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KC COUNCIL ORD 82.00
PAGE-001 OF 011
07/07/2014 10:55
KING COUNTY, WA

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

1. **ORDINANCE 17836 AN ORDINANCE authorizing the vacation of a portion of F.N. Lyons Road, File V-2667. Petitioner: Diane Janshen.**

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page _____ of document

Grantor(s) (Last name, first name, initials)

1. **King County, Washington**

Additional names on page _____ of document.

Grantee(s) (Last name first, then first name and initials)

1. King County, Washington

2. _____

Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

That portion of the F.N. Lyons Road crossing and dividing the petitioner's property. Petitioner's...

Additional legal is on page _____ of document.

Assessor's Property Tax Parcel/Account Number

1026069195, 1026069041 _____

Assessor Tax # not yet assigned

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

RECEIVED
2014 JUL 29 AM 9:37
CLERK
KING COUNTY COUNCIL



KING COUNTY
Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

June 18, 2014

Ordinance 17836

Proposed No. 2014-0126.2

Sponsors Phillips

1 AN ORDINANCE authorizing the vacation of a portion of
2 F.N. Lyons Road, File V-2667; Petitioner: Diane Janshen.

3 STATEMENT OF FACTS:

- 4 1. A petition has been filed requesting vacation of a portion of F.N. Lyons
5 Road right-of-way, also known as County Road No. 526, hereinafter
6 described.
- 7 2. The department of transportation notified the various utility companies
8 serving the area and has been advised that easements have either been
9 obtained or are not required within the vacation area.
- 10 3. The department of transportation records indicates that King County
11 has expended public funds for the acquisition of the F.N. Lyons Road
12 right-of-way.
- 13 4. The department of transportation considers the subject portion of the
14 right-of-way useless as part of the county road system and believes the
15 public would benefit by the return of this unused area to the public tax
16 rolls.
- 17 5. The right-of-way is classified as "A-Class" and, in accordance with
18 K.C.C. 14.40.020, the compensation due to King County is based on one
19 hundred percent of the assessed value of the subject right-of-way, in this

20 case, \$40,000.00. King County is in receipt of \$40,000.00 from the
21 petitioner.

22 6. Due notice was given in the manner provided by law and a hearing was
23 held by the office of the hearing examiner on the 14th day of May, 2014.

24 7. In consideration of the benefits to be derived from the subject vacation,
25 the council has determined that it is in the best interest of the citizens of
26 King County to grant said petition.

27 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

28 SECTION 1. The council, on the effective date of this ordinance, hereby vacates
29 and abandons that portion of the F.N. Lyons Road right-of-way, also known as County
30 Road No. 526, as conveyed to King County by the recording of a Quit Claim Deed dated
31 May 27, 1909, recorded in Volume 672 of Deeds, on Page 130, records of King County,
32 Washington as described below:

33 That portion of the F.N. Lyons Road, also known as County Road No.
34 526, situated in the Southwest quarter of Section 10, Township 26 North,
35 Range 6 East, Willamette Meridian, King County, Washington, located
36 within the following described property:

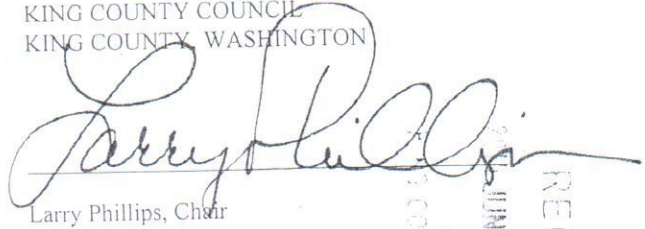
37 That portion of the F.N. Lyons Road crossing and dividing
38 the petitioner's property. Petitioner's parcel numbers are

39 1026069195 and 1026069041. The tax parcel number of
40 the section of road to be vacated is 1026069195.
41

Ordinance 17836 was introduced on 3/31/2014 and passed by the Metropolitan King County Council on 6/16/2014, by the following vote:

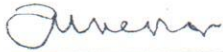
Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Lambert, Mr. Dunn, Mr. McDermott, Mr. Dembowski and Mr.
Upthegrove
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Larry Phillips, Chair

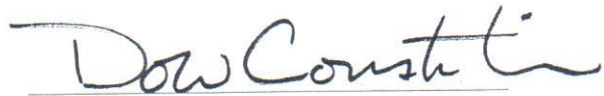
ATTEST:



Anne Noris, Clerk of the Council

RECEIVED
JUN 24 PM 4:18
CLERK
KING COUNTY COUNCIL

APPROVED this 24 day of JUNE, 2014.



