

| CLEARANCES | Initial | Date | Date Received in Council Office: | Agenda date | Assigned to: |
|--------------------|---------|------|----------------------------------|-------------|----------------------|
| Originator: Reeves | | 4/14 | | 9/27/94 | Council Introduction |
| Division Head: | | | | 10/11/94 | Council Hearing |
| Dept. Head: | | | | | |
| Prosecutor: | | | | | |
| Purchasing/Budget: | | | | | |
| Executive: | | | | | |

SUBJECT:

Ordinance regarding the revision of the Road Vacation procedure.

ATTACHMENTS:

Proposed Ordinance

SUMMARY STATEMENT:

Please complete sections of box as appropriate & explain the item below.

| | |
|----------------------------|--|
| Related County contract #: | Should Clerk schedule a hearing? NO / / YES <input checked="" type="checkbox"/> Requested date: 10-11-94 |
|----------------------------|--|

The road vacation petition/review process and fees for the same have not been updated since 1972. The attached ordinance provides for a streamlined petition, review and approval/denial process which will take effect immediately, and also provides for an increase in fees (to take effect in January 1995).

CLERK'S RECOMMENDED MOTION (for final action):

"I move that the Council adopt the Ordinance as proposed."

COMMITTEE ACTION TAKEN:

COUNCIL ACTION TAKEN:

9/13/94:
 9/27/94: Council introduction
 10/11/94: Council adopted the ordinance. 7-0.

Related File Numbers:

Ordinance or Resolution Number (this item only):

AB94-098

SPONSORED BY: Consent

PROPOSED BY: Council Clerk

INTRODUCTION DATE: 9/13/94

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ORDINANCE NO. 94-059
AMENDING WHATCOM COUNTY CODE SECTION 12.20,
REGARDING ROAD VACATION PETITIONS

WHEREAS, Whatcom County Code Section 12.20 provides a process for vacating county roads or portions thereof; and

WHEREAS, the existing process needs to be streamlined for the benefit of the public and county staff, to encourage a "one-stop shopping" approach to government services when possible; and

WHEREAS, this goal will be accomplished if the revision to Whatcom County Code 12.20, attached hereto as Exhibit A, is adopted; and

WHEREAS, the fees charged to cover the costs of processing road vacation petitions have not been changed since 1972; and

WHEREAS, it is the best interest of the public and Whatcom County taxpayers in particular for the County to attempt to recover costs, particularly for processes that benefit a small number of individuals; and

WHEREAS, the Council intends to appropriately amend the Whatcom County Unified Fee Schedule to charge a fees to cover the costs as described in Exhibit B to this ordinance;

1 NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that
2 Whatcom County Code Chapter 12.20 is hereby amended as indicated in Exhibit A to
3 this ordinance; and
4

5 BE IT FURTHER ORDAINED that the revenues obtained as a result of the
6 petition's administrative and appraisal fees shall be distributed to the Current Expense
7 and Road Funds as specified in Exhibit B to this ordinance; and
8

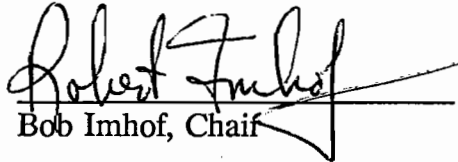
9 BE IT FINALLY ORDAINED that this ordinance will take effect January 1,
10 1995.
11

12 ADOPTED this 11th day of October, 1994.
13

14 ATTEST:

15 WHATCOM COUNTY COUNCIL
16 WHATCOM COUNTY, WASHINGTON

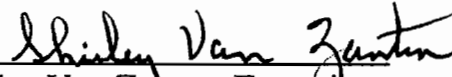
17 
18 _____
19 Ramona Reeves, Council Clerk

20 
21 _____
22 Bob Imhof, Chair

23 APPROVED as to form:

24 Approved Vetoed

25 _____
26 Civil Deputy Prosecutor

27 
28 _____
Shirley Van Zanten, Executive
Date: 10-12-94

REVISIONS TO WHATCOM COUNTY CODE
SECTION 12.20, ROAD VACATIONS

Note to Code Reviser: Prior to changes being made as indicated below, the text of Chapter 12.20 as it appeared in the Whatcom County Code was brought up to date (in conformance with Ordinance 93-080, adoption of the Whatcom County Unified Fee Schedule, filed as AB93-419 in the Council Office).

