



Your Passport To Street Vacations

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The Seattle City Council recently evaluated two highly publicized developments, Amazon’s planned Denny Triangle development and the Arena Group’s Seattle SoDo Arena proposal; both of which involved a request for a “street vacation”.¹ Despite the high-profile nature of these proposed developments and extended media coverage on the issues facing the Council, little is understood about what a street vacation is or how the process works.

To understand why Amazon’s request for a street vacation was successful and the Arena Group’s proposal was not, it is important to first understand that the public’s right to use alleys, streets and roads for access and travel (generally referred to as the “public right-of-way”), exists even where the property underlying the street or road is owned by a private party—the road itself actually consists of an easement for public travel. A “street vacation” is the process by which the public’s interest in the right-of-way can be terminated to allow private use of the land by the fee owner. A street vacation effectively extinguishes the easement allowing the fee owner of the property to develop or utilize the unencumbered property.

Although individual cities and counties typically adopt their own regulations and policies governing the street vacation process, they operate within the more general right of way vacation process outlined by state statutes.² State law requires any person seeking a street vacation to prove that the vacation will serve a public benefit, or at least that the vacation will not adversely impact the public and that the public easement is useless to the government’s needs. Local jurisdictions play a major role in the process, and have broad discretion to grant, deny, or condition any approval of a street vacation request.

While the local legislative authority may itself initiate the procedure to vacate a street by resolution, the more common and often contentious street vacations are initiated by private parties via petition.³ For the vacation of city and town streets or alleys, the petition to vacate may be signed by any property owner with land abutting the portion of the street or alley sought to be vacated.⁴ A county road vacation needs to be signed by a majority of the abutting property owners and must set forth that the road is “useless as part of the county road system and that the public will be benefited by its vacation and abandonment.”⁵ Though the statute governing vacation of city/town streets does not have a corresponding requirement for the content of petitions, municipalities will generally require petitioners to provide information related to the issue of public benefit. For example, some cities require petitioners to provide information on transportation impacts resulting from the loss of right-of-way, possible impacts to utilities, and/or general information on how the proposal serves the public interest. In the case of Amazon’s proposed Denny Triangle alley vacation, the 1232-page vacation application incorporated numerous consultant reports which address these impacts and more.⁶

¹ The term “street vacation” refers to the vacation of any public right of way, including streets, alleys, and roads.

² If the street to be vacated is located in a city, the applicable state statute is Ch. 35.79 RCW. County roads can be vacated pursuant to Ch. 36.87 RCW.

³ Streets may also be vacated through operation of the historic non-use statute or through vacation of a subdivision. *See generally* RCW 36.87.090; RCW 58.17.212. Both processes are outside the scope of this article.

⁴ Where two-thirds of the owners sign the petition, a hearing is automatically scheduled. RCW 35.79.010. If fewer sign the petition, notice is mailed to all abutting owners and if fifty percent of abutting owners object prior to the hearing, the proceedings are automatically terminated. RCW 35.79.020.

⁵ RCW 36.87.020.

⁶ The vacation application can be accessed at:

<https://seattle.legistar.com/View.ashx?M=F&ID=3526498&GUID=CE9E4C6F-8492-4C85-9103-95A518EDDCAB> (last accessed July 25, 2016).

Once the petition is received, the local legislative authority will, by resolution, fix a time for the petition to be heard. Public hearings on street vacation petitions may be conducted by the legislative body or an appointed committee or hearing examiner. In the case of a petition to vacate a County road, the County engineer will examine the road and render an opinion as to whether the road should be vacated. The Engineer's report will be the subject of a county hearing. Regardless of which procedural route is taken, the public hearing can be quite contentious, and the end result is that the legislative authority will make a decision (using the recommendation of the hearing examiner, committee, or County engineer) to grant, grant with conditions, or deny the petition to vacate through an ordinance action.

Two major issues at the center of most vacation proposals are (i) the compensation the adjoining property owners must pay to the jurisdiction if the road is vacated, and (ii) the conditions (if any) imposed on the approval. Local jurisdictions may require abutting property owners to pay compensation for vacating the right-of-way. Jurisdictions have implemented this authority in different ways; in general, most jurisdictions require the property owners to pay an amount equal to a percentage (up to 100%) of the appraised value of the vacated street or alley based on factors such as how long the right-of-way has existed and whether the property was acquired and/or maintained at public expense. Under RCW 35.79.030, half of the revenue received as compensation must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town. Some jurisdictions view street vacation compensation as payment not only for the property value of the right-of-way itself, but compensation for the public benefits lost or impaired as a result of the associated development and value it accordingly. For example, in the case of one of the Amazon alley vacations, Amazon proposed that in consideration of the vacation, they would purchase and maintain for ten years, one "carriage" for the South Lake Union Trolley.

Because the authority to vacate the public right-of-way is discretionary, local jurisdictions also have freedom to impose conditions on a street vacation as necessary to protect the public interest. For example, the City of Seattle's Street Vacation Policies contemplate conditions related to a variety of matters, including circulation, utilities, light, air, open space, and views.⁷ The Seattle City Council has just begun to reevaluate its Street Vacation Policies which are expected to be revised next year. In all jurisdictions, the city, town, or county may retain an easement or right to exercise and grant easements for the construction, repair, and maintenance of public utilities (typically underground) and services.⁸

Notably, the vacation of a street or road abutting a body of water is generally prohibited unless the purpose of the vacation is to enable the local jurisdiction to acquire the vacated property for public purposes.⁹ This is one of the reasons that municipalities bordering Lake Washington, including Seattle, have a number of "street end parks".

As a practical note, under state law (RCW 35.79.040), the property within a street or alley that is vacated by a city or town will revert to the abutting property owners, one-half to each, on the payment of the compensation due. Although it may not be strictly required because the vacation ordinance is often drafted to actually accomplish the transfer of title, the jurisdiction may execute and record a deed transferring its interest in the vacated right of way to the adjoining landowners. This helps to clarify the status of record title to property without having to research outside the real property records.

As demonstrated by recent street vacation decisions in Seattle, municipalities have significant discretion over whether to approve a vacation and what conditions to impose. A few years ago, former Seattle Mayor Mike McGinn opposed an alley vacation because it would have facilitated development of a nonunion grocery chain. Ultimately, applicants for street vacations must pay close attention not only to the specific procedural requirements but to the political and public interest concerns being raised by the

⁷ City of Seattle's Street Vacation Policies (2009), <http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=&s2=&s3=310078&s4=&Sect4=AND&l=20&Sect2=THESON&Sect3=PLURON&Sect5=CFCF1&Sect6=HITOFF&d=CFCF&p=1&u=/-public/cfcf1.htm&r=1&f=G>.

⁸ RCW 35.79.030; RCW 36.87.140.

⁹ See RCW 35.79.035; 36.87.130

community and its leaders. For more information regarding the street vacation process, please contact [Steve Scheele](#).

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