



Public Works Department Memorandum

Date: February 1, 2018
To: City Council
From: Barry Loveless, Public Works Director
Subject: Duane Lane Street Vacation — Staff Report

Background:

At its November 28, 2017, meeting, the City Council approved an agreement (“Agreement for Improvement to Public Trail and Processing of Vacation of Disputed Street”) in an effort to resolve a right-of-way dispute between the City and landowners related to Duane Lane in exchange for construction of a public trail connection. Under the terms of the agreement, the City agreed to initiate and process the street vacation of Duane Lane.

If the City Council approves the vacation, property owner Ohrt will construct and pay for a trail connection (approximately 449’) between two trails, one coming from Sportsman Club Road and the other coming from Weaver Road, and thereby create an approximately 1,200’ trail that would include a bridge over Hirawaka Creek. If the City Council does not approve the street vacation, the agreement will terminate and Ohrt will have no obligation to complete the proposed trail improvements.

Resolution No. 2017-23, approved by the City Council on December 5, 2017, set a public hearing date of February 6, 2018, at 7:00 PM for the Duane Lane street vacation.

The following tax parcels abut the proposed vacation area: Tax Parcel No. 272502-1-125-2002, Tax Parcel No. 272502-1-126-2001, Tax Parcel No. 272502-1-138-2007, Tax Parcel No. 272502-1-140-2003, Tax Parcel No. 272502-1-141-2002, Tax Parcel No. 272502-1-066-2003, and Tax Parcel No. 272502-1-021-2007.

Attachment A to this staff report depicts the existing right-of-way alignment as well as recommended easement areas to be retained if the vacation is approved. The right-of-way proposed for vacation is a 29.41-foot-wide strip running between Nakata Avenue SW and Madison Avenue N.

The dispute referenced above relates to the legal nature of Duane Lane. Based on the historical record and the chain of title of surrounding properties, including that the street has not been vacated by any previous City Council, the City maintains that Duane Lane exists as an unopened street or right-of-way. Ohrt and an abutting owner (the Fleischfressers – see below) have pointed out that land use approvals have occurred related to Duane Lane, including a short subdivision that resulted in a new house on Parcel No. 272502-1-138-2007 that was constructed within the right-of-way and occupies a 24.41-foot-wide portion of the 29.41-foot-wide right-of-way across the parcel. The City recognizes that such approvals occurred, and maintains that communications from the City several years ago must have been in error because the City Council did not approve a vacation related to Duane Lane, and only the Council has the authority to vacate a street.

Regarding other easement rights, a 5.00-foot-wide right-of-way along the south line of Parcel 272502-1-125-2002 was dedicated under City of Winslow Short Plat W-53R-1, recorded under Auditor's File No. 8706230220, and such right-of-way is not proposed for vacation. The proposed right-of-way vacation will not terminate any other easements of record.

Notice of Hearing:

Public notices were published, posted, and mailed in accordance with BIMC 12.34.080.

BIMC 12.34.110 Criteria:

Following the public hearing, the City Council shall determine whether to vacate the right-of-way. Pursuant to BIMC 12.34.110, the determination shall include, but not be limited to, consideration of criteria consisting of five factors. Staff has prepared the following analysis of each factor to be considered:

A. Whether a change of use or vacation of the street or alley will better serve the public?

The proposed street vacation will better serve the public by resolving a right-of-way dispute between the City and several landowners, and result in the construction of a public trail connection between Sportsman Club Road and Weaver Road that will be paid for by the property owners who are parties to the trail agreement.

B. Whether the street or alley is no longer required for public use or public access?

There is no current plan to open Duane Lane as a public street. Regarding trail access, there is an existing non-motorized connection between Madison Avenue and Lovell Avenue to the north of Duane Lane via Ihland Way NW. Additionally, it is expected that another trail will be a condition of planned development to the south of Duane Lane via Wallace Way NW. For these reasons, the street is no longer required for public use or for public access, provided that the City Council retains the access and utility easements described below in D.

C. Whether the substitution of a new and different public way would be more useful to the public?

Constructing a public trail between Sportsman Club Road and Weaver Road would be useful to the public. Once completed, the trail would provide an approximately 1,200 foot uninterrupted extension of Bainbridge Island Parks Foundation's planned Winslow to Gazzam Trail.

