

September 18, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

FINAL REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation file no. **V-2710**
Proposed ordinance no. **2018-0013**
Adjacent parcel no(s). **4008400185, 4008400175, 4008400190, 4008400191**

DONALDSONS, RUNYONS, AND SCHILLINGS
Road Vacation Petition

Location: A portion of SE 184th Street, Renton

Petitioners: **Robbie and Chree Donaldson**
18321 W Lake Desire Drive SE
Renton, WA 98058
Telephone: (425) 228-5180
Email: thetwenty3rdpsalm@yahoo.com

Petitioners: **James and Monica Runyon**
18331 W Lake Desire Drive SE
Renton, WA 98058
Telephone: (425) 577-2212
Email: monica.runyon@hotmail.com

Petitioners: **Duane and Michelle Schilling**
18341 W Lake Desire Drive SE
Renton, WA 98058
Email: michelle-schilling@comcast.net

Intervenor: Parks Homeowners Association
represented by **Michelle Faltaous**
PO Box 58273
Renton, WA 98058
Email: michellefarag@yahoo.com

King County: Department of Local Services
Road Services Section
represented by **Leslie Drake**
201 S Jackson Street
Seattle, WA 98104
Telephone: (206) 684-1481
Email: leslie.drake@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. This petition to vacate involves four separate private parcels and approximately 12,274 square feet of public right-of-way, mapped as SE 180th Street, but never developed into a road. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we recommend vacating three of the four right-of-way segments, at the compensation level calculated using Performance, Strategy, and Budget's (PSB's) financial model. If vacation is completed on those three segments, then we recommend vacating the fourth segment without compensation.
2. Except as provided herein, we adopt and incorporate the facts set forth in Roads' reports (exhibits 1 and 26) and in proposed ordinance no. 2018-0013. Those documents, along with maps showing the vicinity of the proposed vacation and the specific area to be vacated (exhibits 7–9), will be attached to copies of this recommendation submitted to Council.

Background

3. Chapter RCW 36.87 sets the general framework for county road vacations, augmented by KCC chapter 14.40. There are at least four main, somewhat interrelated, inquiries. The first two relate to whether vacation is warranted: is the road useless to the road system and would vacation benefit the public? If the answers to these are both yes, the third and fourth relate to compensation: what is the appraised (or perhaps assessed) value of the right-of-way, and should this number be downwardly adjusted? Whether the public benefits from a vacation depends in part on the compensation the County obtains and the costs the County avoids.
4. At some point in the early 2000s, the Schillings petitioned the County to vacate the easternmost 4,729 square feet of SE 180th Street, as it intersected with West Lake Desire SE. Ex. 1 at 27 (V-2456). In 2003, the then-examiner recommended, and the Council later approved, vacation of this portion of the right-of-way. It is not clear whether the Schillings built their gray-roofed structure in this footprint before or after the area was vacated, but it is clearly visible in the 2017 aerial photos. Ex. 1 at 29. As the Schillings had not petitioned to vacate the entire right-of-way they bordered, County right-of-way continues to abut approximately half their southern boundary. It appears the Schillings

have built another outbuilding (which they described as a shed) in the remaining County right-of-way, although the aerial maps are not survey-level accurate. Ex. 1 at 29.

5. In 2017, the Schillings, along with their adjacent neighbors the Donaldsons, Runyons, and Kwons, petitioned the County to vacate the remaining portion of this unopened stretch of SE 180th Street. Ex. 3 at 001.
6. We held two public hearings here on behalf of the Metropolitan King County Council. Our February 2018 hearing focused largely on whether vacation was warranted. However, the Roads Services Section (Roads) was unable at that point to come up with a comprehensive methodology for calculating the downward adjustments to the appraised value “to reflect the value of the transfer of liability or risk, the increased value to the public in property taxes, the avoided costs for management or maintenance, and any limits on development or future public benefit.” RCW 36.87.120; KCC 14.40.020.A.1. We thus stayed this and other pending road vacation petitions and turned to PSB to help us come up with a sound financial model.
7. PSB answered the call, completing a thorough report at the end of January 2019 that, per the Executive’s transmittal letter, “furthers the King County Strategic Plan goal of exercising sound financial management by understanding administrative costs and valuation of rights-of-way in road vacation petitions.” Ex. 30 at 001. After wrapping up three other previously-stayed vacation petitions, in today’s case we held a prehearing conference in July and a second public hearing in August. The second hearing focused on the appropriateness of vacating one of the four parcels and on the compensation question.

