1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

KING COUNTY

Signature Report

Ordinance 19689

Proposed No. 2023-0248.2 **Sponsors** Upthegrove

AN ORDINANCE denying the vacation of a portion of 232nd Ave NE, Redmond, file no. V-2736; Petitioners: Hyunchul Yi and Yongjun Lee.

STATEMENT OF FACTS:

1. A petition has been filed requesting vacation of a portion of 232nd Ave NE.

2. The department of local services' records indicated that this segment of right of way is unopened and unmaintained. The department of local services considered this segment useless as part of the county road system, believed the public would benefit by the return of this segment to the public tax rolls, and recommended approval of the vacation.

3. Due notice was given in the manner provided by law. The office of the hearing examiner held the public hearing on September 20, 2023. Petitioners and local services appeared and argued for vacation. Numerous neighbors appeared and argued against vacation.

4. As detailed in the October 4, 2023, report and recommendation, the examiner found that the public would not benefit from vacation of this segment. The segment is currently being used as a public trail. Though not valuable to the county road system, the segment is valuable to the county

transportation system. The examiner strongly recommended against vacation.

5. For the reasons stated in the examiner's report and recommendation, the council determines that it is in the best interest of the citizens of King County to deny said petition and not vacate the segment.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The council, on the effective date of this ordinance, hereby denies the petition to vacate and abandon a portion of 232nd Ave NE.

Ordinance 19689 was introduced on 7/11/2023 and passed by the Metropolitan King County Council on 11/7/2023, by the following vote:

Yes: 9 - Balducci, Dembowski, Dunn, Kohl-Welles, Perry, McDermott, Upthegrove, von Reichbauer and Zahilay

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

DocuSigned by:
David Upthegrove
E76CE01F07B14EF...
Dave Upthegrove, Chair

ATTEST:

DocuSigned by:
Melani Hay
8DE1BB375AD3422...
Melani Hay, Clerk of the Council

APPROVED this _____ day of 11/14/2023, _____.

DocuSigned by:
Dow Constantine
4FBCAB8196AE4C6...
Dow Constantine, County Executive

Attachments: A. Hearing Examiner Report dated October 3, 2023

October 3, 2023

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

REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation file no. **V-2736**
Proposed ordinance no. **2023-0248**
Adjacent parcel no. **102506-9151**

HYUNCHUL YI AND YONGJUN LEE
Road Vacation Petition

Location: a portion of 232nd Ave NE, Redmond

Applicants: **Hyunchul Yi and Yongjun Lee**
6106 232nd Ave NE
Redmond, WA 98053
Telephone: (415) 200-7222
Email: Hyunchul30@yahoo.com

King County: Department of Local Services, Road Services Division
represented by **Leslie Drake**
201 S Jackson Street
Seattle, WA 98104
Telephone: (206) 477-7764
Email: leslie.drake@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. This matter involves a petition to vacate an approximately 9582-square-foot stretch of public right-of-way at a portion of 232nd Ave NE near Redmond. The Department of Local Services, Road Services Division (Roads), supports vacation. After holding a September 20 public hearing on behalf of the Council, taking witness testimony and observing demeanor, studying the exhibits entered into evidence, and considering party arguments and the relevant law, we strongly recommend against vacation.

Evidence

2. Leslie Drake provided the history of the petition and its evolution. She asserted that, even given the walking trail the currently crosses it, the right-of-way is useless to the County transportation system of the future and should be vacated.

3. Hyunchul Yi, a petitioner, asserted that he had been harassed and bullied by the neighbors and excluded from the community. He accused the neighbors of destroying nature to build a path and screaming at him. *See also* Ex. A11.

4. Yongjun Lee, the other petitioner, explained his history with the property. He thinks the neighbors are trying to force them out and treating them poorly. Neighbors have shouted at them from the trail, removed his cones blocking off the driveway, and come up to their house. They have asked to join the community and been rejected multiple times. He does not want the neighbors to pass by on the public right-of-way. He is confident there are no easements on his property. *See also* Ex. A1.

5. The first neighbor to testify, William Trippett, opined that there was a right-of-way of necessity across the southern portion of Petitioners' property. That path became the "Lewis Loop" that has been continuously traversed for 40 years. Petitioners have blocked both off, forcing the community to re-route the trail over the public right-of-way. *See also* Ex. P1 at 004-05.

