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KING COUNTY, WA

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

<p>Document Title(s) (or transactions contained therein): (all areas applicable to your document <u>must</u> be filled in)</p> <p>1. Ordinance 18723 AN ORDINANCE authorizing the vacation of a portion of 103rd Avenue SW, also known as H. Steen Road-County Road no. 1604, Vashon Island, File No. V-2694; Petitioner: Erinn McIntyre.</p>
<p>Reference Number(s) of Documents assigned or released:</p> <p>Additional reference #'s on page _____ of document</p>
<p>Grantor(s) (Last name, first name, initials)</p> <p>1. King County, Washington</p> <p>Additional names on page _____ of document.</p>
<p>Grantee(s) (Last name first, then first name and initials)</p> <p>1. King County, Washington</p> <p>2. _____, _____</p> <p>Additional names on page _____ of document.</p>
<p>Legal description (abbreviated: i.e. lot, block, plat or section, township, range)</p> <p>All those portions of the 60 foot wide right-of-way for 103rd Avenue SW, also known as...</p> <p>Additional legal is on page 3 _____ of document.</p>
<p>Assessor's Property Tax Parcel/Account Number <input type="checkbox"/> Assessor Tax # not yet assigned</p> <p>1923039120, 1923039119</p>
<p>The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</p>

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 1, 2018

Ordinance 18723

Proposed No. 2018-0011.2

Sponsors McDermott

1 AN ORDINANCE authorizing the vacation of a portion of
2 103rd Avenue SW, also known as H. Steen Road-County
3 Road 1604, Vashon Island, file no. V-2694; Petitioner/s:
4 Erinn McIntyre.

5 STATEMENT OF FACTS:

- 6 1. A petition was filed requesting vacation of a portion of 103rd Avenue
7 SW, also known as H. Steen Road-County Road 1604, Vashon Island,
8 hereinafter described.
- 9 2. The department of transportation notified utility companies serving the
10 area and King County departments of the proposed vacation and has been
11 advised that no easements are required within the vacation area. The
12 vacation shall not extinguish the rights of any utility company to any
13 exiting easements for facilities or equipment within the vacation area.
- 14 3. Department of transportation records indicates that King County has
15 did not expend public funds acquiring or maintaining the subject portions
16 of 103rd Avenue SW, also known as H. Steen Road-County Road 1604
17 right-of-way.
- 18 4. The department of transportation considers the subject portion of right-
19 of-way useless as part of the county road system. The department of

20 transportation asserted that the council should accept the value of the
21 transfer of liability or risk, the increased value to the public in property
22 taxes, and the avoided costs for management or maintenance as full
23 compensation for this road vacation, but did not quantify these values.

24 5. Due notice was given in the manner provided by law. The office of the
25 hearing examiner held the public hearing on March 15, 2018.

26 6. The examiner agreed that the road segment subject to this petition is
27 not useful as part of the King County road system. The examiner
28 disagreed that the department of transportation had presented sufficient
29 evidence of the quantum of value from transferring liability risk,
30 increasing property taxes, and avoiding costs for management or
31 maintenance to justify a financially principled waiver from par of all of the
32 assessed value. The examiner then explained that averaging the dollars-
33 per-square-foot assessed value of the two McIntyre parcels straddling the
34 right-of-way created an artificially high value. Using only the more
35 constrained western parcel's value, the new assessed value for the right-of-
36 way amounted to \$2,266.30, which Ms. McIntyre paid.

37 7. In consideration of this \$2,266.30, the council has determined that it is
38 in the best interest of the citizens of King County to grant said petition.

39 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

40 SECTION 1. The council, on the effective date of this ordinance, hereby
41 vacates and abandons a portion 103rd Avenue SW, also known as H. Steen Road-County
42 Road 1604, Vashon Island right-of-way as described below:

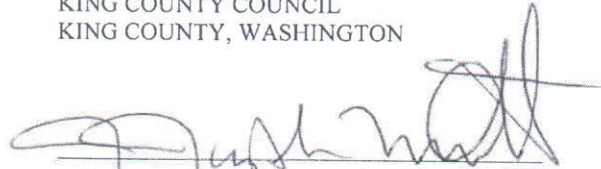
43 All those portions of the 60 foot wide right-of-way for 103rd Avenue SW,
44 also known as H. Steen Road-County Road No. 1604 located in the North
45 Quarter of the Northwest Quarter of the Southeast Quarter of Section 19,
46 Township 23 North, Range 3 East, Willamette Meridian and within Lot 4,

- 47 King County Short Plat 1081035, as recorded under King County
48 Recording No. 8308050872, all in King County, Washington.