D. Whether conditions may so change in the future as to provide a greater use or need than presently exists?

The current 29.41-foot-wide right-of-way does not meet the minimum width for the current zoning designation. Future development will require a new right-of-way dedication with a minimum width of 40-feet. Until the time that such additional right-of-way dedication is made, the Public Works Department recommends that any ordinance approving the street vacation retain the following easements:

- Retain a 5.00-foot-wide utility easement along the north line of Parcel No. 272502-1-138-2007. Combined with the City's 5.00-foot-wide right-of-way to the north of Parcel No. 272502-1-138-2007, which is not currently proposed to be vacated, the City will have a 10.00-foot-wide easement for future utility installation necessary to improve water pressure and fire flow for existing and future development. The remaining 24.41 feet of Parcel No. 272502-1-138-2007 extends under an existing home on this parcel and a vacation of this right-of-way is sought to clarify legal rights related to the current right-of-way area.
- Retain the entire 29.41-foot-wide strip lying east of Parcel No. 272502-1-138-2007 as an access and utility easement. The retained easement can later be extinguished if a new right-of-way dedication with a minimum width of 40-feet is made to accommodate future development on the abutting parcels. Any City utilities lying outside of the such a dedication will require a separately recorded easement agreement.

E. Whether objections to the proposed vacation are made by owners of private property (exclusive of petitioners) abutting the street or alley or other governmental agencies or members of the general public?

On January 25, 2018, the City Clerk received written objections to the proposed vacation from Ricardo Fleischfresser and Jean Ann V.H. Fleischfresser, the owners of Parcel No. 272502-1-138-2007. The Fleischfressers object to the retention of an access and utility easement on their property. The Fleischfressers' objections are included as Attachment B to this staff report.

The Public Works Department received one objection from the Bainbridge Island Metro Park & Recreation District (BIMPRD). The BIMPRD objects to the vacation unless a

permanent easement is provided for non-motorized egress. The BIMPRD's objections are included as Attachment C to this staff report.

Comments from Utility Companies, Governmental Agencies, and City Departments:

Pursuant to BIMC 12.34.070, the Public Works Department solicited comments from utility companies, other governmental agencies, and other City departments. The Public Works Department received the following comments to date:

- **Telephone/Cable:**

CenturyLink has no facilities in the area and has no objection to the vacation of public right-of-way located on Duane Lane NW between Nakata Ave and Madison Ave, Bainbridge Island, WA.

- **Puget Sound Energy:**

Puget Sound Energy recommends approval of the road vacate. PSE has existing easements for the existing overhead facilities and are securing underground easement for the new facilities to be built.

- **Bainbridge Island Parks District:**

The Bainbridge Island Metro Park & Recreation District opposes the proposed road vacation unless a permanent easement is provided for non-motorized egress. See attached letter dated January 18, 2018.

- **Bainbridge Island Fire Department:**

No response.

- **Multi-Modal Transportation Advisory Committee (formerly NMTAC):**

No response.

- **Other City Departments:**

No response.

Staff Recommendation:

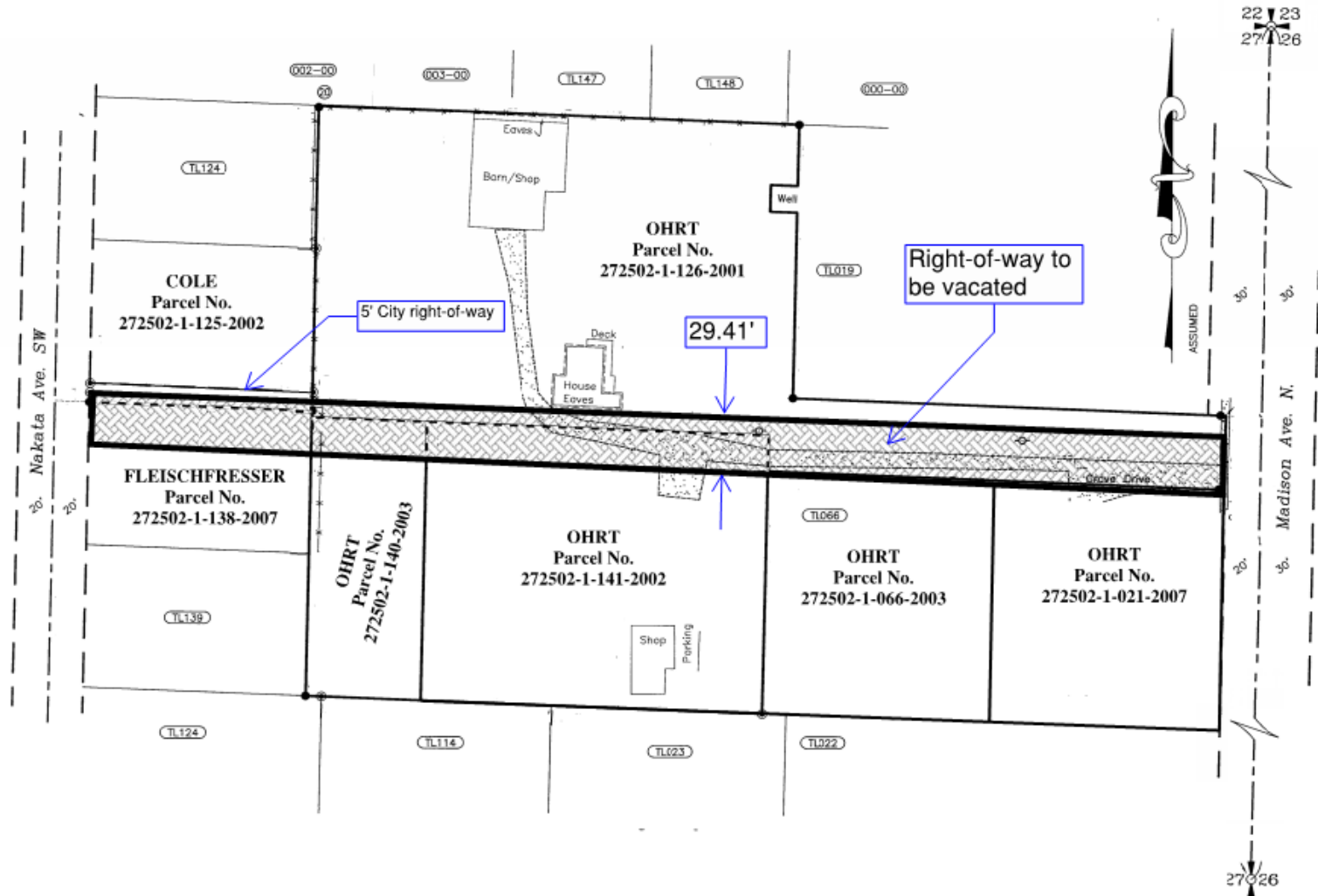
The City's Public Works – Engineering Department has no objections to the proposed right-of-way vacation of Duane Lane.