6. Mark Galbraith explained the community's use of the pedestrian/bike trail along the easement over what is now the Petitioners' property to Chet Lewis's parcel. After Petitioners cut off access, the community had to reroute the trail. He lives across public right-of-way from Petitioners. Petitioners approached him to join in the vacation, so that together they could cut off the entire right-of-way and thus the rerouted trail.[1] He declined, seeing the benefit in a community walking trail. *See also* Ex. P4.

7. Ms. Stutzman described the communities' efforts to relocate the historic trail across the edge of Petitioners' property, to accommodate Petitioners' objection to the historic use. She mapped the previous and new paths. *See also* Ex. P3. She is the caretaker of the neighborhood Facebook group; neither Mr. Lee nor Mr. Yi submitted a request to join; they would be welcome to join.

8. Scott Berkum described efforts to accommodate Petitioners. Because they are fairly isolated in the woods, he has met most of his neighbors from walking the trail. He too is against vacation.

9. Jim Kirschner described conversations with Petitioners to try to reconcile the situation. He suggested a reroute of the trail that would go through less of Petitioners' property, but Petitioners refused, so they shifted the trail to the County right-of-way. He wished they had had a Korean interpreter present to facilitate those conversations.

[1] The Yi/Lee parcel would acquire the eastern half of the subject right-of-way, the Galbraith parcel the western half.

10. Chet Lewis explained the community's continuous use of the Lewis Loop for 40 years. That easement, across a portion of Petitioners' property, is his only access to the water meter. Because Petitioners have blocked it off, he would now need to trek a mile to the water meter, and he is 87 years old.

11. We accepted into the record 22 exhibits submitted by Roads, 12 from Petitioners, and six from the public. Except as provided below, we incorporate the facts set forth in Roads' report and in proposed ordinance no. 2023-0248. That report, and a map showing the area to be vacated and the vicinity of the proposed vacation, are in the hearing record and will be attached to the copies of our recommendation submitted to Council. Exs. D1 at 001-06, D13.

Overarching Thoughts

12. This neighborhood dispute is an unfortunate situation for everyone. It could benefit from mediation, especially with a Korean language interpreter to avoid miscommunication. Some of what Petitioners are complaining about—screaming, dog poop, moving garbage cans, etc.—are unacceptable no matter what. However, part of who is at fault relates to a legal dispute over easements.

13. Petitioners want everyone to follow the law; that makes sense. However, who has the law on their side law, when it comes to property rights, is not so clear. If we are understanding Petitioners' argument, when they purchased the property their title showed no easements across their property. But recorded easements are *not* the only type of easements. The neighbors have demonstrated a colorable claim that there may be an easement of necessity, or an implied easement, or a prescriptive easement across some portion of the Petitioners' property. Thus, it may be that Petitioners purchased a property already burdened by the right of a particular parcel owner (like Mr. Lewis) or other neighbors to traverse a portion of Petitioners' property.

14. We are not in a position to make a ruling on that; that would be the job of the superior court via Petitioners or the neighbors filing a quiet title action if the parties cannot reach an agreement. Until the parties work out some sort of binding agreement or until the facts and law are established by a court, the parties' rights will likely remain fuzzy. Lack of clarity is often a recipe for conflict. If it turns out that Mr. Lewis and/or others have a right to cross a portion of Petitioners' property, "Follow the law!" would mean, "Hey, Mr. Lee and Mr. Yi, stop illegally trying to block off established easements." Conversely, if it turns out there are no easements anywhere on Petitioners' property, "Follow the law!" would mean "Hey, neighbors, stay off of Petitioners' private property."

15. If Petitioners and at least some of their neighbors are interested in trying to resolve their dispute amicably, we can try arranging for mediation. But today we sit not as a community dispute resolver but essentially as a judge applying the legal standards controlling vacations.

Analysis

16. Chapter RCW 36.87 sets the general framework for county road vacations, augmented by KCC chapter 14.40. There are at least four somewhat interrelated inquiries. The first two relate to whether vacation is warranted: is the [1] road useless to the road system and [2] would vacation benefit the public? If the answers to these are both yes, the third and fourth relate to compensation: [3] what is the appraised (or perhaps assessed) value of the right-of-way, and [4] how should this number be adjusted to capture avoided County costs? We analyze each of those below.

17. No one is arguing that [1] the road is useful to the County *road* system. It is not currently built out as a street, nor is there any expectation that it might in the future be built out as an actual street. Uselessness to the *road* system is met.