Ordinance 18723 was introduced on 1/8/2018 and passed by the Metropolitan King County Council on 4/30/2018, by the following vote:

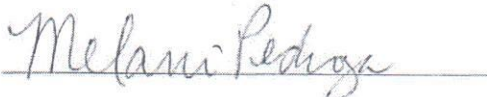
Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles
and Ms. Balducci
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



J. Joseph McDermott, Chair

ATTEST:



Melani Pedroza, Clerk of the Council



APPROVED this 8 day of MAY, 2018.



Dow Constantine, County Executive

RECEIVED
21 MAY 10 AM 9:05
CLERK
METROPOLITAN KING COUNTY COUNCIL

Attachments: A. Hearing Examiner Report dated 3-23-18

March 23, 2018

**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-2694**
Proposed ordinance no. **2018-0011**
Adjacent parcel nos. **1923039120, 1923039119**

ERINN MCINTYRE
Road Vacation Petition

Location: a portion of 103rd Avenue SW, Vashon Island

Petitioner: **Erinn McIntyre**
2005 E Crescent Drive
Seattle, WA 98112
Telephone: (206) 715-3381
Email: erinmcintyre@yahoo.com

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

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation: Approve vacation, entirely waive compensation
Department's Final Recommendation: Approve vacation, accept \$2,266.30 in compensation
Examiner's Recommendation: Approve vacation, accept \$2,266.30 in compensation

FINDINGS AND CONCLUSIONS:

1. This matter involves 22,663 square feet of public right-of-way, a portion of 103rd Avenue on Vashon Island. In May 2015, Erinn McIntyre—who owns the properties that straddle the right-of-way—petitioned the County to vacate the right-of-way.
2. The Examiner received the King County Department of Transportation’s (KCDOT’s) report recommending approval and recommending a complete waiver of compensation. The required notice of hearing was provided. The Examiner conducted the public hearing on behalf of the Metropolitan King County Council (Council). After hearing the witnesses’ testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties’ arguments and the relevant law, the Examiner hereby enters the following.
3. Except as provided herein, the Examiner adopts and incorporates the facts set forth in KCDOT’s report and the statements of fact contained in proposed ordinance no. 2018-0011. KCDOT’s report will be attached to those copies of this report and recommendation that are submitted to the Council. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are in the hearing record as exhibits 4, 5 and 6.
4. 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 for avoided County costs?
5. Whether the public benefits from a vacation is not unrelated to the compensation questions. If, for example, vacating a right-of-way would net the County \$1 million in compensation and/or reduced costs—resources that could be devoted to other worthwhile public endeavors—the public interest analysis looks different than a vacation where the County would net \$100 in compensation and/or reduced costs.
6. 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 does meet the standard:

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 benefitted by the vacation, the county legislative authority *may* vacate the road or any portion thereof.

RCW 36.87.060(1) (emphasis added).

7. There is no question here that the right-of-way is useless to the road system. The subject right-of-way segment was never opened as a road or maintained for public use. It does not even hook up to the road system, being an isolated strip. At some point the right-of-way was identified as a site for a public trail in the Shingle Mill Creek area. Ex. 3 at 001. Thus, County Parks opposed a 1990 petition to vacate the right-of-way, and vacation did not go through. That situation has changed, now that the public trail (as well as and access to, and parking, for that public trail) has been sited on other properties. The Vashon Maury Island Land Trust did not object after receiving written notice of the pending vacation, and County Parks consents to vacation. Ex. 21; Ex. 1 at 020. No utility providers have any objections either. Ex. 1 at 013–18.
8. As to calculating the amount the petitioner must compensate the County, KCDOT asserted that the “compensation analysis begins with the assessed values of the properties adjacent to the subject right-of-way.” Ex. 1 at 004. This is incorrect. The RCW section covering values, within the RCW chapter authorizing the County to vacate rights-of-way, speaks of “appraised value” twice, appraisals once, and assessments none. Our County code reflects this—indeed, our code would presumably find itself in conflict with state law if it did not—starting with the “appraised value of the county right of way.” KCC 14.40.0105.B.6.
9. Our code clarifies that “Council may consider *as a factor* the assessed value of parcels adjacent to the County right-of-way.” KCC 14.40.120.A.1 (emphasis added). It is axiomatic that appraised values are more accurate than, and thus superior, to assessed values, it being no accident that RCW chapter 36.87 discusses “appraisals” and “appraised values” and never employs “assessments” or “assessed values.”¹ Yet in *V-2672*, where KCDOT valued the right-of-way in relation to the assessed values of the private applicant’s properties, we found that “justifiable” in that circumstance, because:

The code allows the “assessed land value of parcels adjacent to the County right-of-way” to be used in determining the appropriate compensation. KCC 14.40.020.A.1. In many scenarios, especially where little money is at stake, it is not worth the time or expense of a full appraisal.²
10. So assessed values may, at least in some instances, be an acceptable substitute for appraised values. But we clarify again today that the starting point is appraised value, with the Council (and thus we, holding the public hearing on behalf of the Council) allowed to consider, “as a factor,” assessed values. With that understanding established, we return to valuation.
11. The average assessed value of the McIntyre properties (meaning the parcel to the east of, plus the parcel to the west of, the right-of-way) is \$0.33 per square foot KCDOT. KCDOT argues that this is too high, for three reasons—two general arguments we have addressed and declined to adopt in previous vacation petitions (and turn down again in the following paragraphs), and a third argument specific to the McIntyre property (which we address at the end of this report).

¹ Otherwise, why would anyone bother spending money on an appraisal? For example, bank loans could be secured with a quick glance at the Assessor’s records instead of a time- and money-consuming appraisal.

² Available at http://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2672_PortageRightOfWay_Report.ashx?la=en at ¶¶ 14–15.

12. First, KCDOT asserts that as a standalone strip, the vacation area would not be usable as a building lot. Ex. 1 at 005. This is true and relevant, but mostly misses the point. (Indeed, if adding the right-of-way acreage to a petitioner’s pre-existing holdings would allow, say, allow subdivision or an additional dwelling unit, using the Assessors’ values would likely *understate* the right-of-way’s true value.) In *V-2667*, the abutting private petitioner—seeking to pay less to acquire the right-of-way than KCDOT appraised it to be worth—made a similar argument; we rejected it thusly:

The premise of Ms. Janshen’s appraiser treating the road as an unbuildable, stand-alone parcel has some intuitive appeal but is ultimately incorrect and significantly undervalues the road area’s value.... The highest and best use of the road property is not as a “stand-alone,” marginal lot. Instead, it will become part of a single, contiguous, unencumbered Janshen homesite. Pegging the value of the road area to the overall Janshen property, and then comparing the Janshen property to sales of other single family lots, is correct.³

13. Second, KCDOT asserts that rights-of-way do not have a readily open market, because they can only go to abutting property owners. That is true, and might affect the values an appraiser would come up with after serious study. But most landowners, if given the choice, tend to want *more* unencumbered property instead of *less* property or encumbered property. Vacation for some past (and pending) petitioners has opened up the possibility of subdividing and selling the property, but the rest of the petitioners to date have placed parts of houses, along with outbuildings, drain fields, and other improvements, on rights-of-way.
14. We have divined no intervening change in market demand patterns, no revolution in appraisal methodology, and no drastic departures in how the Assessor operates. What appears to have changed is that KCDOT has made a political decision to jettison unnecessary rights-of-way without obtaining any compensation. Thus KCDOT appears to be reversing course from its earlier valuation methodology⁴ and now pitching appraised/assessed value as low as possible to justify a desired result.⁵

³ Available at http://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2014/V-2667_Janshen.ashx?la=en at ¶ 13.

