

March 12, 2018

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

King County Courthouse
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REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation file no. **V-2688**
Proposed ordinance no. **2018-0008**
Adjacent parcel no. **1221059065**

EDWARD LEROY BILISKE
Road Vacation Petition

Location: Portion of James H. Skirving Rd No. 2, County Rd 1518, Auburn

Petitioner: **Edward Biliske**
17424 SE 298th Street
Kent, WA 98042
Telephone: (206) 679-7565
Email: icelandiceddie@yahoo.com

King County: Department of Transportation
represented by **Leslie Drake**
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SUMMARY OF RECOMMENDATIONS:

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

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 February 27, 2018, in Courtroom E-942, 9th Floor, King County Courthouse, 516 Third Avenue, Seattle, WA. 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:	A portion of James H. Skirving Road No. 2, County Road no. 1518, Auburn
Area:	5,643 square feet
Compensation:	waive (owner transferring 1,371 square feet)
2. Edward Biliske petitioned the County to vacate the above-described public right-of-way. On February 9, 2018, the Examiner received the Department report. The required notice of hearing on the Department’s report was provided. The Examiner conducted the public hearing on behalf of the Metropolitan King County Council.
3. Except as provided herein, the Examiner adopts and incorporates the facts set forth in the King County Department of Transportation’s (KCDOT’s) report and the statements of fact contained in proposed ordinance no. 2018-0008. The KCDOT 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 and 5.
4. Chapter RCW 36.87 sets the general framework for county road vacations, augmented by KCC Chapter 14.40. There are at least two main inquiries in a vacation petition. Is vacation warranted? If so, what compensation is appropriate? We address those in turn.
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 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).

6. There is no question that the right-of-way is useless. The subject right-of-way segment is not currently opened, constructed, or maintained for public use, and is not known to be used informally for access to any property—it is merely lines on a map. The to-be-vacated area is a reverse L-shaped creature that drops down off of 168th Way SE onto the Biliske property, then takes a hard right and returns to 168th Way SE, basically creating the two short legs of a near-isosceles triangle (168th Way SE being the long leg). It sets entirely within the Biliske property, coming nowhere near any other parcels; vacation of the right-of-way could thus have no adverse effect on—and the local fire district confirms the vacation would have no adverse effect on—the provision of access and fire and emergency services to the abutting properties and surrounding area.
7. While the bulk of the right-of-way is not necessary for the future public road system, KCDOT has identified a portion of the right-of-way closest to the 168th Way SE/SE Auburn-Black Diamond Road intersection (Intersection), along with an additional portion of the Biliske property that abuts the Intersection, as necessary to the future expansion of that intersection. This new wrinkle impacted both main inquiries—whether vacation was warranted and, if so, what compensation was appropriate.
8. The compensation discussion in this case evolved as follows. After Mr. Biliske petitioned for vacation in October 2014, KCDOT calculated that Mr. Biliske would owe \$18,148 for the 13,151 square feet to be vacated—the assessed value of the property apparently being \$1.38 per square foot. Exs. 2, 3, 9. In August 2015, Mr. Biliske offered an analysis of why the right-of-way should be only \$9,041 (i.e. \$0.69 per square foot). Ex. 10. In February 2016, KCDOT reviewed and accepted a fair market appraisal report concluding that \$7,891 (i.e. \$0.60 per square foot) was the appropriate fair market value. Ex. 11.
9. In August 2016, KCDOT explained that staff had performed a field investigation and found that some parts of the proposed vacation area were necessary to the Intersection. Ex. 12. In March 2017, KCDOT then stated that, in addition to reducing the initial area of vacation and requiring some utility easements, KCDOT wished to acquire approximately 1,371 square feet outside of the vacation area, to accommodate the Intersection’s future widening. Exs. 1, 14.
10. Thus, KCDOT proposed—and Mr. Biliske accepted—a swap, whereby Mr. Biliske receives title free and clear to the bulk of the right-of-way (the portion not useful for future road expansion) in exchange for Mr. Biliske executing a utility easement and granting to KCDOT the sliver of his property abutting the Intersection. Mr. Biliske has already signed the statutory warranty deed and granted the utility easement to Puget Sound Energy. Exs. 15–16.
11. The law contemplates such a swap. “The county road engineer or the hearing examiner may propose and the council may accept real property of equal or greater value in lieu of cash compensation.” KCC 14.40.020.A.2. To be sure, Mr. Biliske is not exchanging property of equal or greater value. At the appraised value of \$0.60 per square foot, Mr. Biliske is offering property worth approximately \$823 in exchange for property valued at \$3,386, meaning the County (on first blush) is being shortchanged \$2,563. However, that does not mean that a swap, with no money changing hands now, is inappropriate.