18. However, Petitioners still have the burden to show that [2] "the public will be benefitted by its vacation and abandonment." RCW 36.87.020. While denial is mandatory ("*shall* not" vacate) where a petitioner fails to make that showing, approval is discretionary where a petitioner shows uselessness to the road system and public benefit ("*may* vacate"). RCW 36.87.060(1) (emphasis added). In this case the question of public benefit revolves around a public trail.

19. In a recent recommendation in vacation petition V-2727,[2] we pointed to language in KCC 14.40.0104.B.4 that the road engineer needs to study "Whether it is advisable to preserve all or a portion of the right of way for the county transportation system of the future." We explained that "transportation system" is a broader term than "road system" and that trails are a part of the County's transportation system but not of its road system. Over Roads' objection we found that, due to public trail potential, vacation was not in the public interest. We recommended against vacation; Council agreed with our recommendation and denied the petition.

20. In response, as part of a package of other code amendments, the Executive proposed to change "county transportation system of the future" to "county road system of the future." However, the Council rejected that change. As a councilmember who sponsored the amendment explained it:

> The current code uses the word "transportation", as one of the purposes, for which you could deny a road vacation. One reason to deny is to use it for a future transportation purpose. That has been interpreted in the past to include trails. If in the process of doing this amendment, that word got replaced in favor of "roads" that means we could only deny if we were keeping the land for the purposes of a road, not a trail. The staff in the

[2] https://cdn.kingcounty.gov/-/media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2021/V-2727_GHR_LLC_Michael_Ritter.ashx?la=en&hash=4484D070569C77EAF2F89B1ECA79812E

> Exec branch proposed the change to conform with state law. We don't have to conform[]. I prefer to continue to use the word "transportation" to have the ability to include trails if we choose.

The amendment was adopted unanimously, signaling the Council's continuing commitment to trails.

21. The case against vacation is even stronger here than in previous petitions involving trails.

22. First, in the V-2727 petition described above, the public did not currently use that particular stretch of right-of-way as a trail. There was only the *potential* to use that right-of-way if the alternative, preferred trail alignment was not built out. That *potential* trail use was sufficient for us and the Council to reject the vacation petition. Here the public *already* uses part of that public right-of-way as a trail, re-routing it there after Petitioners objected to the trail's historic alignment across a portion of their property.

23. Second, in previous petitions, the negative impacts on public use were an *incidental* outcome of vacation. For example, a property owner discovers that part of their house was inadvertently built into a public right-of-way; they seek vacation to legalize their home. Where neighbors object that this would cut off a potential trail, we have recommended in favor of vacation, but only where the petitioner creates a public right-of-way *elsewhere* on their property to make up for the vacated portion.

24. Here, the neighbors rerouted the historic "Lewis Loop" to the public right-of-way *because* Petitioners objected to the historic alignment across a portion of their property. Petitioners' vacation is designed to stop the public from walking the public right-of-way. Petitioners even attempted to lobby the Galbraiths to join their petition, so together they could completely block off the entire public right-of-way and thus the rerouted trail. Again, not only are Petitioners not offering a compensating trail somewhere else along their property, the reason the Lewis Loop was shortened and rerouted through the public right-of-way (see exhibit P3 at 002) was to accommodate Petitioners' demand that people stop traveling on any portion of Petitioners' property.

25. It is also not so clear how vacation would solve the problem. As we understood the testimony, the neighbors attempted to find a solution to continue walking along the south and east edge of petitioner's property to avoid the area near petitioner's home, but petitioners refused. Thus, the neighbors agreed to shorten the Lewis Loop to avoid a conflict with Petitioners, bypassing Petitioners' property entirely and constructing a trail on the public right-of-way. Vacation could even make the conflict worse, incentivizing the neighbors to push their potential rights to walk across those portions of Petitioners' property, an outcome Petitioners would not want.

26. Petitioners come nowhere close to showing that the public will benefit by vacating and abandoning the subject right-of-way. We strongly recommend against vacation.

27. If the Council disagrees and finds vacation appropriate, we calculate compensation by [3] starting with the increase in property values the receiving parcel will garner from the

extra square footage the (formerly) public right-of-way area adds to the parcel; this figure is generated by the Assessor. However, that is only the starting point, because [4] State and County law allow local legislative branches to adjust the appraised value to reflect the expected value to the public from avoided liability risk, eliminated management costs, and jettisoned maintenance costs, along with increased property taxes. RCW 36.87.070; KCC 14.40.020.A.1.

