



## King County

### Metropolitan King County Council

David Spohr, Hearing Examiner

King County Courthouse

516 Third Avenue Room 1200

Seattle, Washington 98104

(206) 477-0860

(206) 296-0198 Facsimile

[hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov)

[www.kingcounty.gov/property/hearingexaminer](http://www.kingcounty.gov/property/hearingexaminer)

July 13, 2020

### MEMORANDUM

TO: King County Council

FROM: David Spohr, Hearing Examiner

RE: Waiving compensation in a road vacation petition when the acquiring entity is public

On June 10, we issued a report recommending that the Council grant Lake Washington School District's petition, V-2708, to vacate a short stretch of public right-of-way surrounded by Timberline Middle School. We also recommended against requiring compensation. Today we are transmitting to the Clerk our full report, select exhibits, and a substitute ordinance. Because no appeal was filed, 2019-0490 will go on the Council's consent agenda. KCC 20.22.220.B.2.

We write this memo to draw the Council's attention to one issue involving a fundamental policy question: how to handle the compensation question where the vacation petitioner is another public entity. We framed the issue in our report as follows:

31. .... What animated our concerns in earlier cases was Roads' policy decision to give away public rights-of-way to *private* interests, raising the specter of the constitutional prohibition against gifting public property to private interests.<sup>2</sup> That set in motion a long saga that culminated in PSB creating a sound model for approaching vacation

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<sup>2</sup> "No county...shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm...." WASH. CONST., art. VIII, § 7.

compensation questions. Applying that methodology, along with the appraiser's added input here, results in the \$54,004 figure discussed above.

32. However, Timberline Middle School is not private property, and the District is not a private interest. The vacation area will remain a road and also be used as a recreation area for students and other public users. Public school facilities are an essential part of the public infrastructure and enhance educational opportunities for children, a recognized public good. KCCPP PF-19; Comp. Plan F-215. Safe site circulation and pedestrian access is also a public benefit. And state law specifically authorizes the Council to downwardly adjust compensation in the road vacation context to reflect "future public benefit." RCW 36.87.120.
33. This issue turns on whether—where the application involves vacating right-of-way for a public applicant, and where the vacated area will continue be used exclusively for public use—compensation is appropriate.
34. This has come up twice before on our watch. In *V-2669–King County Water and Land Resources Division (WLRD)*, we "tepidly" recommended that Council waive all compensation for public right-of-way being vacated to provide a salmon recovery and habitat conservation area.<sup>3</sup> There, Council went the other direction, requiring WLRD to fully compensate Roads. Ord. 18571 at lines 48-53.
35. In *V-2703–King County Department of Natural Resources and Parks* we concluded that "while Council may want to take our recommendation off the consent agenda and study it, we think [Roads] transferring the right-of-way to Parks [to use as a public park] without compensation is probably appropriate."<sup>4</sup> Council agreed, and waived compensation. Ord. 18604.
36. We do not pretend to fully grasp funding 'pots' and when it is acceptable for one governmental entity to pay or not pay for something received from another governmental entity. We have only a rudimentary understanding of the Accountancy Act and where and how it applies; others in the Council have a significant leg up on us, as the issue arises outside the road vacation context.
37. However, we note that, in the vacation context specifically, compensation is not necessarily required, be the recipient public or private. The state statute declares that a local vacation ordinance "*may* require that compensation for the vacation of county roads...equal all *or a percentage of* the appraised value of the vacated road." RCW 36.87.120 (italics added). *See also* KCC 14.40.020.A.1 ("compensation may be required"). In pushing back against Roads' insistence to waive compensation across the board in our previous recommendations to Council, we never framed requiring compensation as a mandatory

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<sup>3</sup> [https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2669\\_KingCountyWaterAndLandResourcesDivision.ashx?la=en](https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2669_KingCountyWaterAndLandResourcesDivision.ashx?la=en). We chose our words carefully there, writing "tepidly" (i.e., showing little enthusiasm) because we were concerned with the way WLRD and Roads had approached the process. We have no such concerns with today's application.

<sup>4</sup> [https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2703\\_DNRP\\_REPLACEt.ashx?la=en](https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2703_DNRP_REPLACEt.ashx?la=en).

legal duty but as a policy choice for Council to weigh. That seems even more true where the recipient of the right-of-way area is a public entity.

38. Finally, while all road vacations are legislative acts,<sup>5</sup> vacation being a “political function” seems to carry added weight when answering such government-to-government questions. And because state law specifically authorizes a local legislative body to adjust compensation in the road vacation context to reflect “future public benefit,” RCW 36.87.120, the Council’s latitude seems broad here. So, while we recommend a full waiver of compensation to reflect the public benefits from vacation here, our opinion on this specific policy choice should carry less weight than (we hope) it usually does.

Please feel free to contact us with any questions or concerns.



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David Spohr  
King County Hearing Examiner

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<sup>5</sup>*Chilimist v. Okanogan County*, No. 34585–8–III, 2017 WL 1032774 at \*4-5 (Wn. App. Mar. 16, 2017) (unpublished), *cert. denied*, 188 Wn. 2d 1022, 398 P.3d 1138 (Aug. 2, 2017).