Attachments:

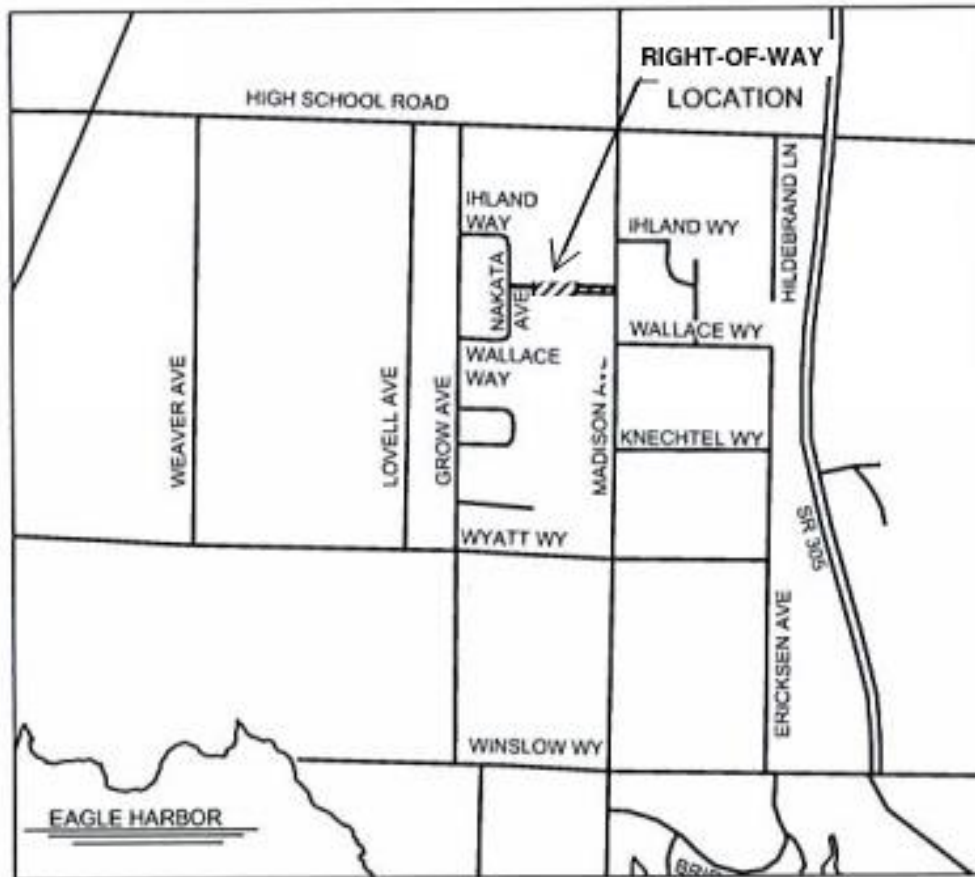
- A. Map of Existing Right-of-Way, Recommended Easement Areas, and Vicinity
- B. Fleischfresser Letter dated 01/25/18
- C. BIMPRD Letter dated 01/18/18

