

December 18, 2015

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

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REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation File No. **V-2657**
Proposed ordinance no. **2015-0335**
Adjacent parcel nos. **1021079158, 1021079081**

DAVID HARRISON AND JOE HARRISON
Road Vacation Petition

Location: Geo Bayne Road and Alex McKinnon Road

Petitioner: **David Harrison**
30820 Cumberland Kanasket Road SE
Ravensdale, WA 98051
Telephone: (253) 261-7146

King County: Department of Transportation
represented by **James Chu**
201 S Jackson Street
Seattle, WA 98104
Telephone: (206) 477-3616
Email: james.chu@kingcounty.gov

SUMMARY OF RECOMMENDATIONS:

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

Approve vacation
Approve vacation
Approve vacation

PUBLIC HEARING:

After reviewing the King County Department of Transportation (KCDOT) report and accompanying attachments and exhibits, the Examiner conducted the public hearing on behalf of the Metropolitan King County Council (Council) on December 9, 2015, in the Ginger 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:	Geo Bayne Road and Alex McKinnon Road
Right-of-way classification:	B-Class
Area:	10,337.40 square feet
Compensation:	\$6,293.34

2. David Harrison petitioned the County to vacate the above described public right-of-way. On November 10, 2015, the Examiner received KCDOT's Report recommending approval.
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. 2015-0335. KCDOT's report will be attached to those copies of this report and recommendation that are submitted to the Council.
4. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are in the hearing record as Exhibit 6.
5. RCW 36.87 sets the general framework for county road vacations, augmented by KCC 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.
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. While denial is mandatory where a petitioner fails to meet the standard, approval is discretionary where a petitioner does meet the standard. RCW 36.87.060(1) ("shall" versus "may").
7. As to usefulness, the subject right-of-way is not currently open to the public, and it has not been open for some time. As originally proposed, however, vacation presented some problems. First, it potentially eliminated access to the property behind it. This was rectified by the family purchasing the rear lot and by creating a thirty-foot ingress, egress,

- and utilities easement adjacent to the to-be-vacated right of way. Exs. 15, 17. Second, it potentially eliminated the utility easement. This was rectified by granting a new easement to Puget Sound Energy. Ex. 16. With those issues resolved, it is now true that the vacation would have no adverse effect on the provision of access and fire and emergency services to the abutting properties and surrounding area, and the right of way is not necessary for the present or future public road system for travel or utilities purposes.
8. As to public benefit, an earlier proposal to vacate 6,560 square feet would have left an orphan sliver of the right of way. Exhibit 6. This was rectified by increasing the vacation square footage to 10,337. Exhibit 9. With that resolved, it is now accurate to say that vacating the right of way benefits the public. The County will obtain the proceeds from essentially selling surplus property. The County gains from adding the road area to the tax rolls. And the County is saved potential costs, as a property owner, for something like cleaning up illegal dumping on the road area, as well as the general liability risk a property owner (especially and absentee one) carries.
 9. We conclude that the road segment subject to this petition is not useful as part of the County road system and that the public will benefit from its vacation.
 10. Where the vacation is appropriate, the amount the petitioner must compensate the County is determined by the class of road in question, which in turn is determined by factors such as whether public funds were expended in the road's acquisition, improvement, or maintenance. Here, the road is "B" Class, meaning the road was acquired at no monetary cost to the county, but for which funds have been expended for improvement or maintenance. Compensation is 75 percent of the appraised value of the vacated area; here that equates to \$6,293.34. KCC 14.40.020.A, .060.B
 11. The compensation required by law to be paid as a condition precedent to vacation of this road has been deposited with King County.
 12. Finally, and because this is a recommendation to the Council, we offer the following. After the Harrisons filed the initial vacation petition in July 2010, there was considerable (and necessary) back and forth to get the vacation in final shape. But by April 5, 2013, KCDOT had notified the Clerk that the petition was sufficient, awaited only the Harrisons' payment, and that after receiving this compensation a proposed ordinance vacating the right of way would be transmitted to the Council. Ex. 18. The County received the Harrisons' payment by April 17, 2013, yet the ordinance was not transmitted until August 10, 2015. Exs. 20, 22.
 13. The September 2010 KCDOT letter to the Harrisons noted that a typical vacation should take nine months to one year to process. Ex. 9. Even assuming that all the processing time between the Harrisons' July 2010 petition and their April 2013 payment was justified—that the ball was either in the Harrisons' court or KCDOT was diligently working the matter—by April 2013 the ball was firmly in KCDOT's court. Yet it took another two plus years before the ordinance was transmitted.

14. Such processing times not only delay property owners reaching closure, they delay the public receiving the benefits from vacating useless right of way (proceeds from the sale, land added to the tax roll, avoiding potential public costs/liability). And there are currently almost twenty pending right of way petitions over a year old. Ex. 28.
15. Such processing times are also not surprising, given KCDOT’s well-documented and massive, systemic budget shortfalls. We do not question the staffing and resources allocations of an agency forced to choose between maintaining an imperiled infrastructure with insufficient funds versus processing road vacation petitions. While KCDOT did not have an estimate of its actual costs processing the Harrisons’ application, it agreed these certainly far outstripped the \$6,293.34 the County (and not necessarily KCDOT even) received. It will take years or even decades before the increased tax revenue would make up the difference.
16. Such processing times also seem somewhat unnecessary. In addition to receiving fair market value for the public property being conveyed to private interests, State law allows a county to:
 - (1) require the petitioners to make an appropriate cash deposit or furnish an appropriate bond against which all costs and expenses incurred in the examination, report, and proceedings pertaining to the petition shall be charged; or (2) by ordinance or resolution require the petitioners to pay a fee adequate to cover such costs and expenses.

