

April 11, 2017

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
Facsimile (206) 296-0198

hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation file no. **V-2697**
Proposed ordinance no. **2017-0054**
Adjacent parcel no. **1871400195**

JAMES AND KATHLEEN PRYOR
Road Vacation Petition

Location: portion of 314th Way SE, Enumclaw, dedicated as Railroad Avenue

Petitioners: **James and Kathleen Pryor**
PO Box 1164
Ravensdale, WA 98051
Telephone: (206) 227-4191
Email: kathypryor60@gmail.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
Department's Final Recommendation:	Approve vacation
Examiner's Recommendation:	Approve vacation

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 April 10, 2017, in the Fred 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:	portion of 314th Way SE, Enumclaw, WA, originally dedicated as “Railroad Avenue”
Right-of-way classification:	C-Class
Area:	901.80 square feet
Compensation:	\$1884.76

2. James-Kathleen Pryor petitioned the County to vacate the above described public right-of-way. On March 16, 2017, the Examiner received the Department Report recommending vacation.
3. 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.
4. Except as provided herein, the Examiner adopts and incorporates the facts set forth in the Department’s report and the statements of fact contained in proposed ordinance no. 2017-0054. The Department’s report will be attached to those copies of this report and recommendation that are submitted to the County Council.
5. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are in the hearing record as Exhibit 9.
6. Chapter 36.87 RCW 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.
7. 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:

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).

8. The subject right-of-way segment here 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 basically a dead-end dogleg at the back of the Pryors' yard. Vacation of the right-of-way 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.
9. 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, and the general risk the liability a property owner (especially an absentee one) carries.
10. We conclude that the road segment subject to this petition is not useful as part of the King County road system and that the public will benefit from its vacation.
11. Where the vacation is appropriate, the standard for determining the amount the petitioner must compensate the County has historically pegged the amount due to the "class" of road, "class" itself being pegged to whether public funds had been expended in the right-of-way acquisition, improvement, or maintenance. For a class "C" road such as this one—were no public funds were expended in the road's acquisition, improvement, or maintenance—compensation has been slotted at 50 percent of the full appraised value. *See* pre-Ord. 18420 version of KCC 14.40.020(B) & .060. Here the Department calculated the value of the 901.80 square feet to be vacated at \$4.18 per square foot, for a total of \$3769.52. When multiplied by the 50 percent discount for a class "C" road, this led to a compensation estimate of \$1884.76. The Pryors paid this \$1884.76 to the King County Treasury last October. Ex. 14.
12. However, between the time of the Pryors' payment and today, Ordinance 18420 changed the standard for determining compensation, and in disparate directions. On the "more" side (meaning the County should require more compensation), the automatic discount for rights-of-way for which the County did not expend funds acquiring, improving, or maintaining, has disappeared. On the "less" side (meaning the County can require less compensation), in 2016 the state changed the standard for right-of-way compensation to allow the local jurisdiction to "adjust the appraised value to reflect the value of the transfer of liability or risk, the increased value to the public and property taxes, the avoided costs for management or maintenance, and any limits on development or future public benefit." RCW 36.87.120. Ordinance 18420 explicitly adopted this new state standard, effective on December 17, 2016. KCC 14.40.020(A)(1).
13. In our previous recommendation in *Portage right-of-way—V-2672*, and again at yesterday's hearing, we announced that for vacation applications like this one, already

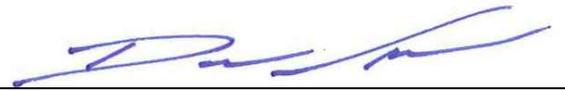
near the end of the pipeline by the effective date of Ordinance 18420, we would continue applying the old standard. That is not a requirement Council must follow; the “vested rights” doctrine—that certain applications are to be decided on the basis of the law as of the date a completed application was submitted, regardless of later regulatory changes—is not applicable to a vacation petition.

14. However, trying to apply a new standard now would require sending the parties back to the drawing board after so much time has passed, because the record contains no information from which we could base a finding of, for example, the value of the transfer of liability or risk or the increased value to the public and property taxes. A remand would certainly increase the Department’s (and thus the public’s) administrative costs, not to mention the Pryors’ burden, and so little compensation here is at stake: at the highest end, the County should be requiring the Pryors to pay the entire \$3769.52 (instead of \$1884.76); at the lowest end, the County should be forgoing compensation altogether.
15. Thus, we recommend sticking with the old formulation for today’s case—and perhaps for a few in the near future where the compensation analysis was completed prior to the code change. The Council, however, retains the discretion to go in a different direction.

RECOMMENDATION:

APPROVE proposed ordinance no. 2017-0054 to vacate the subject road right-of-way.

DATED April 11, 2017.



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 **May 5, 2017**, 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 APRIL 10, 2017, HEARING ON THE ROAD VACATION PETITION OF JAMES AND KATHLEEN PRYOR, DEPARTMENT OF TRANSPORTATION FILE NO. V-2697.

David Spohr was the Hearing Examiner in this matter. The following people were in attendance: Leslie Drake and James and Kathleen Pryor.

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

Exhibit no. 1	Roads Services report to the Hearing Examiner, sent March 16, 2017
Exhibit no. 2	Letter from Clerk of the Council to KCDOT transmitting petition, dated August 4, 2015
Exhibit no. 3	Petition for vacation of a county road, received August 4, 2015
Exhibit no. 4	Filing fee check no. 8530 in the amount of \$100, dated July 28, 2015
Exhibit no. 5	Receipt no. 01002 for filing fee, dated August 5, 2015
Exhibit no. 6	Petitioner’s vacation area vicinity map
Exhibit no. 7	Plat map of the Townsite of Cumberland
Exhibit no. 8	Map of vacation area
Exhibit no. 9	Aerial map of structures located within vacation area
Exhibit no. 10	Email from KCDOT to agencies of final notice of road vacation, sent August 16, 2016
Exhibit no. 11	Letter from KCDOT to Petitioner acknowledging receipt of petition and explaining road vacation process, dated September 21, 2016
Exhibit no. 12	Compensation worksheet
Exhibit no. 13	Letter from KCDOT to Petitioner recommending approval and requesting compensation, dated October 6, 2016
Exhibit no. 14	Compensation payment, check no. 9555406468 in the amount of \$1,884.76, dated October 18, 2016
Exhibit no. 15	Letter from KCDOT to KC Council recommending approval, dated October 6, 2016
Exhibit no. 16	Letter from King County Executive to Councilmember Joe McDermott transmitting ordinance, dated January 27, 2017
Exhibit no. 17	Proposed ordinance 2017-0054
Exhibit no. 18	Fiscal note
Exhibit no. 19	Affidavit of posting, noting posting date of February 28, 2017
Exhibit no. 20	<i>Reserved for affidavit of publication</i>

DS/ed