

July 8, 2020

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

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**REPORT AND RECOMMENDATION**

SUBJECT: Department of Transportation file no. **V-2724**  
Proposed ordinance no. **2020-0174**  
Adjacent parcel no. **1422039052**

**LAWRENCE AND SUZIE KUZNETZ**

Road Vacation Petition

Location: a portion of SW Luana Beach Road (aka Skalberg Road and  
County Road No. 834), Muary Island

Applicants: **Lawrence and Suzie Kuznetz**  
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Spokane, WA 99205  
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King County: Department of Local Services  
*represented by* **Leslie Drake**  
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Snoqualmie, WA 98065  
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Email: [leslie.drake@kingcounty.gov](mailto:leslie.drake@kingcounty.gov)

**SUMMARY OF RECOMMENDATION:**

Department's Recommendation:	Approve vacation and waive compensation
Examiner's Decision:	Approve vacation and waive compensation

## FINDINGS AND CONCLUSIONS:

### Overview

1. Lawrence and Suzie Kuznetz petition the County to vacate an approximately 2,157 square foot area of public right-of-way along SW Luana Beach Road (aka Skalberg Road and County Road No. 834) on Muary Island. The Department of Local Services, Road Services Division (Roads), urges vacation and a waiver of all compensation. We conducted the public hearing on behalf of the Council. After hearing witness testimony, studying the exhibits entered into evidence, and considering the parties' arguments and the relevant law, **we recommend that the Council approve the vacation and waive compensation.**

### Background

2. Except as provided herein, we adopt and incorporate the facts set forth in Roads' report and in proposed ordinance no. 2020-0174. That report, a map showing the general vacation area, and a land survey showing this with more precision, are in the hearing record and will be attached to the copies of our recommendation submitted to Council. Exs. D1 at 001-05, D12 at 005, D2 at 004.
3. 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 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 how should this number be adjusted to capture avoided County costs?

### Is Vacation Warranted?

4. 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 ("*shall* not" vacate) where a petitioner fails to make that showing, approval is discretionary where a petitioner shows uselessness and public benefit ("*may* vacate"). RCW 36.87.060(1) (emphasis added).
5. The subject right-of-way segment is basically a triangular segment on the outside of a curve in the public road. Ex. D1 at 017. Looking at the aerial map, it appeared that the vacation area extended to near the edge of the pavement. Ex. D12 at 005. That raised a yellow flag for us, potentially creating a chokepoint or limiting flexibility for future roadway repairs or improvements. However, aerial photos are imprecise. The Kuznetzes hired a professional land surveyor who determined that the triangle the Kuznetzes are seeking to vacate comes no closer than 24 feet from the edge of the current pavement. Ex. D2 at 004.

6. Roads noted at hearing that 24 feet is more than they often have to work with, and is sufficient here. Roads' Maintenance, its Traffic Engineering, and its Survey Unit each examined the situation and concluded that sufficient right-of-way would remain after the vacation; none expressed concerns or objections. Ex. D1 at 029, 035, 038. An adjacent neighbor testified at hearing that he supported the vacation.
7. We find that the vacation area is useless to the county road system and that the public will benefit from its vacation (see below). We conclude that vacation is warranted, although Council retains the ultimate discretion on whether to vacate or not.

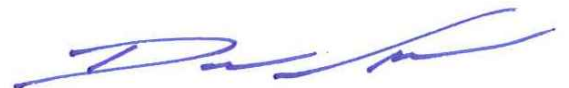
#### What Compensation is Due?

8. Compensation is often a complex and contested item, as analyzed at length in many of our past recommendations. Here, in contrast, it is straightforward. Applying Performance, Strategy, and Budget's model, we start with increased land value from adding the vacation area to private property. The assessor opined that the triangle would add \$3,000 to the value of the Kuznetz property. Ex. D9. Because SW Luana Beach Road is an actual public road, the savings in avoided management and maintenance costs (\$11,596), not to mention a small avoided liability risk (\$153) and some added expected taxes (\$59), collectively dwarf the \$3,000 enhancement to the Kuznetz property. A full waiver of compensation is warranted.

#### RECOMMENDATION:

APPROVE proposed ordinance no. 2020-0174 to vacate the subject road right-of-way and waive the compensation requirement.

DATED July 8, 2020.



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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 *August 3, 2020*, an electronic copy of the appeal statement must be sent to [Clerk.Council@kingcounty.gov](mailto: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 JUNE 23, 2020, HEARING ON THE ROAD VACATION  
PETITION OF LAWRENCE AND SUZIE KUZNETZ, DEPARTMENT OF  
TRANSPORTATION FILE NO. V-2724**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Drake Leslie, Lawrence Kuznetz, Suzie Kuznetz, and Scuderi Shelley.

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

- Exhibit no. D1. Roads Services report to the Hearing Examiner, sent June 9, 2020
- Exhibit no. D2. Letter from Clerk of the Council to KCDOT transmitting petition, dated September 7, 2018
- Exhibit no. D3. Vacation area map
- Exhibit no. D4. Letter from KCDOT to Petitioner acknowledging receipt of petition and explaining road vacation process, dated September 19, 2018
- Exhibit no. D5. KC Development conditions for parcel
- Exhibit no. D6. KC Department of Assessments Real Property page
- Exhibit no. D7. Letter from KCDOT to Petitioner recommending approval, proposing compensation waiver, dated October 26, 2018
- Exhibit no. D8. Aerial photograph
- Exhibit no. D9. Valuation of road vacation
- Exhibit no. D10. Valuation of road right of way
- Exhibit no. D11. Letter from KCDOT to Petitioner conveying the County Road Engineer report, dated November 20, 2019
- Exhibit no. D12. County Road Engineer Report, dated November 19, 2019
- Exhibit no. D13. Letter from KCDOT to Petitioner
- Exhibit no. D14. Ordinance of V-2724, dated January 24, 2020
- Exhibit no. D15. Fiscal Note of 2019-2020
- Exhibit no. D16. Declaration of posting
- Exhibit no. D17. Notice of Hearing

DS/jf