Is Vacation Warranted?

8. A petitioner has the burden to show that the “road is useless as part of the county road system and that the public will be benefitted by its vacation and abandonment.” RCW 36.87.020. “A county right of way may be considered useless if it is not necessary to serve an essential role in the public road network or if it would better serve the public interest in private ownership.” KCC 14.40.0102.B. While denial is mandatory where a petitioner fails to meet the standard, approval is discretionary where a petitioner meets the standard. RCW 36.87.060(1).
9. This portion of SE 180th Street was not opened, constructed, or maintained for public use. Vacation would have no adverse effect on the provision of access and of fire and emergency services to the abutting properties and surrounding area. The right-of-way is not necessary for the present or future public road system for travel or utilities purposes.
10. Whether the public will be benefitted by the vacation—the second part of RCW 36.87.060(1)—has both a standalone, intangible component and a financial component. The more the County would financially benefit by vacating a right-of-way, the more the public would benefit from transferring that interest into private hands. We discuss the dollars directly below, but vacating the right-of-way segments abutting the Donaldsons,

Runyons, and Schillings raises no novel issues and is not inconsistent with the public interest. Vacation of these portions of the right-of-way is warranted.

11. The right-of-way abutting the fourth property is more complex.
12. First, while the Kwons were original 2017 petitioners, by the time of our 2018 hearing, Steve Tran had purchased the Kwons' home. Mr. Tran testified that he had agreed to continue with the three adjoining families in their petition out of neighborliness, not from a desire to obtain the right-of-way. He explained that he did not want to acquire the right-of-way or to have any further involvement in proceedings, and he withdrew his portion of the petition. After un-staying the case in 2019, Roads stated that it still wished to vacate the Tran right-of-way. We advised Mr. Tran that he might want to participate, either to support or to oppose vacation. Consistent with his testimony that he did not want any further involvement, Mr. Tran did not respond.
13. A petition requires only “owners of the majority of the frontage on any county road or portion thereof” to join; unanimity is not required. RCW 36.87.020; KCC 14.40.0102. *Thayer v. King County*, 46 Wn. App. 734, 731 P.2d 1167 (1987), is directly on point. There, petitioners sought to vacate the right-of-way north of a creek. The Council vacated not only the requested portion, but also the creek bed, thereby delegating to the surrounding property owners' upkeep of that area. *Id.* at 735. The petitioners appealed. The court ruled that Council had the statutory authority to vacate any portion of the road on its own motion. *Id.* at 737. The court affirmed the Council's action, observing that the power to vacate is a political function and—absent collusion, fraud, or interference with a vested right—is not judicially reviewable. *Id.* at 738. This does not mean vacation is necessarily warranted; even for a right-of-way useless to the road system, vacation remains discretionary. RCW 36.87.060(1). But Mr. Tran's withdrawal does not end our analysis.
14. Second, unlike the Donaldson, Runyon, or Schilling properties, the Tran property does not abut any private homesite in the Parks. However, it does abut the entrance to the Parks subdivision. In 2018, Michelle Faltaous, head of the Parks homeowner's association (HOA), petitioned us to intervene. At our 2018 hearing, she explained that the Parks' developer left purchasers in a pickle, because he placed some of the Parks' entrance's improvements—such as the subdivision's entrance sign, stone monuments, some trellises, and some shrubbery, sprinklers, an electric box, and lights—in the County right-of-way, without obtaining a permit to do so. The HOA had no idea that this was not Parks property, and the HOA has been maintaining it, recently spending thousands of dollars fixing it up. She submitted thoughtful comments from many of the Parks homeowners and a petition apparently signed by 183 of them concerned that vacation would result in their improvements being removed. Ex. 25 at 3–14. We granted the HOA's intervention. *See* HEx R. X.B. Ms. Faltaous participated in our 2019 hearing as well.
15. Eventual removal of the improvements is a possibility if the right-of-way is vacated to Mr. Tran, private-private negotiations fail, and things go south. However, it is also a very