RCW 36.87.020 (emphasis added). Such costs and expenses are recoverable whether the petition is granted or not, and costs of county appraisals count as recoverable expenses. RCW 36.87.070, .120. The County code tracks this in theory, requiring a deposit to “defray examination, report, publication, investigative and other costs connected with the application.” KCC 14.40.040.
17. Thus the law seems to expect that, in addition to paying fair market value for the road area, a petitioner will cover the County’s expenses involved with processing the vacation petition. Yet, under the current system, a petitioner only pays a \$100 filing fee. Ex. 28. That does not even begin to “defray” the thousands or tens of thousands KCDOT expends in “examination, report, publication, investigative and other costs connected with the application.” Cf. KCC 14.40.040.
18. This runs counter to the typical, cost-recovery approach in the land use arena. For example, if someone applies for a permit to work in a County right-of-way or to obtain a building permit on private land, the County charges a fee (either fixed, hourly or some combination) that somewhat captures the County’s cost of processing the application. It is not clear why, given that state law explicitly envisions a county recovering its costs in processing road vacations, the current system is set up not to recover costs beyond the first \$100. Requiring petitioners to pay to KCDOT a more realistic defrayal fee would provide a funding mechanism for timelier road vacations processing.

RECOMMENDATION:

APPROVE proposed ordinance no. 2015-0335 to vacate the subject road right-of-way.

DATED December 18, 2015.



David Spohr
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

In order to appeal the recommendation of the Hearing Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250 (check payable to King County Office of Finance) on or before **January 4, 2016**. If a notice of appeal is filed, the original and two copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before **January 8, 2016**.

Filing requires actual delivery to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance that implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting the Council may adopt the Examiner's recommendation, defer action, refer the matter to a Council committee, or remand to the Examiner for further hearing or further consideration.

The Council's final action on the Examiner's recommendation shall be the County's final decision. Any subsequent appeal would be to the Superior Court for King County.

**MINUTES OF THE DECEMBER 9, 2015, HEARING ON DEPARTMENT OF
TRANSPORTATION FILE NO. V-2657**

David Spohr was the Hearing Examiner in this matter. James Chu participated in the hearing.

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

- Exhibit no. 1 KCDOT Report to the Hearing Examiner for the December 9, 2015 hearing
- Exhibit no. 2 Letter from Clerk of the Council to KCDOT transmitting petition, dated August 27, 2010
- Exhibit no. 3 Petition for Vacation of a County Road
- Exhibit no. 4 Copy of filing fee from petitioners: check no. 5790, in the amount of \$100.00
- Exhibit no. 5 Receipt no. 00952 for filing fee
- Exhibit no. 6 Vicinity map
- Exhibit no. 7 Quit Claim Deed in Volume 1199 of Deeds, page 447
- Exhibit no. 8 1923 Establishment Map
- Exhibit no. 9 Letter from KCDOT to petitioner explaining the vacation process, dated September 14, 2010
- Exhibit no. 10 Revised Petition for Vacation of a County Road
- Exhibit no. 11 Final Agency Notice sent December 7, 2010
- Exhibit no. 12 Letter from KCDOT to petitioner regarding adjacent site access issues, dated February 17, 2011
- Exhibit no. 13 Letter from KCDOT to petitioner explaining the 60-day hold for the petition, dated May 18, 2011
- Exhibit no. 14 Letter from KCDOT to petitioner explaining that the petition will remain on hold until October 31, 2011, dated August 4, 2011
- Exhibit no. 15 Revised Petition for Vacation of a County Road, received July 12, 2012
- Exhibit no. 16 Easement to Puget Sound Energy for existing utilities, recorded May 5, 2011
- Exhibit no. 17 Easement for ingress, egress, and utilities benefiting neighboring parcel, recorded December 4, 2012
- Exhibit no. 18 Letter from KCDOT to KC Council providing recommendation, dated April 5, 2013
- Exhibit no. 19 Letter from KCDOT to petitioner identifying DOT recommendation, dated March 26, 2013
- Exhibit no. 20 Compensation in the amount of 6,293.34, check no. 1031505201, dated April 1, 2013
- Exhibit no. 21 Compensation receipt no. 2.029041, dated April 5, 2013
- Exhibit no. 22 Ordinance transmittal letter from KC Executive to Councilmember Larry Phillips, dated August 10, 2015
- Exhibit no. 23 Proposed ordinance 2015-0335
- Exhibit no. 24 2015/2016 Fiscal Note
- Exhibit no. 25 Affidavit of Posting, noting site posting on November 4, dated November 5, 2015
- Exhibit no. 26 Affidavit of Publication, dated December 4, 2015 with publication dates of November 25, 2015 and December 2, 2015
- Exhibit no. 27 Map of subject vacation area
- Exhibit no. 28 List of pending vacations, updated December 9, 2015

December 18, 2015

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CERTIFICATE OF SERVICE

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Proposed ordinance no. **2015-0335**
Adjacent parcel nos. **1021079158, 1021079081**

DAVID HARRISON AND JOE HARRISON
Road Vacation Petition

I, Vonetta Mangaoang, 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 of record/interested persons and primary 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 of record/interested persons at the addresses indicated on the list attached to the original Certificate of Service.

DATED December 18, 2015.



Vonetta S. Mangaoang
Clerk/Manager

All Parties of Record

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