

**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-2712**
Proposed ordinance no. **2021-0208**
Adjacent parcel no(s). **2480700037, 2480700038, 2480700041, 2480700070,**
2480700072, 2480700080, 2480700082

STEPHEN AND MEGAN BOTULINSKI AND ET AL.
Road Vacation Petition

Location: A portion of SE 28th Street/Hemlock Street, Fall City

Applicants: **Stephen and Megan Botulinski**
35875 SE 27th Place
Fall City, WA 98024
Telephone: (360) 510-6639
Email: s.botulinski@gmail.com

Applicants: **Jill and Kyle Thompson**
35808 SE 29th Street
Fall City, WA 98024
Email: jillykthompson@gmail.com

Applicants: **Tom and Sharon Bilbro**
35831 SE 27th Place
Fall City, WA 98024
Email: tombilbro@gmail.com

Applicants: **Adam and Jessie Buttermore**
35803 SE 27th Place
Fall City, WA 98024
Email: adam.Buttermore@gmail.com

Applicants: **John and Cynthia Conlon**
35902 SE 29th Street
Fall City, WA 98024
Email: conlonfamily@msn.com

Applicants: **Alfred and Shallbet Valvano**
35714 SE 29th Street
Fall City, WA 98024
Email: Al@valvanos.com

Applicant: **Rex Currier**
PO Box 1191
Fall City, WA 98024
Email: Rcurrier57@gmail.com

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

FINDINGS AND CONCLUSIONS:

Overview

1. The Department of Local Services, Road Services Division (Road Services) petitions the County to vacate a portion of SE 28th Street/Hemlock Street in Fall City. Local Services urges vacation and a waiver of all compensation. We conducted the public hearing on behalf of the Council on July 29, 2021, then held the record open until August 9, 2021. After hearing witness testimony and observing their demeanor, studying the exhibits entered into evidence, and considering the parties' arguments and the relevant law, **we recommend that Council approve the vacation.**

Background

2. Except as provided herein, we adopt and incorporate the facts set forth in Roads' report and in proposed ordinance no. 2021-0208. That report, and maps showing the specific area to be vacated and the vicinity of the proposed vacation, are in the hearing record

and will be attached to the copies of our recommendation submitted to Council. Ex. 1 at 001-06, Ex. 6 & Ex. 7.

3. 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?
4. 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).

Is Vacation Warranted?

5. The subject right-of-way segment is not currently opened, constructed, or maintained for public use, and it is not known to be used informally for access to any property. Vacation would have no adverse effect on the provision of access and fire and emergency services to the abutting properties and surrounding area. The right-of-way is not necessary for the present or future public road system for travel or utilities purposes. (Unlike most vacations, where the to-be vacated right-of-way contains utilities, and vacation is predicated on petitioner’s granting utility easements, here there are no utilities to preserve.)
6. We find that the road is useless to the county road system, that the public will benefit from its vacations (savings in expected management and maintenance costs avoided property taxes gained, discussed below)—and that vacation is warranted.

What Compensation is Due?

7. We calculate compensation by starting with the increase in property values the receiving parcel will garner from the extra square footage of adding the (formerly) public right-of-way area. This figure is generated by the Assessor. However, that is only the starting point, because State and County law allow local legislative branches to adjust the appraised value to reflect the expected value of avoided liability risk, eliminated management costs, and jettisoned maintenance costs, along with increased property taxes. RCW 36.87.070; KCC 14.40.020.A.1. Performance, Strategy, and Budget have generated that model. Road Services then applies to those figures to a given parcel. Exs. 21-27.

8. This means the appropriate level of compensation to require is a somewhat individualized inquiry, producing different results for different parcels. Here there are seven different parcels.
9. For three of those parcels, merging the right-of-way into the private property either adds no value to the receiving parcel, or less value than the County gains from avoiding management and maintenance costs, and from increased property taxes. Thus, there is no compensation to require prior to finalizing vacation. Vacation can proceed without any contingencies. These properties are Conlon (248070-0072), Thompson (248070-0070), and Currier (248070-0080).
10. For the other four parcels, merging the right-of-way into the private property adds more value than the County gains from avoiding management and maintenance costs, and from increased property taxes. Thus, vacation for each parcel should be contingent on payment of the calculated compensation. These properties are Botulinski (248070-0041) at \$2758, Valvano (248070-0082) at \$799, Buttermore (248070-0038) at \$1779, and Bilbro (248070-0037) at \$1779.