Chapter 12.20 ROAD VACATIONS

12.20.010 Authority.

This chapter is enacted pursuant to authority contained in RCW 36.87.120.

12.20.020 Scope and application.

This chapter shall apply to all applications to the Whatcom County council seeking vacation and abandonment of a Whatcom County road, or any portion thereof, initiated pursuant to RCW Chapters 36.87, 58.11 or 58.12 and 58.17.

12.20.030 Petition - Application fee Fees.

A. Every petition to the Whatcom County council for vacation and/or abandonment of any road or portion thereof shall conform to the requirements of the applicable state statute and shall be accompanied by an application fee appraisal fee and application fees as set forth in the Whatcom County unified fee schedule.

B. The petition form, along with the full fees for application and appraisal shall be submitted to the Whatcom County transportation services department.

C. The appraisal fee may be refunded by the council at the recommendation of the county engineer if no appraisal has been carried out in connection with the road vacation petition. Said refund may be given only after the Council makes its final decision in connection with the road vacation petition in question.

D. The portion of the application fee designated for recording the final order of vacation may be reimbursed to the petitioner if the Council denies the petition.

E. A portion of the application fee, but no more than 30 percent of that

1 application fee, may be reimbursed to the petitioner by the Council at the time the
2 application is approved, if the vacation was granted pursuant to the Territorial Land Act
3 of 1890.

4
5 ~~12.20.040 — Petition — Report fee.~~

6 ~~Every petition to the board of Whateom County council for vacations and/or~~
7 ~~abandonment of any road or portion thereof shall be accompanied by a fee of \$50.00 as~~
8 ~~set forth in the Whateom County unified fee schedule, paid to the Whateom County~~
9 ~~current expense fund to cover planning commission costs for field inspection and~~
10 ~~preparation of report to the council on the proposed road vacation or abandonment.~~
11 ~~(Res. dated 12/27/76 Part 4).~~

12
13
14 ~~12.20.050 — Application fee not refundable.~~

15 ~~The application fee is not refundable.~~

16
17 ~~12.20.060 — Bond to cover administrative costs.~~

18 ~~The application shall be accompanied by a bond in the penal sum of \$100.00, payable to~~
19 ~~the county, conditioned that the petitioner will pay to Whateom County the amount of~~
20 ~~all costs and expenses incurred in the examination, report, and all proceedings pertaining~~
21 ~~to such petition to vacate and abandon, including the costs of county appraisals. Said~~
22 ~~amount shall be properly distributed to the county road fund and the current expense~~
23 ~~fund.~~

24
25 ~~12.20.040 Petition format.~~

26 ~~A. Owners of the majority of the frontage on any county road or portion~~
27 ~~thereof may petition for the vacation and/or abandonment of that same county road or~~
28 ~~portion thereof by completing a form prepared by Whatcom County.~~

29 ~~B. Included on the petition and submitted by the petitioner shall be the~~
30 ~~signatures and addresses of five persons owning property within a one-mile radius of the~~
31 ~~road to be vacated, as part of the public notification process, unless the petitioner can~~
32 ~~demonstrate to the transportation department that fewer than five people own property~~

1 within a one-mile radius of the road to be vacated; in which case the petitioner shall
2 submit an affidavit stating the same, along with the signatures of as many people as do
3 own property within a one-mile radius of the road to be vacated.

4 C. By signing the petition the property owners are acknowledging that they
5 are notified of the petitioner's intent to seek vacation of the county road or portion
6 thereof. They are not agreeing to become co-petitioners for the road vacation.