Attachment A

Existing Right-of-Way, Recommended Easement Areas, Vicinity Map



Attachment A
Existing Right-of-Way, Recommended Easement Areas, Vicinity Map



VICINITY MAP

NE QUARTER SECTION 27 TOWNSHIP 25 RANGE 2E

Attachment B
Fleischfresser Objections

Robbie Sepler

From: City Clerk
Sent: Tuesday, January 30, 2018 3:59 PM
To: Robbie Sepler
Subject: FW: Public Hearing of Feb 6th 2018.
Attachments: RE: Duane Lane - Proposed Street Vacation; Resolution No. 2017-23 Initiating the vacation of disputed street (Duane....pdf)

From: Ricardo Fleischfresser [mailto:ricardo@fetraco.com]
Sent: Thursday, January 25, 2018 1:15 PM
To: Sarah Blossom <sblossom@bainbridgewa.gov>; Kol Medina <kmedina@bainbridgewa.gov>; Ron Peltier <rpeltier@bainbridgewa.gov>; Rasham Nassar <rnassar@bainbridgewa.gov>; Michael Scott <msscott@bainbridgewa.gov>; Joe Deets <jdeets@bainbridgewa.gov>; Matthew Tirman <mtirman@bainbridgewa.gov>
Cc: Joe Levan <jlevan@bainbridgewa.gov>; City Clerk <cityclerk@bainbridgewa.gov>; Doug Schulze <dschulze@bainbridgewa.gov>; Kelly Tayara <ktayara@bainbridgewa.gov>; Rob Grant <rgrant@bainbridgewa.gov>; Christine Brown <cbrown@bainbridgewa.gov>
Subject: Public Hearing of Feb 6th 2018.

Dear Council Members,

The City of Bainbridge Island has informed us of a Public Hearing pertaining to a Proposed Road Vacation of Duane Lane, to take place on February 6th, 2018 at 7:00 pm.

We are the property owners of 932 Nakata Avenue NW to which the Proposed Road Vacation pertains and have documented our discord to the **WORDING** of the "AGREEMENT FOR IMPROVEMENT TO PUBLIC TRAIL AND PROCESSING OF VACATION OF DISPUTED STREET" (Attached), specifically to the terms in #1, page 3 of 6, in which the agreement states that the "City reserves the right, as provided in BIMC 21.34.110, to retain an easement for construction, repair, and maintenance of existing and future utilities and services."

On January 15th I submitted the attached email to Mr. Levan regarding the issue, our request for correction and our reasoning. As I have not heard back from the City regarding this request, I am sending this email to all Council Members in the hope that the Agreement wording can be amended to satisfaction of all involved and save time at the hearing where I intend to bring it up in public. In the event the City is unable to amend the wording by then, at least the Council will be aware of the issue when I bring it up.

May I reiterate that my wife and I are not opposed to the general terms of the vacation proposed. We are ready to sign our Consent to the amended Agreement, as soon as the Vacation includes no conditions or rights of the City upon the disputed Right of Way after it is vacated. Please bear in mind that the dispute arises from mistakes carried out solely by the City several decades ago, only uncovered and informed to us last July, and, as such, the property owners should not be penalized in any way by said mistakes.

For more details on the history and reasoning for our request, please refer to my attached email of January 15th to Joe Levan.

I look forward to resolving this issue as soon as possible.

Last but not least, when will the BI site have the Agenda of the Feb 6th meeting posted? We are only 12 days away!

Sincerely,

Ricardo Fleischfresser
2052 Place Road
Port Angeles, WA 98363 - USA
(360) 452 9164
(206) 491 3199 (cel)

Robbie Sepler

From: Ricardo Fleischfresser <ricardo@fetraco.com>
Sent: Monday, January 15, 2018 10:33 PM
To: Joe Levan
Cc: Kelly Tayara; Rob Grant; City Admin
Subject: RE: Duane Lane - Proposed Street Vacation
Attachments: RE: Duane Lane - 11/28/17 Council meeting; Resolution No. 2017-23 Initiating the vacation of disputed street (Duane....pdf)

Dear Mr. Levan,

I have read all the information you provided regarding the vacation of the disputed 29.41' Right of Way. Unfortunately, I must inform you that the fact that "the Council reserved the right, pursuant to the Bainbridge Island Municipal Code, to retain an easement if the Council decides to approve the proposed easement" is unacceptable to my wife and I. Your expectation that the "City staff will recommend to the Council that the City only retain an easement in the area that does not intersect with your house to ensure that such a retained easement does not run under your house" is no guarantee that we will not have "construction, repair, and maintenance of existing and future utilities and services" (as indicated on page 3 of the agreement).