12. We start with the “appraised value of the county right of way,” KCC 14.40.0105.B.6, but that is only the starting point. A 2016 State law change allows local jurisdictions 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.
13. Although KCDOT has—despite our persistent requests over the last year plus—again failed to craft a sound, transparent, and defensible model to quantify the RCW 36.87.120 factors, and although such a shortcoming would prove fatal if significant sums were involved, here the number is \$2,563. We can take judicial notice that the administrative costs (in terms of FTE) of attempting to acquire (either voluntarily or through condemnation) the portion of Mr. Biliske’s property necessary to the future expansion of that county intersection would likely exceed \$2,563. Thus in this instance, absent even a rudimentary KCDOT quantitative analysis on the appropriate adjustment, we recommend that Council find vacation—without additional consideration from Mr. Biliske—acceptable.

RECOMMENDATION:

APPROVE proposed ordinance no. 2018-0008 to vacate the subject road right-of-way.

DATED March 12, 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 5, 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 by the deadline.

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 FEBRUARY 27, 2018, HEARING ON THE ROAD VACATION
PETITION OF EDWARD LEROY BILISKE, DEPARTMENT OF TRANSPORTATION
FILE NO. V-2688**

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

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

Exhibit no. 1	Roads Services report to the Hearing Examiner, sent February 9, 2018
Exhibit no. 2	Letter from Clerk of the Council to KCDOT transmitting petition, dated October 16, 2014
Exhibit no. 3	Petition for vacation of a county road, transmitted October 16, 2014
Exhibit no. 4	Vicinity map
Exhibit no. 5	Site map depicting vacation area and area of deed swap
Exhibit no. 6	King County Assessor’s property detail for subject property
Exhibit no. 7	Survey and Deeds from establishment of James Skirving Road no. 2
Exhibit no. 8	Final notice sent from KCDOT to stakeholders
Exhibit no. 9	Letter from KCDOT to Petitioner acknowledging receipt of petition and explaining road vacation process, dated May 22, 2015
Exhibit no. 10	Letter from Petitioner to KCDOT requesting re-evaluation of compensation, dated August 12, 2015
Exhibit no. 11	Letter from KCDOT to Petitioner confirming revised compensation amount, dated February 17, 2016
Exhibit no. 12	Letter from KCDOT requiring survey and easements, dated August 3, 2016
Exhibit no. 13	Survey of subject area, dated January 19, 2017
Exhibit no. 14	Letter from KCDOT to Petitioner recommending approval and proposing a land swap in lieu of compensation, dated March 30, 2017
Exhibit no. 15	Statutory warranty deed conveying property from Petitioner to King County
Exhibit no. 16	Easement between Petitioner and Puget Sound Energy, recording March 17, 2016
Exhibit no. 17	Letter from KCDOT to KC Council recommending approval and transmitting proposed ordinance, dated November 6, 2017
Exhibit no. 18	Proposed ordinance
Exhibit no. 19	Revised proposed ordinance no. 2018-0008
Exhibit no. 20	Fiscal note
Exhibit no. 21	Affidavit of posting, noting posting date of January 25, 2018
Exhibit no. 22	Affidavit of publication, received March 5, 2018

DS/vsm