Dow Constantine, County Executive

Attachments: A. Hearing Examiner Report dated May 21, 2014

May 21, 2014

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

400 Yesler Way, Suite 240
Seattle, Washington 98104
Telephone (206) 477-0860
Facsimile (206) 296-0198
hearingexaminer@kingcounty.gov

REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation File No. V-2667
Proposed ordinance no. 2014-0126
Adjacent parcel nos. 1026069195, 1026069041

DIANE JANSHEN
Road Vacation Petition

Location: Portion of F.N.Lyons Road, Woodinville

Petitioner: Diane Janshen
represented by **Keith Wells**
13901 NE 175th Street Suite G
Woodinville, WA 98072
Telephone: (425) 485-6600

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:	Approve
Department's Final Recommendation:	Approve
Examiner's Recommendation:	Approve

PUBLIC HEARING:

After reviewing the Department report and accompanying attachments and exhibits, the Examiner conducted a public hearing on the matter on May 14, 2014, in the Ginger Conference

Room, 12th Floor, King County Courthouse, 516 Third Avenue. At the conclusion of the hearing, the Examiner held the record open to allow the Department to submit certain additional information. The Department submitted that information earlier today, and the petitioner has no objection to inclusion of that submittal into the hearing record.

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.

FINDINGS AND CONCLUSIONS:

1. General Information:

Road name and location:	Portion of F.N.Lyons Road, Woodinville
Right of way classification:	Class A
Area: square feet	38,876 square feet
Compensation:	\$40,000

2. Diane Janshen petitioned the County to vacate the above described public right-of-way. On April 14, 2014, the Examiner received the Department of Transportation (Department) Report recommending approval.
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. 2014-0126. The Department's report will be attached to those copies of this report and recommendation that are submitted to the Council.
5. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are in the hearing record as exhibits 6 and 8.
6. RCW 36.87 sets the general framework for county road vacations, augmented by KCC 14.40 and related judicial opinions. There are 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 meets 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. There is no argument that the road or road area here is of any use to the public. Although the County paid \$600 to acquire the property in 1909, the actual road was apparently built

offsite. If there ever was a road on – or even informal access across – the area to be vacated, it preceded the modern area. Currently much of the Janshen residence and part of the tennis court sits on what is essentially an orphaned, check mark-shaped segment that bisects Ms. Janshen's otherwise rectangular-shaped holding. None of the agencies or utilities the Department contacted (and contacted repeatedly) had any objections to vacation, nor have any neighbors expressed a concern. Vacation would have no adverse effect on the provision of access and fire and emergency services to the abutting properties and surrounding area. The road is not necessary for present or future transportation or utilities.