In my email of 11/29/2017 I specifically pointed out this issue and requested a change to the wording. I hereby reaffirm this position. Furthermore, the Agreement presented to the Council that "Fleischfresser's consent to the vacation of the Disputed Street is attached as Exhibit C" – please note that this document is not signed by my wife and I, therefore the statement is false. Following are the facts that will enable the Council and the City to better understand the case. Please refer to the

- 1) Abutting to the North of the disputed Right of Way to be vacated there already exists an easement of 5' owned by the City (indicated as "5' COBI Right of Way" on Exhibit C). At present there are no utilities to be serviced in either the disputed Right of Way or the 5' COBI Right of Way. So any access to these would be for future utilities, services, construction and their maintenance. Why would the City require more than the existing 5' COBI Right of Way?
- 2) Our property at 932 Nakata was purchased from Grand Avenue Homes in December of 1989. Grand Avenue Homes obtained all the Permits from the City for the construction of the house (Permit #1726 issued by the City of Winslow in 1989) and later in 2003 another Permit was issued for a remodel (Permit #BLD12357 issued by the City of Bainbridge Island). This clearly indicates that either:
 - a. the City understood that the disputed 29.41' Right of Way had been vacated
 - b. the City was negligent in doing its due diligence prior to issuing the Permits
 - c. the City neglected to complete the vacation process back in 1983-1988.
 - d. there is perhaps some other objective that reviving the Right of Way may enable at the expense of the homeowner.
 - e. Several of the above.
- 3) After residing at 932 Nakata for 26 years, paying all property taxes throughout that time, my wife and I retired at the end of 2015 and moved to Port Angeles to a second home we purchased in 2009. Since then we have been renting the 932 Nakata house, and rely significantly on our rental income from the property for our years in retirement. The mere fact that the City may place a sign at the border of the 29.41' Right of Way may jeopardize the renewal of the 1 year rental contract with the current renter.
- 4) The 932 property is a very significant part of our retirement portfolio both for rental income and as an asset that we may need to cash in to cover end of life expenses. The existence of the right of the City to "construction, repair, and maintenance of existing and future utilities and services" severely reduces the value and

marketability of the property should we someday want or need to sell it. Had we known of this 29.41' Right of Way that the City now claims to exist under the house, we would not have purchased the property back in 1989.

- 5) Throughout the past 28 years we have been paying taxes based on an assessed value of the property that does not reflect the existence of the disputed Right of Way.

While we understand the purpose of BIMC 21.34.110 to retain an easement for “construction, repair, and maintenance of existing and future utilities and services”, it would seem that this right is meant for other “normal” circumstances and not where egregious and numerous mistakes were made by the City over decades. Our case involves a situation where the City should be looking to right several wrongs of its own doing. As such, and if indeed its intent is to settle the situation with us “in good faith”, to our “mutual satisfaction”, and “at no cost”, the Council and the City should eliminate any “right to retain an easement for construction, repair, and maintenance of existing and future utilities and services” from the vacation terms. The vacation of the 29.41' Disputed Street should be clear of any conditions and rights of the City or any other third parties to our property. When this condition is met, my wife and I will be glad to give you our consent.

I trust you will understand this email as a constructive and cooperative contribution from us to settle the situation in good faith and to all the involved parties' mutual satisfaction,

Sincerely,

Ricardo & Jean Fleischfresser
2052 Place Road
Port Angeles, WA 98363 - USA
(360) 452 9164
(206) 491 3199 (cel)

From: Joe Levan [<mailto:jlevan@bainbridgewa.gov>]
Sent: Thursday, January 11, 2018 7:20 PM
To: ricardo@fetraco.com
Cc: tacole2@gmail.com; Kelly Tayara; Rob Grant
Subject: Duane Lane - Proposed Street Vacation

Mr. Fleischfresser;

I regret the misunderstanding. I thought that you may have been in contact with other staff members regarding this matter and that you were provided an update. Also, my recollection is that I let you know when we last spoke on the phone that all City Council actions are easily accessible via the City's website and my understanding was that you would be tracking what the Council did per the agenda items related to this matter, including the item related to the November 28, 2017, meeting. The Council's agendas and minutes can be accessed via the [City Council Agendas website](#). The following is a summary of Council action related to the proposed vacation.

On November 28, 2017, the Council voted to approve the related “Agreement for Improvement of Public Trail and Processing of Vacation of Disputed Street.” Per that agreement, the Council agreed to initiate the proposed street vacation at the next Council meeting.

At that next Council meeting, which occurred on December 5, 2017, the Council voted to approve Resolution No. 2017-23 (attached), which initiated the street vacation process. Note that the Council's action committed the City to initiate the street vacation process, which includes an upcoming public hearing on the proposed street vacation, but the ultimate decision regarding the proposed vacation is a Council decision that will not be made until after the process is complete, including the public hearing. Pursuant to Resolution No. 2017-23, the

public hearing is set for “February 6, 2018, at 7:00 PM, or as soon thereafter as the matter may be heard,” The public hearing is on the Council’s agenda calendar and is set for the February 6, 2018, meeting.

