

July 21, 2020

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

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REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation file no. **V-2725**
Proposed ordinance no. **2020-0180**
Adjacent parcel nos. **0525069010, 0525069022, and 0525069036**

MICHAEL MURRAY AND LAKE WASHINGTON SCHOOL DISTRICT
Road Vacation Petition

Location: A portion of 200th Avenue NE and John O'Holland Road

Petitioner: Michael Murray and Lake Washington School District
represented by **Denise Stiffarm**
20210 NE 85th Street
Redmond, WA 98053
Telephone: (206) 669-7740
Email: mike@csf.org

King County: Department of Local Services
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. Michael Murray and Lake Washington School District (District) petition the County to vacate an approximately 73,949 square-foot stretch of unopened public right-of-way, John O'Holland Road/200th Avenue NE, near Redmond. The Department of Local

Services, Road Services Division (Roads) Roads urges vacation and a waiver of all compensation. We conducted the public hearing on behalf of the Council. After hearing testimony, studying the exhibits entered into evidence, and considering the parties' arguments and the relevant law, we recommend that Council vacate the right-of-way and waive compensation.

Background

2. The vacation area is not an actual road, but instead lines on a map. It bisects properties on which Mr. Murray grazes cattle, before edging slightly onto the District property. Ex. D3 at 003; Ex. D9 at 002.¹ After Mr. Murray initiated the proceeding, Roads encouraged the District to join the petition, to avoid leaving an isolated public remnant. The District did.
3. Except as provided herein, we adopt and incorporate the facts set forth in Roads' report and in proposed ordinance no. 2020-0180. That report, and a map showing the specific area to be vacated, are in the hearing record and will be attached to the copies of our recommendation submitted to Council. Ex. D1 at 001–06; Ex. D9 at 002.
4. 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?

5. 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).
6. The subject right-of-way was never opened, constructed, or maintained for public use, and it is not used informally for access to any property. Several neighbors emailed commentary, and one even took the time out of her day to participate in our hearing; all supported vacation. Ex. P1-P5. The right-of-way is useless as part of the county road system.

¹ The right-of-way to be vacated on the District property is approximate 4% of the total vacation area, the other 96% will attach to the Murray properties.

7. Utility-wise, Puget Sound Energy (PSE) needed an easement from Mr. Murray; he has provided this. Ex. D23. The Union Hill Water Association (Union Hill) has a fire hydrant along NE 85th Street just east of 200th Avenue NE, and an old survey shows another fire hydrant within the lines of 200th itself. Ex. D21 at 001, Ex. D1 at 025–27. Mr. Murray has agreed to provide Union Hill with an easement; Union Hill is satisfied and has no objection to vacation. Ex. D24. With those provisions, we find vacation will have no impact on providing fire, emergency services, or utilities to the abutting properties and surrounding area.
8. Finally, the public will benefit from vacation, saving \$4,000 in expected management and maintenance costs. Ex. D14 at 004–05. Vacation is appropriate.


What Compensation is Due?

9. The Assessor's Office wrote that adding right-of-way area would not change the land values for either Mr. Murray's or the District's properties. Ex. D15 at 001. In a recent vacation recommendation, *Schill/Brown-V-2716* (ordinance 2020-0064), we stated that if Assessor staff opined in a future petition that merging the right-of-way square footage into the abutting lot adds zero value to that lot, Roads should arrange to have someone from the Assessor's Office participate in our public hearing, so we could have a back-and-forth colloquy on the record and be able to write a more thorough recommendation. Jeffrey Darrow dutifully participated.
10. Mr. Darrow explained that because of the very large size of the properties it is difficult, especially in a mass appraisal context, to measure any accrued value from adding a small square footage (relative to the overall parcel size).² The highest and best use here would be a subdivision, and the additional square footage would not add additional potential lots. Thus, using the model the Assessor employs, there is no increased private value from right-of-way vacation here. While it still seems slightly counterintuitive, Mr. Darrow's was a thorough explanation, and the best evidence we have in our record. We recommend that Council waive all compensation.

RECOMMENDATION:

APPROVE proposed ordinance no. 2020-0180 to vacate the subject road right-of-way, conditioned on Mr. Murray granting Union Hill Water Association an easement.

DATED July 21, 2020.



David Spohr
Hearing Examiner

² The Murray parcels total over 62 acres. The District property is almost 27 acres, and the right-of-way only brushes up against it.

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 14, 2020*, 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 JULY 7, 2020, HEARING ON THE ROAD VACATION PETITION OF MICHAEL MURRAY AND LAKE WASHINGTON SCHOOL DISTRICT, DEPARTMENT OF TRANSPORTATION FILE NO. V-2725

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake, Michael Murray, Denise Stiffarm, Olena Starovoirov, and Jeffrey Darrow.

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

Exhibit no. D1	Roads Services report to the Hearing Examiner, submitted June 22, 2020
Exhibit no. D2	Letter from Clerk of the Council to Roads transmitting petition, dated March 13, 2019
Exhibit no. D3	Petition for vacation of a county road, transmitted March 13, 2019
Exhibit no. D4	Letter from Roads to Petitioner, acknowledging receipt of petition and explaining road vacation process, dated March 19, 2019
Exhibit no. D5	Order of Establishment, dated June 6, 1932
Exhibit no. D6	Email between Roads and the Attorney for Lake Washington School District regarding potential to join petition for road vacation

Exhibit no. D7	Memo of Revised Petition for Vacation of a County Road, dated May 13, 2019
Exhibit no. D8	Revised Petition for Vacation of a County Road, dated May 13, 2019
Exhibit no. D9	Final notice sent to stakeholders, with vicinity map and site map showing vacation area, dated August 6, 2019
Exhibit no. D10	King County Assessor's information for parcel no. 0525069036
Exhibit no. D11	King County Assessor's information for parcel no. 0525069022 and 0525069010
Exhibit no. D12	Site map of vacation area
Exhibit no. D13	Letter from KCDOT to Petitioner recommending approval, conveying County Road Engineer report, proposing compensation waiver, dated December 24, 2019
Exhibit no. D14	County Road Engineer Report with attachments, dated December 24, 2019
Exhibit no. D15	Email from Elizabeth Shirer regarding road vacation evaluations, dated October 30, 2019
Exhibit no. D16	Valuation of roads right of way for parcel no. 0525069036
Exhibit no. D17	Valuation of roads right of way for parcel no. 0525069022 and 0525069010
Exhibit no. D18	Letter from Executive to Council recommending approval and transmitting proposed ordinance, dated April 22, 2020
Exhibit no. D19	Proposed ordinance
Exhibit no. D20	Fiscal note
Exhibit no. D21	Photograph of NE 85 th Street in area of vacation
Exhibit no. D22	Declaration of posting
Exhibit no. D23	Puget Sound Energy easement
Exhibit no. D24	Union Hill Water Association Letter
Exhibit no. D25	Letters from the public
Exhibit no. D26	Affidavit of Publication from the Clerk of Council

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

Exhibit no. A1	Letter from Denise Stiffarm, dated June 30, 2020
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DS/jf