real possibility if the area remains public. Roads explained that the County does not permit permanent improvements in a right-of-way, nor does it allow obstructions. Even if the County would grant a right-of-way use permit, it would be temporary in nature, would not stretch beyond five years, and would be revocable at any time. We have no crystal ball, but we think the odds of the HOA being allowed to keep its improvements in that area long-term is actually slightly *better* in the scenario where it can negotiate directly with Mr. Tran and there are no private use restrictions for a public right-of-way. In any event, Roads is not in the business of keeping public rights-of-way for the sole use of maintaining private improvements. As described below the conditionally recommend vacating the Tran right-of-way as well.

Compensation

16. As to compensation, the PSB model starts by working with the Assessor to get an individualized assessment of what value merging the right-of-way area adds to each parcel. That is only the starting point, because we adjust downward to reflect transferred liability risk, avoided management or maintenance, and increased tax revenue. To arrive at such financial accounting, PSB used information from the Office of Risk Assessment—whom PSB described as having a complete methodology for calculating claims judgments and settlements, per mile—to arrive at a number for avoided liability risk. PSB explained which types of taxes (General Fund and Roads Fund) would figure into the mix and which would not (other taxes such as levy lid lifts). PSB analyzed the avoided maintenance costs. It also explained why it did not include petition-processing costs in its assessment. Ex. 33. We have previously detailed the workings of PSB’s model, and we and Council have adopted it in past vacations.¹
17. Although none of the neighbors abutting the southerly border of the right-of-way abutting the Donaldson, Runyon, and Schilling properties participated in our 2019 process, they did in 2018. One testified to placing over 40 calls to at least three different Roads employees. Roads had visited the property at least four times. Neighbors asserted that the petitioners had planted (without proper permits) things like laurels along the right-of-way’s boundary that had grown “totally out of control,” encroaching into (and damaging) their properties. In our order after the 2018 hearing, we described this as “an especially high conflict right-of-way for which [Roads] has had to expend higher personnel costs than they would for a typical unopened right-of-way.”
18. PSB has opined that one way to measure avoiding maintenance costs is actual costs incurred on the parcel over the last five years. Ex. 33 at 005. Because the right-of-way of way had been the subject of many complaints to (and visits by) Roads, we thought that the reduction for avoided maintenance costs might be greater than the default \$2,000-per-parcel the PSB model provides for and Roads applied in today’s case. Although Roads explained that it did not track hours and costs, we asked them to perform a back-of-the-envelope calculation, presuming it would produce a higher avoided-maintenance-cost to subtract from compensation otherwise due.

¹ See, e.g., https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2019/V-2692_GoodGround_GirlScoutsWW_Report_CDversion.ashx?la=en.