⁴ For example, in https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2669_KingCountyWaterAndLandResourcesDivision.ashx?la=en, KCDOT valued the right-of-way at over \$75,000, and later its review appraiser pointed out several concerns with petitioners’ rebuttal appraisal. KCDOT did further analysis and arrived at a \$40,000 estimated value, which we accepted. *Id.* at ¶¶ 12–14. And in https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2672_PortageRightOfWay_Report.ashx?la=en, KCDOT initially valued the right-of-way at \$75 a square foot. In response to petitioners’ rebuttal appraiser, KCDOT’s review appraiser reevaluated the situation, found flaws with the petitioners’ appraisal, came up with a highest and best use at \$55 a square foot, and then explained how she discounted this to \$19.75. While were “slightly concerned that maybe an almost two-thirds discount is too much,” we nonetheless accepted KCDOT’s review appraiser’s final valuation. *Id.* at ¶¶ 14–17.

⁵ Compare the detailed analysis KCDOT undertook in the cases footnoted directly above with https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2669_KingCountyWaterAndLandResourcesDivision.ashx?la=en at ¶ 10 and https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2703_DNRP_REPLACEt.ashx?la=en at ¶ 14.

15. What has changed (beyond KCDOT preferences) is that the appraised—or in some instances the assessed—value is no longer the end of the compensation analysis. A 2016 state law change, adopted by the County, allows a local legislative branch to “adjust 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.
16. In transmitting the proposed ordinance recommending today’s vacation, the Executive described these as “non-monetary factors.” Ex. 17 at 001. If what the Executive meant was that the RCW 36.87.120 factors should reduce the money the petitioner pays at the point of vacation, that is accurate. But KCDOT seems to argue that the .120 factors are not monetary. This is incorrect. For example, an increase in property taxes is indeed a monetary factor. Given that most County employees do not work for free, avoiding personnel costs managing or maintaining a right-of-way saves the County actual money. And money damages that do not actually have to be paid out is also a monetary factor.
17. Instead of offering a quantitative analysis, KCDOT again offers several qualitative rationales for why RCW 36.87.120’s factors counsel in favor of downwardly adjusting compensation. Despite our repeated requests in previous cases, KCDOT has elected not to craft a sound, transparent, and defensible financial model to explain how it arrived at the appropriate adjustment. And although RCW 36.87.120 allows the Council to “adjust” the appraised value downward, KCDOT has once more argued not for an adjustment, but for a complete *elimination* of compensation. This at a time KCDOT maintains that there is a structural deficit in the Roads Fund and where, the last time we asked (in 2014), it was costing KCDOT approximately \$20,000 to administratively process a vacation petition.⁶
18. As we explained in our October 2017 road vacation recommendation to Council in *V-2703*:

Over the many months since the County’s 2016 ordinance (18420) explicitly incorporated RCW 36.87.120’s allowed reductions, we have repeated to KCDOT our expectation that it craft some model to quantify a requested reduction. As we phrased it in our [notice of hearing in *V-2703*], “what we expect from KCDOT is some sort of robust model to quantify potentially appropriate reductions, reduced to an actual dollar value.” Perhaps we should have phrased it more simply, as one of our elementary school math teachers phrased it to us: “Show your work.” In any event, our message apparently did not register, as we received an eloquent *qualitative* explanation for a waiver here, but no solid *quantitative* proposal for how to calculate that reduction.

Suppose we found that [the assessed values of adjacent properties] was the appropriate starting value...and we then tried to calculate an RCW 36.87.120-based request to reduce this otherwise-applicable compensation figure. We would need to come up with dollar amounts to downwardly

⁶ https://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2014/V-2667_Janshen.ashx?la=en at ¶ 17.

adjust this...figure to account for (1) the transfer of liability or risk, (2) the increased value to the public in property taxes, (3) the avoided costs for management or maintenance, (4) any limits on development, and (5) future public benefit. RCW 36.87.120; KCC 14.40.020.A.1.

...[C]oncepts KCDOT has advanced here (like avoiding liability for somebody injured on the right-of-way, or avoiding having to manage the area, or avoiding the specter of illegal dumping on KCDOT property) are probably sufficient to support a finding that the vacation is in the public interest. But public interest is a *conceptual* analysis.⁷ In contrast, compensation—and any reduction of the appraised value—is a *calculation*. We need actual numbers and a thorough understanding of how those numbers were arrived at. A qualitative analysis can enhance, but is no substitute for, a quantitative analysis. We now turn to the five reduction factors in RCW 36.87.120.