Regarding your concern about the City’s right to reserve an easement related to the proposed vacation, as you will see from the agreement that is attached to the attached resolution, the agreement that the Council approved included a section entitled, “City Initiation and Processing of Street Vacation” (see pp. 2-3 of the agreement). In that section of the agreement, the Council reserved the right, pursuant to the Bainbridge Island Municipal Code, to retain an easement if the Council decides to approve the proposed easement. If the Council approves the proposed vacation and decides to retain an easement in doing so, my expectation is that City staff will recommend to the Council that the City only retain an easement in the area that does not intersect with your house to ensure that such a retained easement does not run under your house.

If you would like information regarding the status of the street vacation process for Duane Lane, please contact Rob Grant (cc’d above), the City’s Survey Program Manager, at (206) 780-3742.

Best Regards,



Joe Levan

City Attorney

www.bainbridgewa.gov

(206) 780-8622

From: Ricardo Fleischfresser [<mailto:ricardo@fetraco.com>]
Sent: Thursday, January 11, 2018 11:26 AM
To: Joe Levan <jlevan@bainbridgewa.gov>
Cc: City Admin <cityadmin@bainbridgewa.gov>; Kelly Tayara <ktayara@bainbridgewa.gov>; 'Tom Cole' <tacole2@gmail.com>
Subject: FW: Duane Lane - 11/28/17 Council meeting

Dear Joe,

As per a voice message I just left on (206) 780 8622 requesting a response regarding the status of the easement at 932 Nakata NW, this is the reminder email.

It has been over six weeks now since I sent you this email (below) requesting info on the status of the Duane Lane / Madison Grove Projects, yet I have had no response. On the same email I requested a change in the wording regarding the vacation of the road right of way so as to avoid any future issues regarding the city’s right of accessing the 29.41 feet under my house (see below email).

At one point when you met up with my wife in July of last year you requested we be patient and the city would take care of the mistake. Well, it has been over six months now and I am yet to receive a courtesy response to an email.

I hope this communication reminds you that we have been left without any response from the city.

Sincerely,

Ricardo Fleischfresser

2052 Place Road
Port Angeles, WA 98363 - USA
(360) 452 9164
(206) 491 3199 (cel)

From: Ricardo Fleischfresser [<mailto:ricardo@fetraco.com>]
Sent: Wednesday, November 29, 2017 4:45 PM
To: 'Joe Levan'
Cc: 'Jean Fleischfresser'; 'Tom Cole'
Subject: RE: Duane Lane - 11/28/17 Council meeting

Joe,

I was wondering how the council meeting went last night with regards to vacating the 29.4' easement. Please send me the outcome if you could.

On my side, while I am in agreement to give you our consent, I did notice that the documentation presented to the council pertaining to the agreement to vacate the easement maintains that

1. City Initiation and Processing of Street Vacation. At the first City Council meeting following execution of this Agreement, the Council, pursuant to BIMC 12.34.020, will initiate a street vacation to vacate the area depicted as "29.41' Dedicated to City of Winslow for Street Purposes," in that certain Fryer Short Plat, recorded under Kitsap County Recording No. 8312080074, a copy of which is attached as Exhibit B-1 hereto, and variously described as a private road, "road right-of-way," "street," and "perpetual easement," in the chain of title for the properties at issue, as shown in Exhibits B-2 through B-5 (the "Disputed Street"). Attached as Exhibit E is a map showing the location of the Disputed Street and the owners of the abutting properties. The City agrees to make a good faith effort to prioritize the processing of the vacation. At its discretion, the City may approve or reject the proposed vacation. If the City approves the vacation, it reserves the right, as provided in BIMC 12.34.110, to retain an easement for construction, repair, and maintenance of existing and future utilities and services. However, if the City fails to initiate the vacation within 30 days of the Effective Date, fails to vote on the vacation within 90 days of the Effective Date, or rejects the vacation, then this Agreement shall terminate and Ohrt shall have no obligation to complete the Trail Improvements described in paragraph 4. If the City approves the vacation, then Ohrt agrees to pay the costs of recording the certified copy of the ordinance vacating the Disputed Street. Pursuant to BIMC 12.34.130(B), in that the vacation as described would be initiated by the City, the owners of property abutting the Disputed Street, including Ohrt, shall not be required to pay compensation for the area vacated.

The highlighted text in yellow above must not be part of the terms of the vacation. It is totally unreasonable for the city to have the right to access the 29.4'. Perhaps you are unaware of the circumstances. My 2 storey house sits on some 24' of those 29.4', foundation, bedrooms, bathrooms and all.

Perhaps the text should be amended by replacing the yellow highlight with The City will retain a 5' adjacent easement located to the North of the disputed 29.4' road right of way for construction, repair, and maintenance of existing and future utilities and services.

Please make sure this correction is inserted into the terms of the street vacation to be approved by the Council. Once it is in place I will send you our consent.

