

ORDINANCE NO. 438

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, VACATING A PORTION OF THE ORIGINAL ALIGNMENT OF WOODINVILLE-DUVALL ROAD (AKA KING COUNTY ROAD NO. 537); SETTING FORTH CONDITIONS FOR SAID VACATION; PROVIDING FOR SEVERABILITY; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, a signed petition seeking vacation of certain property dedicated for street purposes, located within the City of Woodinville, Washington, and commonly referred to as a portion of the original alignment of Woodinville-Duvall Road (aka King County Road No. 537), east of 156th Avenue NE, was filed with the Woodinville City Clerk, who has returned a certification of sufficiency; and

WHEREAS, pursuant to Chapter 35.79 RCW, a public hearing regarding said petition was scheduled by Resolution No. 331 and held by the City Council on 5 February 2007; and

WHEREAS, the City Council has determined that the subject right-of-way segment is not needed for public use, and that, in addition to the compensation provided hereunder, vacation of the same will effect a public benefit by returning the underlying property to the tax rolls and absolving the City from any continued maintenance responsibility and liability therefore; and

WHEREAS, no private land will be denied direct access onto a public right-of-way as a result of the vacation effected hereunder; and

WHEREAS, the City Council finds that the requested vacation, as conditioned herein, satisfies the criteria enumerated in WMC 12.18.090 and is in the public interest; and

WHEREAS, the petitioner's desire for vacation of the above-referenced public right-of-way segment depends upon the City's separate agreement to convey to the petitioner an adjacent strip of real property; and

WHEREAS, the City and the petitioner seek to ensure that the right-of-way vacation effected hereunder is expressly contingent upon both the execution of a Purchase and Sale Agreement for the adjacent property in question, and the satisfaction of all contingencies set forth in said agreement;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Right-of-way Vacation Authorized. The portion of right-of-way depicted in Exhibit A and legally described in Exhibit B, both of which are attached hereto and incorporated herein by this reference as if set forth in full, is hereby vacated in accordance with and subject to the provisions of this ordinance.

Section 2. Contingency: Compensation. In compensation for the right-of-way vacation authorized hereunder, the petitioner shall remit to the City Clerk a cashier's check made payable to the City of Woodinville in the amount of \$23,730. The right-of-way vacation effected hereunder is expressly contingent upon and shall not take effect until the City's receipt of such payment.

Section 3. Contingency: Agreement. Separate from the compensation required pursuant to Section 2 of this ordinance, the right-of-way vacation authorized hereunder is expressly contingent upon the execution by the petitioner and the City of a Purchase and Sale Agreement containing, *inter alia*, the provisions set forth below.

A. **Real Property; Purchase Price.** The Purchase and Sale Agreement shall authorize the legal transfer from the City to the petitioner of the portion of Tract A of SPA2005050 depicted and legally described in Exhibit C, attached hereto and incorporated herein by this reference as if set forth in full. The purchase price for said transfer shall be \$31,270.

B. **Purchase and Sale Contingency: Regulatory Approval.** The Purchase and Sale Agreement shall be expressly contingent upon the receipt of any and all regulatory approval(s), including but not limited to a boundary line adjustment, plat alteration or plat modification, as may be necessary in order to formally adjust easterly the lot line separating Tract A from Lot 2 of SPA2005050 by 33.5 feet. The parties shall reasonably cooperate in good faith with respect to applying for and obtaining such approval(s). PROVIDED, that the petitioner shall bear all costs associated with the application and approval process therefore.

C. **Purchase and Sale Contingency: Permanent Egress Restriction.** The Purchase and Sale Agreement shall be expressly contingent upon the execution and recording of a binding covenant permanently prohibiting left-turn egress from Lot 1 and Lot 2 of SPA2005050 onto east-bound Woodinville-Duvall Road aka NE 185th Street. Said covenant shall be in a form approved by the City Attorney, shall run with the land and bind all future owners thereof, and shall be recorded against the property titles of Lot 1 and Lot 2 of SPA2005050 at the petitioner's sole expense.

