

October 28, 2016

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
Facsimile (206) 296-0198
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation file no. **V-2695**
Proposed ordinance no. **2016-0461**
Adjacent parcel nos. **3751602373, 3751603395, 3751603393, 3751603390,**
3751603389, 3751603387, 3751603385, 3751603397, 3751603398, 3751603401,
3751603403, 3751603405, and 3751603407

HIGHLAND PACIFIC HOUSING GROUP LLC
Road Vacation Petition

Location: Portions of the S 356th Street (16th Street) and 55th Place S (Texas Avenue) rights-of-way

Petitioner: Highland Pacific Housing Group
represented by **Barghausen Consulting Engineers**
18215 72nd Avenue S
Kent, WA 98032
Telephone: (425) 251-6222
Email: tbarghausen@barghausen.com

King County: Department of Transportation
represented by **Lydia Reynolds-Jones**
201 S Jackson Street
Seattle, WA 98104
Telephone: (206) 477-3631
Email: lydia.reynolds-jones@kingcounty.gov

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner's Recommendation:

Approve petition
Approve petition
Approve petition

PUBLIC HEARING:

After reviewing the Department of Transportation (Department) report and accompanying attachments and exhibits, the Examiner conducted a public hearing on the matter on October 24, 2016, in the Fred Conference Room, 12th Floor, King County Courthouse, 516 Third Avenue, Seattle, Washington.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner’s Office. Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS AND CONCLUSIONS:

1. General information:

Road name and location:	Portions of the S 356th Street (16th Street) and 55th Place S (Texas Avenue) rights-of-way
Right-of-way classification:	C-Class
Area:	26,622 square feet
Compensation:	\$11,447.59

2. Highland Pacific Housing Group (Petitioner) petitioned the County to vacate the above described public right-of-way. On September 30, 2016, the Examiner received the Department Report recommending approval.
3. The required notice of hearing was provided. The Examiner conducted the public hearing on behalf of the Metropolitan King County Council.
4. Except as provided herein, the Examiner adopts and incorporates the facts set forth in the Department’s report and the statements of fact contained in proposed ordinance no. 2016-0461.¹ The Department’s report will be attached to those copies of this report and recommendation that are submitted to the County Council.
5. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are in the hearing record as exhibit nos. 10 and 11.
6. Chapter 36.87 RCW sets the general framework for county road vacations, augmented by KCC Chapter 14.40. 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. So the main inquiries are whether vacation is warranted (which requires inquiry both into whether the road is useless and also whether the public will benefit from its vacation), and if so, what compensation is appropriate. We address those in turn.
7. While denial is mandatory where a petitioner fails to meet the standard, approval is discretionary where a petitioner does meet the standard:

¹ The proposed ordinance listed the square footage as 26,350 square feet. The correct total is 26,662. We will incorporate the correct number into the ordinance before we transmit it to Council.

If the county road is found useful as a part of the county road system it *shall* not be vacated, but if it is not useful and the public will be benefited by the vacation, the county legislative authority *may* vacate the road or any portion thereof.

RCW 36.87.060(1) (emphasis added).

8. The County acquired the subject right-of-way via a 1912 plat dedication. No public funds were expended in its acquisition, construction, or maintenance, making it a “C” class road. The segment is not currently opened, and is not known to be used informally for access to any property. The area is bordered by wetlands to the south and west.
9. This vacation petition is in a little different procedural posture than typical. Usually, an applicant wants to permanently acquire the swath of land underlying a right-of-way to put it to some private use. Here, in contrast, the Petitioner, through a separate application with the Department of Permitting and Environmental Review (DPER), sought to construct what would become a *public* storm water drainage facility on that swath. DPER has approved that construction.
10. However, the protocol for such facilities is that the private party builds a facility and then meets certain performance bond—and later maintenance bond—requirements before the government takes things over. This makes sense, decreasing the odds the government will be stuck with an albatross of a poor facility around its neck. So the Petitioner here sought not to purchase the right-of-way, but to obtain a Special Use Permit to allow it to construct the storm water drainage facility on that swath, shepherd the pond through the bond periods, and then transfer long-run responsibility to the County.
11. The hurdle, however is that while a County Special Use Permit allows construction of *closed* drainage vaults or other closed facilities in County rights-of-way, the rules do not allow construction of an *open* pond. This created a bit of a conundrum, given that DPER agrees an open pond is appropriate here. So the mechanism that the County and the Petitioner arrived at to accomplish this end was for the Petitioner to purchase the swath through this vacation process, complete its pond-related responsibilities, then transfer things back to the government.
12. The parties were confident enough that this vacation would go through that the Petitioner has already constructed the pond. That is a tad concerning; what would happen if they guessed wrong? But here they guessed right, or at least we recommend that the Council find they guessed right, because vacation seems appropriate. The right-of-way is not necessary for the present or future public road system for travel or utilities purposes. No one has objected to the vacation.
13. As to whether the vacation benefits the public, here the procedural posture is, again, somewhat nonstandard. Typically the public gains from adding the road area to the tax rolls. And the public is saved potential costs, as a property owner, for something like cleaning up illegal dumping on the road area and the general risk the liability a property owner (especially an absentee one) carries. Here, however, the intent is for the County to take the pond over, and the swath will be a public drainage pond, not a tax-producing

property. Still, the public gains in the short run from \$11,447.59 in compensation, and gains in the long run from a public storm-water drainage pond.