7
8 12.20.050 Engineer's report.

9 A. The county road engineer shall examine and, if necessary, perform an
10 appraisal of the road proposed to be vacated; the engineer shall perfect the legal
11 description of the road proposed to be vacated, and report upon such vacation and
12 abandonment to the Whatcom County council. Said report shall be in the form of a
13 resolution by which the Whatcom County council either authorizes or denies the petition
14 to vacate the county road.

15 B. The engineer shall file the petition and resolution with the Whatcom
16 County council upon completion of his/her report. The clerk of the council will
17 schedule a public hearing on the resolution after its arrival in the council office, with
18 public notice to be given as provided in RCW 36.87.

19 C. The Whatcom County council shall consider the petition in resolution
20 form. Action on the resolution will be the Council's final action in the matter.

21 D. The petition shall be deemed to have been denied if a motion to approve
22 of the resolution fails, or if by other means a majority of the council denies approval of
23 the resolution or petition.

24 E. If the engineer recommends, by resolution, that a petition be denied and
25 the Council disagrees with the engineer's recommendation to deny, the Council may
26 amend the resolution to indicate that it is approving of the petition despite the
27 Engineer's recommendation.

28 F. If the Whatcom County council passes the resolution and there is a
29 provision seeking payment by the applicant of further costs or appraised value of the
30 area being vacated, the clerk of the council shall notify the applicant that he/she has six
31 calendar months in which to pay for such costs.

32 G. If the applicant pays such money as is owed the county within the six

1 calendar months after the date of passage of the resolution, or if upon passage of the
2 resolution no money is owed the County by the petitioner, the clerk of the council shall
3 prepare an order of vacation and have it, along with the resolution, recorded by the
4 county auditor. If the applicant fails to make payment as required, the council's
5 authorization the vacation becomes null and void.

6 H. The vacation becomes official only after an order of vacation and the
7 resolution are recorded by the county auditor.

8
9 ~~12.20.070—Engineer's report.~~

10 ~~Whenever the county council directs the county road engineer to report upon such~~
11 ~~vacation and abandonment, he shall report on the following matters in addition to the~~
12 ~~requirements of RCW 36.87.040:~~

13 ~~A. The fair market value of the area sought to be vacated as determined by~~
14 ~~appraisal;~~

15
16
17 ~~12.20.060 Resolution requirements.~~

18 ~~The resolution shall contain the following information, in addition to the requirements of~~
19 ~~RCW 36.87.040:~~

20 ~~A. The petitioner's name and mailing address, the date the petition was filed~~
21 ~~with the transportation department, a statement that the application and report fee has~~
22 ~~been paid, and a short description of the roads or portion of roads to be vacated;~~

23 ~~B. A legal description of the roads or portions thereof to be vacated;~~

24 ~~C. A statement that the applicant has six calendar months from the date the~~
25 ~~resolution is passed to pay any remaining fees to the Whatcom County council office,~~
26 ~~with checks made payable to the Whatcom County treasurer, prior to the vacation~~
27 ~~becoming effective, including but not limited to the appraised value of the area sought to~~
28 ~~be vacated;~~

29 ~~D. A statement that the petitioner has met all of the petition requirements as~~
30 ~~set forth by this Chapter, and by all other applicable laws;~~

31 ~~E. The fair market value of the area sought to be vacated as determined by~~
32 ~~appraisal;~~

1 ~~F~~B. The classification of the road area and the nature of the county's interest
2 therein, according to the following classification:

- 3 1. Class A. Public expenditure made,
- 4 2. Class B. No public expenditures made or nonascertainable from records,
- 5 3. Class 1. No part thereof lies in any plat,
- 6 4. Class 2. Part or all lies within a platted subdivision,
- 7 5. Class 3. Did not remain unopened for public use for a period of five
8 years after the authority was granted for opening it,
- 9 6. Class 4. Remained unopened for public use for five or more years after
10 the order made or authority granted for opening it,
- 11 7. Class 5. Is contained within that portion of a plat which is to be
12 replatted,
- 13 8. Class 6. Abandoned in fact due to relocation of right-of-way,
- 14 9. Class 7. Informalities exist in the records of title which are construed to
15 invalidate and divest the public of any right, title or interest in the right-of-way.

