way, and then running north to a blow-off valve at Oak Street.



Water District service does not extend into Tala Shores.

o Water District #1 proposes to remove that portion of their line within Willow Street and extend northward along the northeast side of Paradise Bay Road to a blow-off valve at the drainage/ravine location.

ILLUSTRATION 2: Physical Features



1 **REVIEW CRITERIA**

2 Right-of-way vacation petitions are subject to JCC Chapter 12.10, Road
3 Vacations, and in particular the review criteria of JCC 12.10.130.

4 **CONCLUSIONS OF LAW**

5 *Legal Issues, Physical Constraints, and Neighborhood Relations*
6 are addressed the before seven criteria specified by JCC 12.10.130:

7 ***Legal Issues:***

8 1. The vacation petition, on its face, would isolate Oak Street, a
9 public road right-of-way and also undeveloped. A public right-of-way
10 cannot be isolated from the rest of the road system. But equally
11 interesting is the fact that Oak Street extends from the north end of
12 Willow Street to Hood Canal—maybe. A Record of Survey map indicates
13 that Oak Street extends beyond the "Top of Bank" and on to the west
14 line of "Beach Tract L" and Hood Canal. The term "abutting" is
15 generally interpreted as "contiguous" or actually touching. The
16 Attorney General was asked in 1970 how RCW 36.87.130⁶ considers the
17 abutting edge of a body of salt water. The Attorney General Opinion⁷
18 is clear in the meaning of "abutting" until applying RCW 36.87.130.
19 Here the intent of the legislature was given more weight, and suggests
20 that the line is marked by the line of vegetation as the "*line which*
21 *the water impresses on the soil by covering it for sufficient periods*
22 *to deprive the soil of vegetation...*"

23 2. In previous Hearing Examiner cases along similar stretches of
24 Hood Canal with high banks and a continuous "Beach Tract", the
25

26 _____
27 ⁶ *RCW 36.87.130 Vacation of roads abutting bodies of water prohibited unless for public purposes*
28 *or industrial use. No county shall vacate a county road or part thereof which abuts on a body of salt*
29 *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.

⁷ See AGO 1970 No. 26 COUNTIES - ROADS - LIMITATIONS ON VACATION.

1 Ordinary High Water Line often was common with the toe of the slope.
2 RCW 36.87.130 appears to apply to Oak Street.

3 ***Physical Constraints:***

4 3. A drainage way beginning at the outlet of a culvert under
5 Paradise Bay Road becomes a deep ravine by the time it reaches Oak
6 Street. If access is to be preserved by a new right-of-way from
7 Paradise Bay Road along the south line of Lot 1 of Tala Shores, a
8 significant environmental impact must be mitigated—probably at
9 considerable cost.

10 ***Neighborhood Relations:***

11 4. The record indicates a history of some conflict between property
12 owners; however, all were cordial and reasonable at the public
13 hearing. The public hearing may have served to reveal each person's
14 concerns, and their rights being protected and sought. The Kloske's,
15 owners of Lot 1 of Tala Shores, wish to preserve their access to the
16 portion of land isolated from the balance of their lot by the ravine
17 and also containing the most frontage overlooking Hood Canal. On the
18 other hand, the Guettinger's own two parcels divided by the Willow
19 Street right-of-way, and seek to at least enhance their septic
20 drainfield on their western triangle. Allen Guettinger offered to
21 provide an easement over a portion of the vacated right-of-way, if
22 approved.

23 **The Review Criteria of JCC 12.10.130 (1) through (7):**

24 ***Criterion (1) Compliance with Plans and Ordinances:***

25 5. The petition is not in conflict with the Comprehensive Plan or
26 Unified Development Code.

27 ***Criterion (2) Overall Circulation:***

28 6. The portion of Willow Street proposed for vacation is not needed
29 for overall area circulation.

1 **Criterion (3) Emergency Services:**

2 7. The portion of Willow Street proposed for vacation is not needed
3 for emergency services.

4 **Criterion (4) Utility Services:**

5 8. The portion of Willow Street proposed for vacation is currently
6 used for water service for Water District #1; however, testimony
7 indicates that the line in question can be rerouted at the
8 Petitioner's expense.

9 **Criterion (5) Trails and Pathways:**

10 9. The Jefferson County Parks Advisory Board did not respond, and
11 the right-of-way is not mapped as a planned trail. However, Willow
12 Street connects to Oak Street, which in turn abuts "Beach Tract L" and
13 Hood Canal. See also Criterion (6) following.

14 **Criterion (6) RCW 36.87.130, Abutting Bodies of Water:**

15 10. Oak Street should be considered as abutting Hood Canal, as
16 described in Conclusions 1 and 2 above. Accordingly, the Petition
17 cannot be approved as requested.

18 **Criterion (7) Land Lock:**

19 11. As a practical matter, the proposed vacation would preclude
20 access to a portion of Lot 1, Tala Shores. Also, the proposed
21 vacation would isolate Oak Street, a public right-of-way. The
22 isolation of Oak Street is not remedied by an easement.

23 **Summary Conclusion:**

24 12. While there may be physical solutions to the several legal
25 problems identified in Conclusions 1, 2, 10 and 11, this petition as
26 it stands should be denied.

1 **RECOMMENDATION**

2 Based on the testimony presented at the Public Hearing, the documents
3 and exhibits admitted into the record, a visit to the site and
4 surroundings, and the above Findings and Conclusions, the Hearing
5 Examiner recommends that the requested vacation be **DENIED**.

6 **DATED this 15th day of November 2002.**

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10 **Irv Berteig**
11 **Jefferson County Hearing Examiner**

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