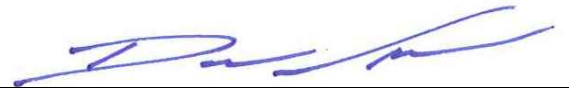
19. Our assumption was incorrect. Roads' best estimate is that it expended \$4,000 in staff time on this right-of-way. Ex. 32. Dividing that by the four segments in question would mean a \$1,000-per-parcel reduction, which is less than reduction the default provides petitioners. It leads us to think that maybe the \$2,000 default from the PSB model is a little high—since this stretch required far more Roads involvement than the typical unopened, undeveloped right-of-way (where Roads is often not even aware of the right-of-way's existence until the vacation petition arrives). We will stick with the default.
20. Applying PSB's model, vacation will increase the Donaldsons' property value by \$11,000, but save the County \$2,216, resulting in compensation due of \$8,784. Ex. 27. Vacation will increase the Runyons' property value by \$10,000, but save the County \$2,197, resulting in compensation due of \$7,803. Ex. 28. Vacation will increase the Schillings' property value by \$6,000, but save the County \$2,118, resulting in compensation due of \$3,882. Ex. 29.
21. For the Tran property, vacation will increase property values by \$7,000, but save the County \$2,138, resulting in compensation due of \$4,852. Ex. 26. Unlike the Donaldsons, Runyons, and Schillings, as discussed above Mr. Tran withdrew his portion of the petition and testified, under oath, that he did not want the right-of-way vacated to him.
22. As we have written previously, we are on guard to prevent strategic behavior. A property owner could attempt to get something for free by sitting on the sidelines while the neighbors soldiered on with a petition and paid the compensation figure the PSB model produces. Knowing that Roads would have an interest in vacating an entire right-of-way stretch and not leaving an orphaned sliver, a wily property owner could calculate that holding out long enough just might result in a freebie. We have been steadfast in protecting the public fisc, and we will not allow someone to game the system.
23. We are convinced that there is nothing disingenuous about Mr. Tran withdrawing his vacation petition. He withdrew at a time where Roads was recommending (and strenuously arguing) that all compensation for all four petitioners should be waived. Thus, Mr. Tran withdrew at a point where the expectation was that, if he stayed with the process, he would get the right-of-way for free. Yet he still wanted nothing more to do with the process. We find nothing manipulative about Mr. Tran's position. And we cannot ask him to pay for something he wants no part of.
24. If the Donaldsons, Runyons, and Schillings perfect the vacation and acquire the right-of-way, then instead of leaving an orphan strip along the Tran property, we recommend vacating the Tran portion of the right-of-way, with a full compensation waiver for Mr. Tran.

RECOMMENDATION:

1. We recommend that Council APPROVE proposed ordinance no. 2018-0013 to vacate each of the four road right-of-way segments, each with a condition to the Council recording the vacation ordinance as to the respective property.

2. Vacation of the Donaldson portion of the right-of-way, parcel 400840-0185, is contingent on petitioners paying \$8,784 to King County, within 90 days of the date Council takes final action. If King County does not receive \$8,784 by that date, there is no vacation and the right-of-way associated with parcel -0185 remains King County's. If payment is timely received, the clerk shall record this ordinance against parcel -0185. Recording this ordinance against parcel -0185 signifies that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel -0185 is vacated.
3. Vacation of the Runyon portion of the right-of-way, parcel 400840-0190, is contingent on petitioners paying \$7,803 to King County, within 90 days of the date Council takes final action. If King County does not receive \$7,803 by that date, there is no vacation and the right-of-way associated with parcel -0190 remains King County's. If payment is timely received, the clerk shall record this ordinance against parcel -0190. Recording this ordinance against parcel -0190 signifies that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel -0190 is vacated.
4. Vacation of the Schilling portion of the right-of-way, parcel 400840-0191, is contingent on petitioners paying \$3,882 to King County, within 90 days of the date Council takes final action. If King County does not receive \$3,882 by that date, there is no vacation and the right-of-way associated with parcel -0191 remains King County's. If payment is timely received, the clerk shall record this ordinance against parcel -0191. Recording this ordinance against parcel -0191 signifies that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel -0191 is vacated.
5. Vacation of the Tran portion of the right-of-way, parcel 400840-0175 is contingent on vacation of all three of the rights-of-way described in paragraphs 2 through 5 above. If the rights-of-way associated with parcels -0185, -0190, and -0191 are all vacated, then the clerk shall record this ordinance against parcel -0175. Recording this ordinance against parcel -0175 signifies that the contingency is satisfied and the right-of-way associated with parcel -0175 is vacated. If a right-of-way associated with either parcel -0185, -0190, or -0191 is not vacated, there is no vacation of -0175 and the right-of-way associated with parcel -0175 remains King County's

DATED September 18, 2019.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

A person appeals an Examiner recommendation by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a **\$250**

appeal fee (check payable to the King County FBOD), and providing copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner’s recommendation. Please consult KCC 20.22.230 for exact requirements.

