

Via Email

City of Snoqualmie
City Council
38624 SE River Street
Snoqualmie, WA 98065

March 4, 2025

Re: Supplemental Materials: **Petition for Vacation of Right of Way, Tax Parcel Number 7849200064**

Dear City Clerk:

We write in response to the City's February 24, 2025 letter refusing to schedule a hearing on our Petition for Vacation. The City is under the mistaken belief that NWBF has not satisfied the two-thirds ownership requirement. Since the City Attorney is clearly involved in evaluating NWBF's petition, we also feel the time is warranted to express the reasons why NWBF also believes that a vacation is a foregone conclusion.

Two-Thirds Requirement: The relevant provision states: "if the petition is signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated." RCW 35.79.010. Since the City has not explained its decision, NWBF can only presume the City is referring to its own, abutting ownership, of the property east of the platted Schusman Avenue. Reliance on this ownership is a mistake.

NWBF is the only property owner abutting the land it seeks to vacate, other than the City of Snoqualmie itself. And, simply put, the City's ownership does not count towards the two-thirds calculation. This question was resolved in *Ponischil v. Hoquiam Sash & Door Co.*, 41 Wash. 303, 305, 83 P. 316 (1906). In this case, parties challenged whether the two-thirds requirement had been met. The Court concluded: "The petition was signed by the owners of all private property actually abutting upon the portion of said street sought to be vacated, and was therefore sufficient, under the requirements of section 1 of said act." *Id.* The two-thirds requirement does not take into account publicly owned property. This interpretation was repeated in *Smith v. City of Centralia*, 55 Wash. 573, 576, 104 P. 797 (1909) ("more than two-thirds of the private property").

This only makes sense, given that the very public entity from which a property owner seeks vacation cannot be expected to create such a glaring conflict of interest in such a proceeding by signing the petition themselves. Additionally, if the statute were to be interpreted to include public property, then the rights of way abutting the area sought to be vacated would also count towards the two-thirds requirement. Clearly, this is not the case. As NWBF is the *only* property owner abutting the relevant right of way whose signature matters, the petition is signed by 100% of the relevant owners.

There are also two areas in question, Schusman Avenue and Park Street. Since the City has chosen not to explain its reasoning, NWBF does not know whether the City is objecting to one or the other.

Clearly, when it comes to Park Street abutting the property, NWBF is the only possible owner. If the City insists on this position, NWBF will simply bifurcate its petition, giving the City no choice but to proceed with at least part of its request. However, as we have already explained, NWBF believes that the King County Assessor's records are in error regarding Park Street, and no ordinance has been discovered even dedicating the relevant area to the City. Thus, we're simply asking the City to accept the facts and make this official, for the public record.

Title to the Area of Schusman Avenue Already Lies with NWBF: We intended to raise this at the hearing, having filed the petition with the best of intentions to pay the City for the value of the area in settlement of a dispute of the City's own making. However, since the City is apparently taking an unnecessarily adverse position towards NWBF's petition, there is no reason to wait.

The area of Schusman Avenue automatically vacated and vested in NWBF's predecessors in 1895 under the non-user statute. The Non-User Statute, originally passed by the state legislature in 1890, and now codified at RCW 36.87.090, provides:

Any county road, or part thereof, which remains unopen for public use for a period of five years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time...

Although the Non-User Statute only operates to vacate county roads, roads within city limits may still be eligible for the statutory vacation if the land was annexed to a city after the relevant 5-year period of non-use. Here, Schusman Avenue was dedicated by plat in 1890, and since the Town of Snoqualmie was not incorporated until 1903, the relevant area automatically vested in NWBF's predecessors by 1895. Very likely, the parties knew this when they constructed a building in 1940. If the City does not process NWBF's petition and formalize a vacation, NWBF will file suit for quiet title.

NWBF chose this less contentious path in the hopes of explaining this situation to City Council on mutually beneficial terms. NWBF would be willing to pay the value of the land in exchange for the City recognizing that these rights have already vested with regard to Schusman Avenue. NWBF was inspired to pursue this path by an extraordinarily relevant Code from the City of Snohomish.

Although the nonuser statute applies without regard to the City's street vacation process under Ch. 35.79 RCW, property owners who abut a street vacated under the nonuser statute may nonetheless apply to the City to "formally" vacate the street by ordinance. Abutting property owners may use this method to clear title to right-of-way vacated under the nonuser statute rather than filing a quiet title action in Superior Court, which can be more costly and cumbersome than the street vacation ordinance process. Accordingly, the City will consider petitions to formally vacate streets or alleys that have been vacated by operation of the nonuser statute, if said streets or alleys were dedicated and unopened as county roads for five years prior to the 1909 proviso and if the City has not acquired said streets or alleys by prescription /adverse possession, purchase, eminent domain, or other means. The burden shall be on the property owner requesting vacation to provide all necessary title and historical information to the City to demonstrate that the nonuser statute operates to vacate the subject property.

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Snohomish Municipal Code 12.48.050(D). This Code is an eminently reasonable way to resolve the present situation. However, if the City prefers the more onerous procedure of litigation, NWBF will have no choice.

We respectfully request the City reconsider its unwarranted refusal to schedule a hearing for NWBF's petition.

Sincerely,



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Reviewed and Approved by:

/s/Stephen DeShazo

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