9. Uselessness is but one requirement for vacation; another is the vacation benefitting the public. RCW 36.87.020. Here the main beneficiary is Ms. Janshen, but that is not preclusive. A private party benefitting directly from a street vacation does not mean the vacation does not also serve a public purpose. *Hoskins v. City of Kirkland*, 7 Wn. App. 957, 964, 503 P.2d 1117 (1972). The public benefit is three-fold. Immediately the County will obtain (as described below) the proceeds from essentially selling surplus property. Longer term, 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. Given the lack of countervailing reasons to hold onto the road, those are sufficient public benefits to warrant vacation.
10. We conclude that the road segment subject to this petition is not a useful as part of the King County road system and that the public will benefit from its vacation.
11. Where vacation is appropriate, the amount a petitioner must compensate the County for the road area 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, as the County originally expended funds acquiring the road, the road is "Class A," with compensation at one-hundred percent of the road's appraised value. KCC 14.40.060(A), .020(A).
12. In August 2012, the Department valued the property at \$78,811.25, amending that slightly to \$75,092.12 in March 2013. In response, Ms. Janshen submitted a summary appraisal opining that the subject property was "unbuildable" and employing two valuation approaches. First, her appraiser compared the road area to sales of small, marginal or uneconomic sites (a property in the floodplain, one encumbered by a wetland, and one suffering significant road noise) and arrived at an estimate for the road area of \$16,000. Second, her appraiser looked at sales of lots with single family homes, and then discounted the road area dramatically to arrive at \$13,000. The Department's review appraiser pointed out several concerns with her appraisal, but used some of those dollars-per-square foot values from her appraiser's second approach to arrive at a \$40,000 estimated value. Ms. Janshen has already deposited that \$40,000 with the Department, but argues that final compensation should be less than \$40,000.
13. The premise of Ms. Janshen's appraiser treating the road as an unbuildable, stand-alone parcel has some intuitive appeal but is ultimately incorrect and significantly undervalues the road area's value. Ms. Janshen's already has most of a residence and tennis court on the road area. Even if the road area cut a different swath through her holdings, a swath that did not touch any improvements, that approach would still ignore the reality of the situation. The highest and best use of the road property is not as a "stand-alone,"

marginal lot. Instead, it will become part of a single, contiguous, unencumbered Janshen homesite. Pegging the value of the road area to the overall Janshen property, and then comparing the Janshen property to sales of other single family lots, is correct.¹

14. While the Department's approach appears correct, and we are convinced that \$40,000 does not overstate fair market value, we are slightly concerned that \$40,000 may understate it, even ignoring the value of the improvements on the road swath.² The Department's review appraiser explicitly questioned whether the properties Ms. Janshen's appraiser used as comparable sales were "truly comparable." That Janshen-generated, \$1.31 per square foot value from those sales was less than the \$1.41 and \$2.58 per square foot estimates the Department had initially landed on. And then the review appraiser discounts that \$1.31 per square foot value by twenty percent. In the end, however, we accept the Department's review appraiser's assessment that \$1.31 per square foot is "reasonable and supported" and his opinion that a twenty percent discount is warranted. We conclude that compensation is appropriate.
15. That concludes our analysis of Ms. Janshen's petition. However, given that our report is a recommendation to Council, and this is our first such recommendation in several years, we provide some possible grist for a later Council legislative mill.
16. 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). RCW 36.87.070 declares that such costs and expenses are recoverable whether the petition is granted or not, while RCW 36.87.120 clarifies that the costs of county appraisals are recoverable expenses. KCC 14.40.040 tracks these, requiring a deposit to "defray examination, report, publication, investigative and other costs connected with the application."

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. Here the Department estimates its costs with Ms. Janshen's petition at \$20,000 to \$22,000. At hearing, the Department opined that Ms. Janshen's petition was a fairly typical one. Thus the \$100 fee is only covering an infinitesimal percent of the Department's costs. Over time the County will gradually recover some of those costs in the form of enhanced tax

¹ There may be road vacations where someone other than an abutting owner might have an interest in the area to be vacated and be willing to pay more than an abutting land owner. But a petitioner, as here, is typically someone who wants to unencumber or add to her or his contiguous holding.

² The true value to Ms. Janshen far exceeds \$40,000, given that her house's and tennis court's continuing existence and salability (without this vacation) are compromised, having been built partially on public property. But that would overvalue the road area. Fair market value looks at what a buyer "willing, but not obligated to buy" the property would pay, not what someone who is essentially over a barrel would sacrifice.

revenues on what will become private, taxable property. But here the Department estimates the tax enhancement from adding the road area to the tax base at approximately \$1500 to \$1700 per year, meaning it will take well over a decade for the County to break even.