Prior to the close of business (4:30 p.m.) on **October 14, 2019**, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if the Clerk does not actually receive the fee and the appeal statement within the applicable time period.

Unless the appeal requirements of KCC 20.22.230 are met, the Clerk of the Council will place on the agenda of the next available Council meeting a proposed ordinance implementing the Examiner’s recommended action.

If the appeal requirements of KCC 20.22.230 are met, the Examiner will notify parties and interested persons and will provide information about “next steps.”

**MINUTES OF THE FEBRUARY 27, 2018, HEARING ON THE ROAD VACATION
PETITION OF DONALDSON, RUNYON, SCHILLING, AND TRAN,
DEPARTMENT OF TRANSPORTATION FILE NO. V-2710**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake, Brandy Rettig, Robert Wick, Chree Donaldson, Erroll Garnett, Brenda Bower, Steve Tran, Monica Runyon, Michelle Faltaous, Michelle Schilling, Karen Holman-Brown, and Robbie Donaldson.

The following exhibits were offered and entered into the hearing record:

Exhibit no. 1	Roads Services report to the Hearing Examiner, sent February 13, 2018
Exhibit no. 2	Letter from Clerk of the Council to KCDOT transmitting petition, dated January 10, 2017
Exhibit no. 3	Petition for vacation of a county road, transmitted January 10, 2017
Exhibit no. 4	Amended letter from Clerk of the Council to KCDOT transmitting petition noting inclusion of lot 13, dated January 17, 2017
Exhibit no. 5	Petition for vacation of a county road, transmitted February 2, 2017
Exhibit no. 6	Letter from KCDOT to Petitioner acknowledging receipt of petition and explaining road vacation process, dated February 6, 2017
Exhibit no. 7	Vacation site map
Exhibit no. 8	Aerial photograph of subject area
Exhibit no. 9	Vicinity map
Exhibit no. 10	Lake Desire plat
Exhibit no. 11	Final agency to stakeholders, sent March 9, 2017
Exhibit no. 12	Letter from KCDOT to Petitioner recommending approval, conveying County Road Engineer report, and proposing compensation waiver, dated July 13, 2017

Exhibit no. 13	County Road Engineer report
Exhibit no. 14	Notification of petition letter to Lori Brooks, dated January 25, 2018
Exhibit no. 15	Notification of petition letter to Paul Brown and Karen Holeman, dated January 25, 2018
Exhibit no. 16	Notification of petition letter to Robert and Susanne Wick, dated January 25, 2018
Exhibit no. 17	Notification of petition letter to Parks Homeowners Association, dated January 25, 2018
Exhibit no. 18	Letter from KCDOT to KC Council recommending approval and transmitting proposed ordinance, dated October 18, 2017
Exhibit no. 19	Proposed ordinance
Exhibit no. 20	Revised proposed ordinance
Exhibit no. 21	Fiscal note
Exhibit no. 22	Affidavit of posting, noting posting date of January 25, 2018
Exhibit no. 23	Affidavit of publication, noting advertisement dates of February 14 and 21, 2018
Exhibit no. 24	Intervenor Wicks photographs of portion of vacation area
Exhibit no. 25	Intervenor Parks Homeowners Association petition to council and examiner

MINUTES OF THE AUGUST 27, 2019, HEARING

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake, Chree Donaldson, Monica Runyon, Michelle Schilling, Duane Schilling, and Michelle Faltaous.

Exhibit no. 26	Road Services Supplemental Report, received August 13, 2019
Exhibit no. 27	E-mail, from Jeffrey Darrow, sent July 8, 2019
Exhibit no. 28	Valuation of Roads of Right of Way: Train
Exhibit no. 29	Valuation of Roads of Right of Way: Donaldson
Exhibit no. 30	Valuation of Roads of Right of Way: Runyon
Exhibit no. 31	Valuation of Roads of Right of Way: Schilling
Exhibit no. 32	Addendum to Supplemental Report, received August 26, 2019
Exhibit no. 33	Transmittal memorandum and right-of-way valuation model, dated January 31, 2019

DS/jo