Sincerely,

Ricardo Fleischfresser
2052 Place Road
Port Angeles, WA 98363 - USA
(360) 452 9164

(206) 491 3199 (cel)

From: Joe Levan [<mailto:jlevan@bainbridgewa.gov>]
Sent: Tuesday, November 28, 2017 11:58 AM
To: Ricardo Fleischfresser
Subject: RE: Duane Lane - 11/28/17 Council meeting

If you consent, and you would like to sign that document, it would be good to have that signed document as part of the Council's consideration for tonight's meeting. If you are OK with that consent page, you could print it, sign it, scan it, and email it to me and I will provide it to the Council for tonight's meeting.

Best Regards,



Joe Levan
City Attorney
www.bainbridgewa.gov
(206) 780-8622

From: Ricardo Fleischfresser [<mailto:ricardo@fetraco.com>]
Sent: Tuesday, November 28, 2017 11:43 AM
To: Joe Levan <jlevan@bainbridgewa.gov>
Subject: RE: Duane Lane - 11/28/17 Council meeting

Thanks Joe!!

Do you want us to sign our consent and send it to you?

Best Regards,

Ricardo Fleischfresser
2052 Place Road
Port Angeles, WA 98363 - USA
(360) 452 9164
(206) 491 3199 (cel)

From: Joe Levan [<mailto:jlevan@bainbridgewa.gov>]
Sent: Monday, November 27, 2017 6:28 PM
To: ricardo@fetraco.com
Subject: Duane Lane - 11/28/17 Council meeting

Ricardo;

Per our phone call, the following is the link to the Duane Lane agenda item that is on the Council agenda for tomorrow night (11/28/17). The Duane Lane item is Item 7.A. on the agenda, which you can access by clicking on that link when you click to the agenda per the link below, or you can access that item here:

<https://bainbridge.novusagenda.com/agendapublic/CoverSheet.aspx?ItemID=2774&MeetingID=419>

The following is the link to the proposed agreement:

[Proposed Trail Connection Agreement](#)

The following is the link to the full agenda (which includes the item above):

<https://bainbridge.novusagenda.com/agendapublic/MeetingView.aspx?MeetingID=419&MinutesMeetingID=-1&doctype=Agenda>

I will contact you on Wednesday and update you.

Best Regards,



Joe Levan

City Attorney

www.bainbridgewa.gov

(206) 780-8622

Robbie Sepler

From: Ricardo Fleischfresser <ricardo@fetraco.com>
Sent: Wednesday, November 29, 2017 4:45 PM
To: Joe Levan
Cc: 'Jean Fleischfresser'; 'Tom Cole'
Subject: RE: Duane Lane - 11/28/17 Council meeting

Joe,

I was wondering how the council meeting went last night with regards to vacating the 29.4' easement. Please send me the outcome if you could.

On my side, while I am in agreement to give you our consent, I did notice that the documentation presented to the council pertaining to the agreement to vacate the easement maintains that

1. City Initiation and Processing of Street Vacation. At the first City Council meeting following execution of this Agreement, the Council, pursuant to BIMC 12.34.020, will initiate a street vacation to vacate the area depicted as "29.41' Dedicated to City of Winslow for Street Purposes," in that certain Fryer Short Plat, recorded under Kitsap County Recording No. 8312080074, a copy of which is attached as Exhibit B-1 hereto, and variously described as a private road, "road right-of-way," "street," and "perpetual easement," in the chain of title for the properties at issue, as shown in Exhibits B-2 through B-5 (the "Disputed Street"). Attached as Exhibit E is a map showing the location of the Disputed Street and the owners of the abutting properties. The City agrees to make a good faith effort to prioritize the processing of the vacation. At its discretion, the City may approve or reject the proposed vacation. If the City approves the vacation, it reserves the right, as provided in BIMC 12.34.110, to retain an easement for construction, repair, and maintenance of existing and future utilities and services. However, if the City fails to initiate the vacation within 30 days of the Effective Date, fails to vote on the vacation within 90 days of the Effective Date, or rejects the vacation, then this Agreement shall terminate and Ohrt shall have no obligation to complete the Trail Improvements described in paragraph 4. If the City approves the vacation, then Ohrt agrees to pay the costs of recording the certified copy of the ordinance vacating the Disputed Street. Pursuant to BIMC 12.34.130(B), in that the vacation as described would be initiated by the City, the owners of property abutting the Disputed Street, including Ohrt, shall not be required to pay compensation for the area vacated.

The highlighted text in yellow above must not be part of the terms of the vacation. It is totally unreasonable for the city to have the right to access the 29.4'. Perhaps you are unaware of the circumstances. My 2 storey house sits on some 24' of those 29.4', foundation, bedrooms, bathrooms and all.

Perhaps the text should be amended by replacing the yellow highlight with The City will retain a 5' adjacent easement located to the North of the disputed 29.4' road right of way for construction, repair, and maintenance of existing and future utilities and services.

Please make sure this correction is inserted into the terms of the street vacation to be approved by the Council. Once it is in place I will send you our consent.