As to transferred liability or risk, KCDOT states that Risk Management paid out just over \$3 million to resolve Roads-related claims in 2016. That gives us a snapshot of *total* liability for the *entire* 1,500-mile County roadway system for a single year, but provides no way to translate that into a dollar amount to assign to liability-reduction for today's vacation.

We could attempt our own crude, back-of-the-envelope-calculations: if 1,500 miles equates to 7,920,000 linear feet, and the typical right-of-way is 60 feet wide, there are something approximating 475,200,000 square feet of total County right-of-way. Spreading the \$3 million liability across the entire system, we could estimate average liability at \$0.0064 per square foot in 2016. For the 72,211 square feet in play here, that would equate to just under \$460 in average expected avoided liability costs. But 2016 might be an outlier, and of course, that is only one year—one would need to reduce expected future claims to a net present value. And there might be different multipliers to assign to different categories of rights-of-way. For example, one would expect the well-traveled park in today's case to have a higher likelihood of claims than a forested right-of-way in a remote area in our most recent road vacation recommendation, *Hsi-V-2706*.⁸ KCDOT has smart financial people; we leave it to them to come up with some model for calculating risk reduction. But we reiterate again that we will need something quantifiable for a future acquisition by a private petitioner.

The increased value to the public in property taxes where the right-of-way is transferred to private ownership should be a simpler calculation—taking the tax bill of the parcel into which the right-of-way will merge,

⁷ Note: As noted above, part of the public interest analysis is conceptual, but even that has a quantitative component. The more the public fisc would gain by vacating a right-of-way, the more likely vacation is to be in the public interest.

⁸ Note: One would also expect that an established road right-of-way would have a higher risk factor associated with it than an undeveloped right-of-way. Someone skidding a car off the road and crashing in a fiery inferno would seem to lend itself to a higher claim amount than someone tripping and falling on a forested right-of-way.

estimating the increase enlarging the parcel will create (presumably on a square foot basis), and doing the math to reduce the additional, expected future tax stream to a net present value. Earlier this year the Council, via Motion 14803, adopted the Office of Performance, Strategy and Budget's (PSB's) May 2016 "Comprehensive Financial Management Policies." In that document, PSB devotes an entire section to discount rate policy. So this is not an exercise KCDOT needs to manufacture from whole cloth; PSB has done some of the legwork already.

As to the avoided costs for management or maintenance, we presume KCDOT can figure out how much it spends each year on this over its entire roadway system, can divide this by dollars saved per square foot, and come up with a net present value for those savings. Again creating subcategories such as open, maintained roads (which presumably would require more management and maintenance) versus unimproved rights-of-way (on which KCDOT presumably spends little per square foot) might improve accuracy.

As analyzed [earlier], adjusting "the appraised value to reflect...any limits on development," is a bit of an odd duck, because most such limits should already be captured in the appraised value. We can envision, however, one scenario that might fly in the private acquisition context.

Normally, if a right-of-way is essentially disappearing and merging into the larger (private) parcel, that parcel would have an appraised value enhanced by the additional acreage. But the code contemplates that a county right-of-way may be vacated if the right-of-way "would better serve the public interest in private ownership." KCC 14.40.0102.B. Thus for example, if there were a limit on the to-be vacated right-of-way such that it will remain a private easement or road, that restriction might *not* necessarily be captured by an appraisal of the larger parcel, and so might be the type of adjustment to the appraised value the legislature was getting at. Again, we are not sure what the statutory language means, and we would be receptive to further analysis of this portion of RCW 36.87.120.