D. Release; Indemnification. The Purchase and Sale Agreement shall include the petitioner's promise to fully release, indemnify, protect, defend and hold harmless the City of Woodinville, its officers, employees and agents from and against any and all claims, suits, losses, damages and causes of action arising out of or in any way connected with (1) the right-of-way vacation effected pursuant to Ordinance No. 420; (2) the right-of-way vacation effected pursuant to this ordinance; and (3) the development, including the regulatory approval process(es) therefore, of SPA2005050, specifically including but not limited to any design, construction, maintenance and repair of the storm drainage, retention and/or treatment facilities located on Tract A of SPA2005050, and (4) the Purchase and Sale Agreement

E. Reservation of Regulatory Authority. The Purchase and Sale Agreement shall contain the petitioner's acknowledgement that (1) the City Council does not and cannot guarantee the approval of any application for the afore-referenced plat alteration, plat modification, boundary line adjustment or other regulatory approval(s), and (2) proceeding with any such application is at the petitioner's sole risk.

The right-of-way vacation authorized pursuant to Section 1 of this ordinance shall not become effective unless and until each of the contingencies set forth in the Purchase and Sale Agreement have been satisfied and the purchase and sale transaction has closed. The Purchase and Sale Agreement shall be returned to the City Council for approval prior to the City Manager's execution thereof.

Section 4. Temporary Access. As a provision of the Purchase and Sale Agreement referenced in Section 3, the City Manager is authorized to grant the petitioner a temporary license or easement permitting reasonable access over and upon the portion of Tract A of SPA2005050 transferred thereby. Such license or easement shall be for the purpose of constructing improvements thereupon in accordance with applicable permits and approved plans therefore. PROVIDED, that the petitioner's entry upon and use of Tract A pursuant to such license or easement, as well as the installation of any improvements thereupon by the petitioner, shall be at the petitioner's sole risk, and the petitioner shall release, protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, suits, losses, damages and causes of action arising out of or in any way connected therewith. If for any reason other than a judicial or administrative appeal the closing for the Purchase and Sale Agreement does not occur by September 1, 2007, the petitioner shall immediately and at its sole expense lawfully remove any improvements from the area of Tract A covered by the license authorized hereunder. PROVIDED, that in the event of an administrative or judicial appeal, the September 1, 2007 deadline shall be extended until the final resolution thereof.

Section 5. Clear Title. The City Clerk is hereby directed to file a certified copy of this ordinance with the King County Records, Elections and Licensing

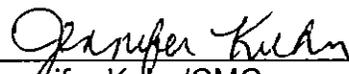
Services Division upon verification that the contingencies set forth in Section 2 and Section 3 hereof have been fully satisfied.

Section 6. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 7. Effective Date. This ordinance, being an exercise of power specifically delegated to the City legislative body, is not subject to referendum and shall take effect five (5) days after passage and publication of the ordinance or a summary thereof consisting of the title. PROVIDED, that the right-of-way vacation authorized hereunder shall not take effect unless and until the City Clerk has filed a certified copy of this ordinance with the King County Records, Elections and Licensing Services Division pursuant to Section 5 hereof.

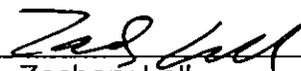

Cathy VonWald, Mayor

ATTEST/AUTHENTICATED:


Jennifer Kuhn/CMC
City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY


J. Zachary Lell
City Attorney

PASSED BY THE CITY COUNCIL: 05-21-2007
PUBLISHED: 05-28-2007
EFFECTIVE DATE: 06-05-2007
ORDINANCE NO. 438

EXHIBIT B

Right of Way Vacation Description

That portion of County Road No. 537 as described in deed to King County recorded under recording No. 1023736, lying southerly of the southerly margin of the Old Woodinville-Duvall Road (aka Road No. 1437) as said road margin is established by deed from King County to Robert Leroy Gooch and Mattie L. Hinman recorded under recording No. 6331586:

Commencing at the intersection of the north margin of the new Woodinville-Duvall Road (aka N.E. 185th Street) as said road is established by deed to King County recorded under recording no. 8901240160 and the east line of the west five-eighth of the southwest quarter of the southeast quarter of section 2 township 26 North, range 5 East, W.M., in King County Washington, thence North $89^{\circ}17'32''$ West 174.56 Feet along said North margin to the southeast corner of Lot 2 of the short plat as recorded under King County No. 20061130900010; then North $00^{\circ}42'28''$ West 107.33 Feet along easterly property line of said Lot 2 the True Point of Beginning;

Thence North $00^{\circ}42'28''$ East 57.55 Feet along easterly property line of said Lot 2 to a point on the south margin of the Old Woodinville-Duvall Road (aka Road No. 1437); thence South $60^{\circ}16'32''$ East 38.31 feet along said south margin; thence South $00^{\circ}42'28''$ West 77.39 Feet; thence North $40^{\circ}22'32''$ West 50.98 Feet and to the True Point of Beginning.

The parcel described above contains 2,260 square feet (0.05 Acres) more or less.

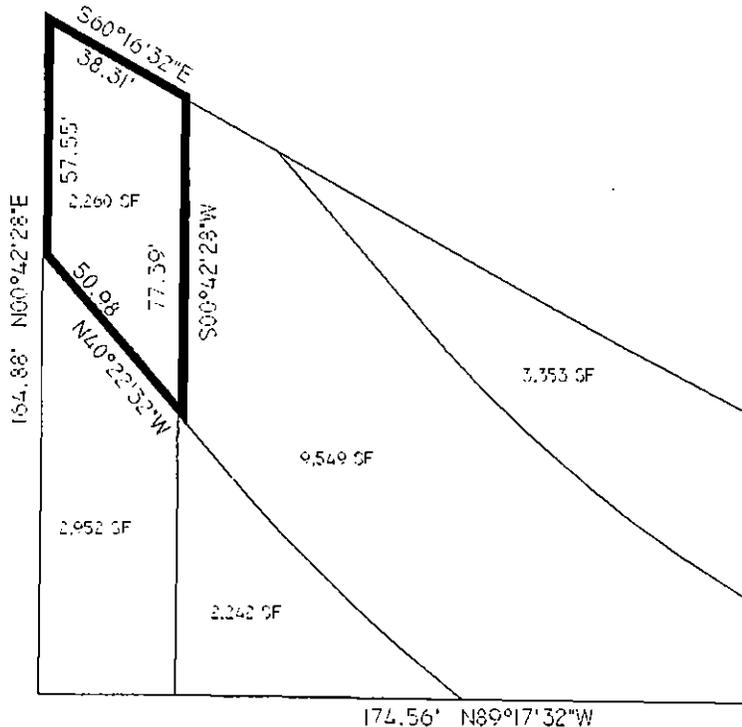


EXHIBIT C

Area To Be Transferred Through Purchase and Sale Agreement

That portion of Tract A from Lot 2 of SPA2005050 as described in said plat in King County under recording No. 20061130900010, lying northerly of the northerly margin of Woodinville-Duvall Road (aka N.E. 185th Street):

Commencing at the intersection of the north margin of the new Woodinville-Duvall Road (aka N.E. 185th Street) as said road is established by deed to King County recorded under recording no. 8901240160 and the east line of the west five-eighth of the southwest quarter of the southeast quarter of section 2 township 26 North, range 5 East, W.M., in King County Washington, thence North 89°17'32" West 174.56 Feet along said North margin to the southeast corner of Lot 2 of the short plat as recorded under King County No. 20061130900010; to the True Point of Beginning;

Thence North 00°42'28" East 107.33 Feet along easterly property line of said Lot 2; thence South 40°22'32" East 50.98 Feet; thence South 00°42'28" West 71.34 feet to a point on the north margin of the new Woodinville-Duvall Road (aka N.E. 185th Street); thence North 89°17'32" West East 33.50 Feet; and to the True Point of Beginning.

The parcel described above contains 2,952 square feet (0.07 Acres) more or less