14. The compensation required by law to be paid as a condition precedent to vacation of this road (\$11,447.59) has been deposited with King County.
15. We conclude that the road segment subject to this petition is not useful as part of the King County road system and that the public will benefit from its vacation.

RECOMMENDATION:

We recommend that the County APPROVE proposed ordinance no. 2016-0461 to vacate the subject road right-of-way.

DATED October 28, 2016.



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 **November 21, 2016**, 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 OCTOBER 24, 2016, HEARING ON THE ROAD VACATION PETITION OF HIGHLAND PACIFIC HOUSING GROUP LLC, DEPARTMENT OF TRANSPORTATION FILE NO. V-2695.

David Spohr was the Hearing Examiner in this matter. The following individuals were in attendance: Lydia Reynolds-Jones, Leslie Drake, Ted McCaugherty, and Tom Barghausen.

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

Exhibit no. 1	Roads Services report to the Hearing Examiner, sent September 30, 2016
Exhibit no. 2	Letter from the Council Clerk to KCDOT transmitting petition, dated May 26, 2015
Exhibit no. 3	Cover letter to road vacation petition, dated May 26, 2015
Exhibit no. 4	Petition for vacation of a county road, dated May 26, 2015
Exhibit no. 5	Petitioner's vicinity map
Exhibit no. 6	Filing fee check no. 85998 in the amount of \$100
Exhibit no. 7	Filing fee receipt no. 01000, dated May 26, 2015
Exhibit no. 8	Letter from KCDOT to Petitioner acknowledging receipt of petition and explaining the road vacation process, dated July 17, 2015
Exhibit no. 9	Revised legal description of the vacation area
Exhibit no. 10	Map depicting revised vacation area
Exhibit no. 11	Vicinity map
Exhibit no. 12	Jovita Heights plat map
Exhibit no. 13	Site map depicting vacation area
Exhibit no. 14	Composite utilities plan sheet for Pepper Hill Estates, permit no. L06CG410
Exhibit no. 15	Drainage control plan sheet for Pepper Hill Estates, permit no. L06CG410
Exhibit no. 16	Boundary line adjustment, permit no. BLAD13-0026
Exhibit no. 17	Special use permit, no. SUPS15-0143
Exhibit no. 18	Letter from KCDOT to Petitioner recommending approval and requesting compensation, dated July 7, 2016
Exhibit no. 19	Compensation worksheet
Exhibit no. 20	Letter from KCDOT to KC Council recommending approval of petition, dated July 7, 2016
Exhibit no. 21	Compensation payment, check no. 3322512652 in the amount of \$11,447.59, dated July 18, 2016
Exhibit no. 22	Letter from KCDOT to KC Council transmitting proposed ordinance, dated September 7, 2016
Exhibit no. 23	Proposed ordinance 2016-0461
Exhibit no. 24	Fiscal note
Exhibit no. 25	Affidavit of posting, noting a posting date of September 28, 2016
Exhibit no. 26	<i>Reserved for affidavit of publication</i>

DS/vsm

October 28, 2016

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CERTIFICATE OF SERVICE

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HIGHLAND PACIFIC HOUSING GROUP LLC
Road Vacation Petition

I, Elizabeth Dang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND RECOMMENDATION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- caused to be placed with the United States Postal Service, with sufficient postage, as **FIRST CLASS MAIL** in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED October 28, 2016.



Elizabeth Dang
Legislative Secretary

All Parties of Record

Altschuler, Jennifer
Department of Transportation
Department of Transportation

Treichel, Chris
Department of Transportation

Walker, Bill mailed paper copy
Comcast Cable

Ballweber, Jim
Department of Transportation

Barghausen Consulting Engineers mailed paper copy

Barghausen, Thomas mailed paper copy
Barghausen Consulting Engineers

Brater, Rick
Department of Transportation
Department of Transportation

Christian, Claire
Department of Natural Resources and Parks

Claussen, Kimberly
Department of Permitting and Environmental Review

Drake, Leslie
Department of Transportation

Eichelsdoerfer, Robert
Department of Transportation

Freitag, Ivy
Department of Natural Resources and Parks

Harb, Alex mailed paper copy
CenturyLink

Ishimaru, Jim
Department of Transportation
Department of Transportation

Kulish, Michael
Facilities Management Division

Lakehaven Utility District mailed paper copy

McDonald, Andrew
Department of Natural Resources and Parks

Morehead, Tina
Department of Transportation
Department of Transportation

Potts, Michela mailed paper copy
Puget Sound Energy

South King Fire and Rescue mailed paper copy

Torkelson, Cindy
Department of Transportation