18. That seems 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 the RCW seems to explicitly envision a county recovering its costs in processing road vacations, the current system is set up not to recover costs beyond the first \$100. The concern is heightened by the Department's well-documented, continuing budget shortfalls.
19. Perhaps because there is no system in place where a petitioner pays a fee or deposit to defray cover the likely, expected Department processing costs beyond the first \$100, the "deposit" the Department requires a petitioner to make is the entire estimated fair market value. In this case, Ms. Janshen had to deposit the full \$40,000 in estimated compensation last July, even though, with Department cutbacks, the Department could not complete its work until recently. That \$40,000 is payment for property Ms. Janshen will not receive until after the road vacation is approved by Council and finalized. One possible future solution would be the County requiring a petitioner to deposit up front a sum sufficient to significantly defray the County's expected costs and expenses processing a petition, and only requiring the petitioner to make a deposit towards the property's fair market value later in the vacation process.³

RECOMMENDATION:

APPROVE proposed ordinance no. 2014-0126 to vacate the subject road right-of-way.

DATED May 21, 2014.


David Spohr
King County Hearing Examiner

³ In this case, we found the \$40,000 Ms. Janshen deposited appropriate as fair market value. But we could have decided – and the Council still can decide, as it takes final action on our recommendation – that some amount lower or higher than \$40,000 is appropriate, necessitating either a refund or an additional demand prior to title transfer.

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision 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 *June 4, 2014*. If a notice of appeal is filed, the original 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 June 11, 2014*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

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 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.

V-2667-Diane Janshen

MINUTES OF THE May 14, 2014, HEARING ON DEPARTMENT OF TRANSPORTATION
FILE NO. V-2667.

David Spohr was the Hearing Examiner in this matter. James Chu and Lydia Reynolds-Jones participated in the hearing on behalf of the Department and Keith Wells on behalf of the Petitioner.

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

- | | |
|----------------|--|
| Exhibit no. 1 | Report to the Hearing Examiner for the May 14, 2014, hearing |
| Exhibit no. 2 | Letter from Clerk of the Council to KCDOT, transmitting petition, dated April 25, 2012 |
| Exhibit no. 3 | Petition for Vacation of a County Road including legal descriptions of Petitioner's property |
| Exhibit no. 4 | Copy of filing fee: check no. 1072, in the amount of \$100 |
| Exhibit no. 5 | Receipt no. 00971 for filing fee |
| Exhibit no. 6 | Vicinity map |
| Exhibit no. 7 | Quit Claim Deed transferring proposed vacation area to King County for road purposes, recorded June 18, 1909 |
| Exhibit no. 8 | 1909 establishment map showing proposed vacation area property |
| Exhibit no. 9 | Letter from KCDOT to Petitioner describing road vacation process, dated August 2, 2012 |
| Exhibit no. 10 | Notice of proposed road vacation, dated August 2, 2012 |
| Exhibit no. 11 | Final Agency Notice sent November 9, 2012 |
| Exhibit no. 12 | Letter from KCDOT to KC Council recommending approval of petition, dated December 18, 2013 |
| Exhibit no. 13 | Letter from KCDOT to Petitioner recommending approval and requesting compensation, dated March 7, 2013 |
| Exhibit no. 14 | Petitioner submitted Land Appraisal Summary Report |
| Exhibit no. 15 | KC Real Estate Services section Appraisal Review |
| Exhibit no. 16 | Copy of compensation payment, check no. 512837 in the amount of \$40,000 |
| Exhibit no. 17 | Receipt for compensation payment |
| Exhibit no. 18 | Letter from KCDOT to KC Council transmitting proposed ordinance, dated March 12, 2014 |
| Exhibit no. 19 | Proposed Ordinance 2014-0126 |
| Exhibit no. 20 | Fiscal Note |
| Exhibit no. 21 | Affidavit of Posting, noting posting date of April 8, 2014 |
| Exhibit no. 22 | Affidavit of Publication, noting April 30, 2014, and May 7, 2014, publication dates |

The following exhibits were offered and entered into the hearing record on May 21, 2014:

- | | |
|----------------|---|
| Exhibit no. 23 | Email from James Chu to David Spohr sent May 21, 2014 |
|----------------|---|

DS/vsm