16 ~~G. A statement that the vacation does not become effective until the fees are
17 paid, and the final order and the resolution are recorded with the county auditor.~~

18
19 ~~12.20.080070~~ Payment of costs when.

20 Recompense in the amount of the fair-market appraised value and all certified costs and
21 expenses incurred in the proceedings above and beyond those covered by the application
22 and appraisal fee shall be tendered at time of within six months of the hearing on the
23 petition for vacation; provided, however, that at the time of the hearing the county
24 council may waive payment of the fair-market appraised value, or any portion thereof, if
25 it finds that the granting of such vacation will be of some specific benefit to Whatcom
26 County. Said waiver shall be included as a part of the resolution approving of the
27 vacation.

28
29 ~~12.20.090~~ Decision of council.

30 If the council denies vacation, all sums, other than the application fee, shall be refunded
31 to applicant except those sufficient to pay all certified costs and expenses incurred. If the
32 council approves vacation, upon payments as required in this chapter, the council shall

1 ~~declare the same vacated and enter its declaration in its minutes.~~

2

3 ~~12.20.100 — Time limits.~~

4 ~~Every petition for vacation and/or abandonment of any county road or portion thereof~~
5 ~~which has been authorized by the county council shall be completed by the petitioner(s)~~
6 ~~no later than six months from the date of the signing of the order of vacation by the~~
7 ~~council. In the event the requirements of the final order of vacation are not completed~~
8 ~~within said six month period, the authorization of the county council shall become null~~
9 ~~and void.~~

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**JUSTIFICATION FOR AND DISTRIBUTION OF
ROAD VACATION PETITION FEE**

Fees associated with road vacation petitions have not been increased since 1972. The majority of taxpayers should not unduly supplement services benefiting only a few private individuals. Therefore these new fees are based on conservative estimates of the County's costs. Hourly rates for engineering and clerical services are similar to those paid by the County's taxpayers to private engineering firms for services in recent years¹ (clerical, \$26 per hour; engineering, \$75 per hour).

Fees, to be set in the Whatcom County Unified Fee Schedule, are justified as shown in the chart below. In setting fees, staff hours were rounded to the lowest possible number. From time to time a petition may take more time to process, and in those circumstances the County will bear the additional costs involved, unless the Engineer's report to the Council recommends otherwise. Fees are to reimburse the County for its costs; no profit is sought. Only the appraisal fee may be reimbursed (see footnote 2 below).

| County Staff Tasks (expenses): | | Cost to petitioner: |
|--|---|---------------------|
| A | Application fee (Transportation Services Department services) (assistance with filing petition, preparation/verification of legal description, field inspection, report & resolution preparation) | 300.00 |
| B | Appraisal fee ² | 200.00 |
| C | Application fee (Council Office services) (legal advertisement preparation, notice to parties of Council hearing, legal advertisement costs (based on average), final paperwork preparation) | 162.00 |
| D | Application fee (Auditor's Office services, document recording fee (based on average of 6 pages)) ³ | 20.00 |
| Estimated cost to County (to be borne by petitioner): | | 682.00 |
| Amount to Current Expense (steps E to I): | | 182.00 |
| Amount to Road Fund: | | 500.00 |

¹See contracts 9209017, 9210022, and 9108002 between Whatcom County and Weden Engineering.

²The appraisal fee may be refunded by the Council, at the Engineer's recommendation, if an appraisal is not conducted. At times an appraisal is not required when a road vacation petition is being considered.

³The portion of the application fee set aside for recording may be refunded if the Council does not pass the resolution granting the road vacation.