

March 15, 2023

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

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REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation file no. **V-2738**
Proposed ordinance no. **2022-0448**
Adjacent parcel no. **1550000015**

RICHARD ELANDER AND VERNON TIMMONS

Road Vacation Petition

Location: a portion of 310th Avenue NE/Alder Road

Applicants: **Richard Elander and Vernon Timmons**
37897 Ronald Ct
Cathedral City, CA 92234
Email: stevetmi54@gmail.com

King County: Department of Local Services, Road Services Division
represented by **Leslie Drake**
201 S Jackson Street
Seattle, WA 98104
Telephone: (206) 477-7764
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FINDINGS AND CONCLUSIONS:

Overview

1. Richard Elander and Vernon Timmons petition the County to vacate an approximately 35,139-square foot stretch of public right-of-way near Duvall. The Department of Local Services, Road Services Division (Roads), urges vacation with reduced compensation. We conducted the public hearing on Council's behalf on March 1, 2023. After hearing witness testimony and observing demeanor, studying the exhibits entered into evidence, and considering the arguments and the relevant law, **we recommend that Council vacate the subject right-of-way, contingent on Petitioners' \$809 payment.**

Background and Standards

2. 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?
3. A petitioner has the burden to show that the “road is [1] useless as part of the county road system and [2] 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).
4. Where vacation is appropriate, we calculate compensation by [3] starting with the increase in property values the receiving parcel will garner from the extra square footage the (formerly) public right-of-way area adds to the parcel; this figure is generated by the Assessor. However, that is only the starting point, because [4] State and County law allow local legislative branches to adjust the appraised value to reflect the expected value to the public from 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 created a model for calculating these adjustments, updated annually. Roads then applies those figures to a given parcel.
5. Except as provided herein, we adopt and incorporate the facts set forth in Roads’ report and in proposed ordinance no. 2022-0448. 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. Exs. 1, 5.

Is Vacation Warranted?

6. Petitioners abut the west side of a legal right-of-way created via a 1916 plat, which we will call Alder Road for simplicity sake, depicted at exhibit 5. Petitioners essentially wish to acquire the west side of that right-of-way. The property owners on the east side of that right-of-way did not join the petition, so today’s proposal is only a half-width acquisition. (The east-side property owners would be the ones who would need to petition to vacate the east half of Alder Road.)
7. While Alder Road was platted to connect 310th Avenue NE from the south to Mountain View Road NE to the north, Alder Road was never opened, constructed, or maintained for public use, and it is not known to be used informally for access to any property. Both the Petitioners and their east-side neighbors (and various neighbors to the south) reach their properties from 310th Avenue NE. There is, and apparently has never been, any

actual access via Mountain View Road NE. Thus, on first blush, vacation seems eminently appropriate.

8. However, one Roads reviewer noted that:

The south end of this road[?]s] recently slide resulting in a temporary closure and considerable expenditure to restore the roadway to one lane for the homes served. Since 310th is a sole access dead-end road to the south it may be desirable to retain this right of way to north to construct an alternative road out should the main road fail again.

Ex. 1 at 035. That gives us pause. Can we conclude that right-of-way is not necessary for the present or future public road system for travel, including for emergency services? We have noted in several hearings that if there is a potential for future public access on a right-of-way, the thumb should be on the scale of retaining the public access option.

9. Counterbalancing this, another Roads reviewer noted that, because the to-be-vacated right-of-way is on a steep ridge with cross slope of approximately 35%, which would require large cuts and fill to site a road, it would not be cost-effective to construct Alder Road. Ex. 1 at 029. While still another noted that the Alder Road right-of-way:

is located within a 165-foot Type F stream buffer per KCC 21A.24.358(C)(1) based on location of streams shown on the DNR's Forest Practices Application Mapping Tool.¹ Wetlands may also be present based on anecdotal information and aerial imagery.... Right-of-way is also located in an erosion hazard area (development standards at KCC 21A.24.220) and multiple potential steep slope hazard areas (development standards at 21A.24.310).

Ex. 1 at 032.

10. When we probed Roads at hearing on the topic; they had two responses. First, given all the physical and legal impracticalities of building an actual Alder Road, even if there were an additional slide on 310th Avenue NE it would be far more practical to expend funds rebuilding 310th than trying to cut a brand-new Alder Road. And second, if there was no other option, because the east side of Alder Road right-of-way is not being vacated now, the remaining right-of-way would be of sufficient width for a one-way access route.
11. While the appropriateness of vacation is no slam dunk, we find that Alder Road is useless as part of the county road system and that the public will benefit (as explained below) by its vacation and abandonment.

What Compensation is Due?

12. Compensation is the simpler issue here. The Assessor opines that Petitioners' property will increase \$5000 with the extra square footage the (formerly) public right-of-way area

¹ <https://fpamt.dnr.wa.gov/default.aspx>.

will add to the parcel. And the County will save an estimated \$4087 in eliminated future maintenance/management costs and will add \$104 in expected property taxes. The appropriate quantum of compensation to require of Petitioners is thus \$809.

RECOMMENDATION:

1. We recommend that Council APPROVE proposed ordinance no. 2022-0448 to vacate the western half of the right-of-way, the portion abutting parcel 1550000015.
2. This is CONTINGENT on petitioner paying \$809 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$809 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 1550000015. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 1550000015 is vacated.

DATED March 15, 2023.



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 10, 2023**, 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 MARCH 1, 2023, HEARING ON THE ROAD VACATION
PETITION OF RICHARD ELANDER AND VERNON TIMMONS,
DEPARTMENT OF TRANSPORTATION FILE NO. V-2738**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake, Vernon Timmons, and Richard Elander.

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

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| Exhibit no. 1 | Roads Services report to the Hearing Examiner, sent February 14, 2023 |
| Exhibit no. 2 | Letter from Clerk of the Council to KCDOT transmitting petition, dated September 22, 2020 |
| Exhibit no. 3 | Petition for vacation of a county road, transmitted September 22, 2020 |
| Exhibit no. 4 | Letter from KCDOT to Petitioner acknowledging receipt of petition and explaining road vacation process, dated October 15, 2020 |
| Exhibit no. 5 | Vacation area map |
| Exhibit no. 6 | Plat Cherry Gardens division no. 3 |
| Exhibit no. 7 | KC Assessors information for Petitioners' property, APN 1550000015 |
| Exhibit no. 8 | Final stakeholder notification, sent February 5, 2021, and March 16, 2021 |
| Exhibit no. 9 | Easement from Petitioners in favor of KC Water District no. 119 |
| Exhibit no. 10 | Email exchange with Assessor's Office regarding valuation of vacation area |
| Exhibit no. 11 | Compensation calculation model spreadsheet for Petitioners property, APN 1550000015 |
| Exhibit no. 12 | Letter from KCDOT to Petitioner recommending approval, conveying County Road Engineer report, proposing compensation waiver, dated April 23, 2021 |
| Exhibit no. 13 | Road Engineer report |
| Exhibit no. 14 | Letter from KCDOT to KC Council recommending approval and transmitting proposed ordinance, dated November 28, 2022 |
| Exhibit no. 15 | Proposed ordinance |
| Exhibit no. 16 | Fiscal note |
| Exhibit no. 17 | Affidavit of posting |
| Exhibit no. 18 | <i>Reserved for future submission of</i> Affidavit of publication |
| Exhibit no. 19 | Letter with copy of CRE Report and Notice of Hearing to property 18631 Mountain View Road NE |