28. Performance, Strategy, and Budget created a model for calculating these adjustments, updated annually. Roads then applies those figures to a given parcel, which here would result in a required payment of $3746. Ex. 9. Vacation would need to be made contingent on Petitioners' payment of that amount within 90 days of Council takes final action on the ordinance.

RECOMMENDATION.

We recommend that Council deny the petition.

DATED October 3, 2023.

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 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 27, 2023,*** either send an electronic copy of the appeal statement to Clerk.Council@kingcounty.gov or ensure that a paper copy of the appeal statement is 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 appeal 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 SEPTEMBER 20, 2023, HEARING ON THE ROAD VACATION PETITION OF HYUNCHUL YI AND YONGJUN LEE, DEPARTMENT OF TRANSPORTATION FILE NO. V-2736

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake, Yongjun Lee, Hyunchul Yi, William Trippett, Mark Galbraith, Scott Berkun, Jim Kirschner, and Jill Stutzman.

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

Exhibit no D1.	Roads Services report to the Hearing Examiner, sent September 5, 2023
Exhibit no D2.	Petition for vacation of a county road, received July 22, 2020
Exhibit no D3.	Letter acknowledging receipt of petition, dated March 2, 2021
Exhibit no D4.	Vacation area map
Exhibit no D5.	Assessor's information for property APN 1025069151
Exhibit no D6.	Deed for 232nd Avenue NE right of way 197311020348
Exhibit no D7.	Final stakeholder notification, sent March 19, 2021, with comment deadline of April 23, 2023
Exhibit no D8.	Email, regarding valuation of subject area
Exhibit no D9.	Compensation calculation model for APN 102506-9151
Exhibit no D10.	Letter recommending approval, conveying County Road Engineer report, proposing compensation waiver, dated June 23, 2021
Exhibit no D11.	Road Engineer report
Exhibit no D12.	Revised petition
Exhibit no D13.	Map for revised vacation area
Exhibit no D14.	Email, regarding valuation of revised subject area
Exhibit no D15.	Letter, ordinance transmittal, dated July 13, 2023
Exhibit no D16.	Proposed ordinance
Exhibit no D17.	Declaration of posting, noting posting date of August 28, 2023
Exhibit no D18.	Email between Jill Stutzman, dated August 2023
Exhibit no D19.	Email between Joe Van Dyk, dated August 2023
Exhibit no D20.	Confirmation of publication
Exhibit no D21.	Email from Mark Galbraith, dated September 2023
Exhibit no D22.	*Reserved for future submission of* Affidavit of publication

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

Exhibit no A1.	Email, harassment, dated September 6, 2023

Exhibit no A2.	Video 1 of trail
Exhibit no A3.	Video 2 of trail
Exhibit no A4.	Photographs of trail
Exhibit no A5.	Video, dated August 21, 2021, at 7:16 p.m.
Exhibit no A6.	Video, dated September 5, 2021, at 7:30 p.m.
Exhibit no A7.	Trail now
Exhibit no A8.	Sheriff report, incident date October 11, 2021
Exhibit no A9.	Location of person talking
Exhibit no A10.	Location of suspicious person walking
Exhibit no A11.	Email with photographs, dated September 10, 2023
Exhibit no A12.	Email with photographs, dated September 12, 2023

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

Exhibit no P1.	Email from William Trippett, dated September 11, 2023
Exhibit no P2.	Email from Steve Baker, submitted September 14, 2023
Exhibit no P3.	Email from, Jill Stutzman, submitted September 15, 2023
Exhibit no P4.	Email from, Mark Galbraith, submitted September 15, 2023
Exhibit no P5.	Email from, Kathy Little, submitted September 15, 2023
Exhibit no P6.	Email from, Scott Berkun, submitted September 15, 2023

DocuSign

Certificate Of Completion

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Subject: Complete with DocuSign: Ordinance 19689.docx, Ordinance 19689 Attachment A.pdf
Source Envelope:
Document Pages: 3
Signatures: 3
Envelope Originator:
Supplemental Document Pages: 8
Initials: 0
Cherie Camp
Certificate Pages: 5
AutoNav: Enabled
401 5TH AVE
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