Sincerely,

Ricardo Fleischfresser
2052 Place Road
Port Angeles, WA 98363 - USA
(360) 452 9164

(206) 491 3199 (cel)

From: Joe Levan [mailto:jlevan@bainbridgewa.gov]
Sent: Tuesday, November 28, 2017 11:58 AM
To: Ricardo Fleischfresser
Subject: RE: Duane Lane - 11/28/17 Council meeting

If you consent, and you would like to sign that document, it would be good to have that signed document as part of the Council's consideration for tonight's meeting. If you are OK with that consent page, you could print it, sign it, scan it, and email it to me and I will provide it to the Council for tonight's meeting.

Best Regards,



Joe Levan
City Attorney
www.bainbridgewa.gov
(206) 780-8622

From: Ricardo Fleischfresser [mailto:ricardo@fetraco.com]
Sent: Tuesday, November 28, 2017 11:43 AM
To: Joe Levan <jlevan@bainbridgewa.gov>
Subject: RE: Duane Lane - 11/28/17 Council meeting

Thanks Joe!!

Do you want us to sign our consent and send it to you?

Best Regards,

Ricardo Fleischfresser
2052 Place Road
Port Angeles, WA 98363 - USA
(360) 452 9164
(206) 491 3199 (cel)

From: Joe Levan [mailto:jlevan@bainbridgewa.gov]
Sent: Monday, November 27, 2017 6:28 PM
To: ricardo@fetraco.com
Subject: Duane Lane - 11/28/17 Council meeting

Ricardo;

Per our phone call, the following is the link to the Duane Lane agenda item that is on the Council agenda for tomorrow night (11/28/17). The Duane Lane item is Item 7.A. on the agenda, which you can access by clicking on that link when you click to the agenda per the link below, or you can access that item here:

<https://bainbridge.novusagenda.com/agendapublic/CoverSheet.aspx?ItemID=2774&MeetingID=419>

The following is the link to the proposed agreement:

[Proposed Trail Connection Agreement](#)

The following is the link to the full agenda (which includes the item above):

<https://bainbridge.novusagenda.com/agendapublic/MeetingView.aspx?MeetingID=419&MinutesMeetingID=-1&doctype=Agenda>

I will contact you on Wednesday and update you.

Best Regards,



Joe Levan

City Attorney

www.bainbridgewa.gov

(206) 780-8622

Attachment C
BIMPRD Objections

January 18, 2018

Joan Haase, Department of Public Works
City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110



RE: Vacation of Duane Lane Right-of-Way

Dear Ms. Haase,

Thank you for informing the Park District regarding a potential ROW vacation, under Bainbridge Island Municipal Code 12.34. We appreciate the ongoing notification on these matters.

We see the proposal to vacate Duane Lane without providing for permanent trail or multimodal connection as counter-productive to efforts to develop trail and non-motorized access in Winslow. The attached exhibit and notification provides no assurance that if vacated non-motorized access would be guaranteed by a trail easement or otherwise. The cost for providing non-motorized access in the future at other locations in Winslow will only grow as more people desire such connections.

Our agency has just concluded efforts to provide neighborhood connections in the vicinity of this ROW vacation proposal at Wyatt to Shepherd Way. That proposal was endorsed by the neighborhood association and local donations because people see the value of providing non-motorized access that connect neighborhoods to schools, parks and businesses. This effort is called for in our Park's comprehensive plan, its Trail Vision Plan and its appendix, the Greening of Winslow.

At Duane Lane, the proposal as presented in the notification does not guarantee access for non-motorized connection. This existing ROW links neighborhoods to the library, schools and businesses. As properties are increasing converted to mixed use in Winslow, the City's population will increase and more people will want to make these trips on foot or by bicycle. Economically, it is not efficient to have to acquire these connections after the fact. It also is counterproductive when an existing City owned ROW exists.

Our experience has been that ROW can be very complex, so we are reluctant to let go of an existing publicly held ROW in the hope of a future connection occurring later somewhere else. To make a new proposed easement publicly available, first there must be willing property owners to cooperate and provide a continuous point to point connection. All it takes is for one property owner to say no and the proposed route becomes non-actionable. Instead of vacating existing ROWs such as Duane Lane, we recommend holding onto the connection and/or providing an easement for public non-motorized egress across an end to end portion of it. We recommend that the City's Multi-Modal Transportation Advisory Committee provide standards for such a connection due to the location of the ROW.

Unless we are missing documentation, we do not see public non-motorized egress guaranteed in this vacation proposal. As such, we do not recommend the vacation of Duane Lane from what has been proposed. We would not relinquish a public non-motorized connection when their making of a new one is so difficult, time-consuming and expensive.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Kinney". The signature is fluid and cursive, with a large, sweeping "J" and "K".

Jay Kinney, Chair
Bainbridge Island Metropolitan
Park & Recreation District