Future public benefit is the final category. If KCDOT can explain how it calculates a dollar figure to assign to this, we will be all ears. We have noted before that where the road is something KCDOT has actively wanted to jettison (such as an isolated, troublesome road, perhaps serving only one property) and not the more traditional scenario of a private petitioner looking to acquire additional property (where the appearance of a gift of public property would be higher), perhaps one could legitimately

assign some multiplier to apply to the KCDOT-initiated scenario.⁹ We leave that calculation, in the first instance, to KCDOT.¹⁰

19. We recognize today, as we recognized earlier, that presenting arguments and requesting zero compensation is simpler than coming up with a model to calculate an actual adjustment. Yet we do not see how we could have been much clearer in October: such an approach, however convenient it is to KCDOT’s overarching political strategy, will not fly. We closed those October 2017 findings and conclusions with:

Our requiring a more rigorous quantitative analysis will (until KCDOT can craft a justifiable formula to calculate RCW 36.87.120’s reductions) place a speed bump on KCDOT’s push to divest the road system of rights-of-way. But it need only be a temporary hurdle. As we made crystal clear at last week’s hearing, we will not be a rubber stamp. If we receive a future petition involving a right-of-way to be vacated into private ownership, where KCDOT seeks a RCW 36.87.120-based reduction from the appraised-value level or a complete waiver of compensation, yet is not prepared to present a detailed methodology to quantify and calculate those requested reductions, we will remand the petition back to KCDOT to come up with something more defensible, some model where we can follow the math. So really the issue is the timing of that necessary work; as the legendary coach John Wooden asked, “If you don’t have time to do it right, when will you have time to do it over?” Better now than later.¹¹

20. In an earlier case (*V-2669*), the Council *rejected* our recommendation to entirely waive compensation, ultimately requiring compensation of \$109,100.¹² Thus, in our October 2017 determination in the *V-2703* case quoted from above—which involved vacation in favor of a public entity (a public park)—we wrapped up our recommendation with a pledge to Council that:

We assure Council that in future cases involving vacations to private ownership, we will not send up a recommendation to Council unless we can vouch for a transparent explanation, tracking the math, for how we quantified a conclusion to partially or fully waive compensation, thus ensuring that Council will not inadvertently be gifting public property interests.¹³

21. Yet today’s petition, and the other six petitions transmitted to Council simultaneously in December 2017, KCDOT mostly recycled the unsuccessful arguments made in past cases. KCDOT did not provide even the most basic calculation—the expected increase in

⁹ Note: Today’s case is not one where KCDOT proactively identified this right-of-way as something it wanted off its books and approached the abutting property owners; Ms. McIntyre approached KCDOT of her own volition.

¹⁰ https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2703_DNRP_REPLACEt.ashx?la=en (internal citations omitted) at ¶¶ 25–36.

¹¹ *Id.* at ¶ 37.

¹² Compare https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2669_KingCountyWaterAndL.andResourcesDivision.ashx?la=en with Ordinance 18571.

¹³ *Id.* at RECOMMENDATION no. 2.

tax receipts from adding property to each abutting parcel. All transmittals recommended entirely waiving compensation in each case, again without providing the necessary quantitative analysis outlined above.

22. In the first batch of these cases we held hearings on, on March 13 we wrote how ineffective it had proved to alert KCDOT (in October 2017) that we would remand another insufficient application. Observing that the recent KCDOT reports have seemed “results-oriented” (i.e. geared to reach a pre-destined amount of zero compensation), and desiring a straight up, chips-fall-where-they-may analysis, not “how can we get to zero” arguments, we requested that a *different* executive branch agency, the Office of Performance, Strategy and Budget (PSB), either create its own quantitative model, or work with KCDOT to help KCDOT come up with a model. In several of those recent cases, we held the record open until PSB is able to certify that the RCW 36.87.120-based model being proposed is up to PSB’s standards.¹⁴
23. We offered Ms. McIntyre the choice of either paying the assessed valuation or waiting to see how the model PSB comes up with applies to her property. Ms. McIntyre decided that, given how long the process has already taken,¹⁵ she wished to wrap it up now. So we took a harder look at valuation, which involves the third reason KCDOT recommended zero compensation.
24. KCDOT noted that Ms. McIntyre’s parcel situated east of the right-of-way is developed with a single family residence, while the parcel to the west is covered with a steep slope hazard area, erosion hazard area, and some seismic hazards. Ms. McIntyre did a solid job at hearing presenting photos and other descriptions showing the gully that starts on the right-of-way and slopes steeply west.
25. Thus the normal methodology that KCDOT uses to select right-of-way values—taking the *average* dollars-per-square-foot values of both McIntyre parcels—warrants an adjustment here. The right-of-way area shares much more in common with the undeveloped, environmentally challenging parcel to the west than it does the developed parcel to the east. Thus an average of the two parcels overstates the right of way’s value.
26. KCDOT did a good job at hearing, working on the fly, pulling up Assessor records, and calculating an assessed value for the western parcel of \$0.10 per square foot. Applying this to the 22,663 square feet of right-of-way resulted in a total figure of \$2,266.30. Ms. McIntyre wrote a check for this amount, and thus the compensation required by law to be paid as a condition precedent to vacation of this road has been deposited with King County.