RECOMMENDATION:

1. We recommend that Council APPROVE proposed ordinance no. 2021-0208 to vacate the subject road right-of-way abutting parcels 248070-0072 (Conlon), 248070-0070 (Thompson), and 248070-0080 (Currier), with no compensation requirement or contingencies.
2. We recommend that Council APPROVE proposed ordinance no. 2021-0208 to vacate the subject road right-of-way abutting parcel 248070-0041 (Botulinski) CONTINGENT on petitioner paying \$2758 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$2758 by that date, there is no vacation and the associated right-of-way remains King County's. If payment is timely received, the Clerk shall record an ordinance against parcel 248070-0041. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 248070-0041 is vacated.
3. We recommend that Council APPROVE proposed ordinance no. 2021-0208 to vacate the subject road right-of-way abutting parcel 248070-0082 (Valvano) CONTINGENT on petitioner paying \$799 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$799 by that date, there is no vacation and the associated right-of-way remains King County's. If payment is timely received, the Clerk shall record an ordinance against parcel 248070-0082. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 248070-0082 is vacated.

4. We recommend that Council APPROVE proposed ordinance no. 2021-0208 to vacate the subject road right-of-way abutting parcel 248070-0038 (Buttermore) CONTINGENT on petitioner paying \$1779 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$1779 by that date, there is no vacation and the right-of-way associated remains King County's. If payment is timely received, the Clerk shall record an ordinance against parcel 248070-0038. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 248070-0038 is vacated.
5. We recommend that Council APPROVE proposed ordinance no. 2021-0208 to vacate the subject road right-of-way abutting parcel 248070-0037 (Bilbro) CONTINGENT on petitioner paying \$1779 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$1779 by that date, there is no vacation and the associated right-of-way remains King County's. If payment is timely received, the Clerk shall record an ordinance against parcel 248070-0037. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 248070-0037 is vacated.

DATED August 20, 2021.



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 **September 13, 2021**, 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 29, 2021, HEARING ON THE ROAD VACATION
PETITION OF STEPHEN AND MEGAN BOTULINSKI AND ET AL.,
DEPARTMENT OF TRANSPORTATION FILE NO. V-2712**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Tom Bilbro, Stephen Botulinski, Leslie Drake, and Jill Thompson.

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

Exhibit no. 1	Roads Services report to the Hearing Examiner, sent July 15, 2021
Exhibit no. 2	Letter from Clerk of the Council to KCDOT transmitting petition, dated May 1, 2017
Exhibit no. 3	Petition for vacation of a county road, transmitted May 1, 2017
Exhibit no. 4	Letter from KCDOT to Petitioner acknowledging receipt of petition and explaining road vacation process, dated May 24, 2017
Exhibit no. 5	Amended petition with new property owners
Exhibit no. 6	Vacation area map
Exhibit no. 7	Vicinity map
Exhibit no. 8	Record of survey
Exhibit no. 9	Vacation area prepared by petitioner’s surveyor
Exhibit no. 10	Legal description of vacation area prepared by petitioner’s surveyor
Exhibit no. 11	Plat Fall City Orchard Tracts
Exhibit no. 12	KC Assessor’s information for petitioner Botulinski property, APN 248070-0041
Exhibit no. 13	KC Assessor’s information for petitioner Conlon property, APN 248070-0072
Exhibit no. 14	KC Assessor’s information for petitioner Thompson property, APN 248070-0070
Exhibit no. 15	KC Assessor’s information for petitioners Valvano and Shallbetter property, APN 248070-0082
Exhibit no. 16	KC Assessor’s information for petitioner Currier property, APN 248070-0080
Exhibit no. 17	KC Assessor’s information for petitioner Buttermore property, APN 248070-0038

- Exhibit no. 18 KC Assessor’s information for petitioner Bilbro property, APN 248070-0037
- Exhibit no. 19 Notice sent to stakeholders, with vicinity map and site map showing vacation area, sent May 19, 2017
- Exhibit no. 20 Email between Assessor’s Office, regarding valuation
- Exhibit no. 21 Compensation calculation model spreadsheet for petitioner Botulinski property, APN 248070-0041
- Exhibit no. 22 Compensation calculation model spreadsheet for petitioner Conlon property, APN 248070-0072
- Exhibit no. 23 Compensation calculation model spreadsheet for petitioner Thompson property, APN 248070-0070
- Exhibit no. 24 Compensation calculation model spreadsheet for petitioners Valvano and Shallbetter property, APN 248070-0082
- Exhibit no. 25 Compensation calculation model spreadsheet for petitioner Carrier property, APN 248070-0080
- Exhibit no. 26 Compensation calculation model spreadsheet for petitioner Buttermore property, APN 248070-0038
- Exhibit no. 27 Compensation calculation model spreadsheet for petitioner Bilbro property, APN 248070-0037
- Exhibit no. 28 Cover letters to petitioners, including the County Road Engineer report, dated December 21, 2020
- Exhibit no. 29 County Engineer Report
- Exhibit no. 30 Letter from KCDOT to KC Council recommending approval and transmitting proposed ordinance, dated May 24, 2021
- Exhibit no. 31 Proposed ordinance
- Exhibit no. 32 Fiscal note
- Exhibit no. 33 Affidavit of posting, noting posting date of July 7, 2021
- Exhibit no. 34 *Reserved for future submission of Affidavit of publication*

DS/jo