¹⁴ In *V-2688*, KCDOT recommended a full waiver of compensation as well. But that case involved a transfer-in-lieu of property. KCDOT proposed—and Petitioner accepted—a swap, whereby Petitioner will receive title free and clear to the bulk of the right-of-way (the portion not useful for future road expansion) in exchange for Petitioner executing a utility easement and granting KCDOT the sliver of his property KCDOT needs for an intersection improvement. The law contemplates such a swap. KCC 14.40.020.A.2. On March 12, we recommend that Council find vacation—without additional consideration from Petitioner—acceptable.
https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2018/V-2688_Biliske.ashx?la=en. Once the appeal window on our report closes, Ordinance 2018-0008 will come before the Council.

¹⁵ The Clerk transmitted Ms. McIntyre’s petition to KCDOT in May 2015. The clerk received the petition back from the Executive in December 2017.

RECOMMENDATION:

APPROVE proposed ordinance no. 2018-0011 to vacate the subject road right-of-way.

DATED March 23, 2018.



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 **April 16, 2018**, 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 MARCH 15, 2018, HEARING ON THE ROAD VACATION PETITION OF ERINN MCINTYRE, DEPARTMENT OF TRANSPORTATION FILE NO. V-2694

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake and Erinn McIntyre.

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

- | | |
|---------------|---|
| Exhibit no. 1 | Roads Services report to the Hearing Examiner, sent February 28, 2018 |
| Exhibit no. 2 | Letter from Clerk of the Council to KCDOT transmitting petition, dated May 11, 2015 |
| Exhibit no. 3 | Petition for vacation of a county road, transmitted May 11, 2015 |
| Exhibit no. 4 | Vacation area map |
| Exhibit no. 5 | Aerial photograph |

- Exhibit no. 6 Vicinity map
- Exhibit no. 7 Abstract of Quit Claim Deed of property to King County, executed June 13, 1922
- Exhibit no. 8 Letter from KCDOT to Petitioner acknowledging receipt of petition and explaining road vacation process, dated March 17, 2016
- Exhibit no. 9 Final stakeholder notification, sent August 2, 2016, with comment deadline of August 31, 2016
- Exhibit no. 10 Revised petition, filed April 1, 2017
- Exhibit no. 11 Sensitive Areas notice for subject parcel, recording no. 19991101001112
- Exhibit no. 12 King County Department of Assessments: eReal property report for parcel 1923039120 noting parcel is unbuildable
- Exhibit no. 13 Vacation site iMap with Environmentally Sensitive Areas overlay
- Exhibit no. 14 Photographs of portion of right-of-way adjacent to parcel 1923039120
- Exhibit no. 15 Letter from KCDOT to Petitioner recommending approval, conveying County Road Engineer report, proposing compensation waiver, dated July 13, 2017
- Exhibit no. 16 Road Engineer report
- Exhibit no. 17 Letter from KCDOT to KC Council recommending approval and transmitting proposed ordinance, dated October 11, 2017
- Exhibit no. 18 Proposed ordinance
- Exhibit no. 19 Fiscal note
- Exhibit no. 20 Affidavit of posting, noting posting date of February 16, 2018
- Exhibit no. 21 Notification of petition letter to Vashon Maury Island Land Trust, dated January 30, 2018
- Exhibit no. 22 Notification of petition letter to Michael and Katrina Lande, dated January 30, 2018
- Exhibit no. 23 Notification of petition letter to Gary Peterson, dated January 30, 2018
- Exhibit no. 24 Affidavit of publication for February 28 and March 7, 2018
- Exhibit no. 25 Photographs of subject property

DS/vsm