

September 29, 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-2706**
Proposed ordinance no. **2017-0320**
Adjacent parcel nos. **2924089034, 2924089001**

LIWAY HSI AND CLAREMONT FOREST, LLC
Road Vacation Petition

Location: Portion of SE 70th Drive-Geo. Stephan Road-County Road no.
1615, Snoqualmie

Petitioner: Claremont Forest LLC
represented by **Liway Hsi**
40404A SE 70th Drive
Snoqualmie, WA 98065
Telephone: (909) 525-8610
Email: ngfy90t@yahoo.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 with transfer in-lieu
Department's Final Recommendation:	Approve vacation with transfer in-lieu
Examiner's Recommendation:	Approve vacation with transfer in-lieu

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 September 25, 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 SE 70th Drive-Geo. Stephan Road- County Road no. 1615, Snoqualmie
Area:	25,165 square feet
Compensation:	Transfer an area of 30,358 square feet within the same parcel to King County

2. Claremont Forest LLC petitioned the County to vacate the above-described public right-of-way. On September 11, 2017, the Examiner received the 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. 2017-0320. 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 exhibits 7 and 8.
6. Chapter RCW 36.87 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. “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 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 benefited 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 was quit-claimed to the County in 1920. And a road (SE 70th Drive) was built in the *vicinity* of where the right-of-way deed said it should go. Yet except for a tiny patch of overlap, the right-of-way was built on adjacent land. Ex. 7. Beyond that tiny overlapping patch, the recorded right-of-way was never opened, constructed, or maintained for public use. It is basically a brambled area in the middle of forest land. Ex. 18 at 004–07. SE 70th Drive as actually constructed provides access for abutting properties and for fire and emergency services, and vacating the right-of-way would have no adverse effect on the provision of any access. The actual SE 70th Drive, and not the legal right-of-way, is what is necessary for the present or future public road system for travel or utilities purposes.
9. As a condition of vacation, the Petitioner has executed and delivered a Statutory Warranty Deed in favor of King County for the proposed conveyance. Acceptance of the Petitioner’s conveyance will perfect the county’s interest in the as-built SE 70th Drive. KCC 14.40.020.B allows the County to “accept real property of equal or greater value in lieu of cash compensation.” The square footage of the area the County will obtain is actually larger than the area being vacated (30,358 versus 25,165 square feet).
10. We observed in our Notice of Hearing that

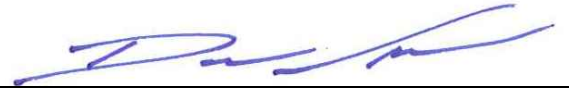
There is at least a slightly interesting academic issue of whether the County has obtained some sort of prescriptive easement over the right-of-way as actually built and used, and thus this may not truly be an in lieu transfer (i.e. perhaps the County already possesses the right to use the road as constructed plus the deeded, but unopened strip). We say that is an academic issue because, as Designated Forest Land with an average assessed value of \$.029 per square foot, at most an outright transfer of 25,165 square feet would be valued at less than \$730, which is not worth the effort it would take to obtain compensation. Thus, unlike some other road vacations, there is nothing in particular we are looking at KCDOT to address in his application.

KCDOT came back with an even stronger articulation of the benefit: the swap will provide the County with a *perfected* interest in the improved and open SE 70th Drive. That perfection is thus worth significantly more than \$730. So not only will the public decidedly benefit from this vacation, but the normal compensation requirement has been more than adequately satisfied by the transfer in-lieu.

RECOMMENDATION:

Without any hesitation, we recommend APPROVAL of proposed ordinance no. 2017-0320 to vacate the subject road right-of-way.

DATED September 29, 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 **October 23, 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 SEPTEMBER 25, 2017, HEARING ON THE ROAD VACATION
PETITION OF LIWAY HSI AND CLAREMONT FOREST, LLC, DEPARTMENT OF
TRANSPORTATION FILE NO. V-2706**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake for King County Department of Transportation, Road Services Division, and Liway His, the Petitioner.

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

- | | |
|----------------|---|
| Exhibit no. 1 | Roads Services report to the Hearing Examiner, sent on September 11, 2017 |
| Exhibit no. 2 | Letter from Clerk of the Council to KCDOT transmitting petition, dated August 2, 2016 |
| Exhibit no. 3 | Petition for vacation of a county road, transmitted August 2, 2016 |
| Exhibit no. 4 | Vicinity map |
| Exhibit no. 5 | Map of large lot segregation for Claremont Forest |
| Exhibit no. 6 | Quit claim deed, dated August 30, 1920 |
| Exhibit no. 7 | Map of deed swap |
| Exhibit no. 8 | Assessor's map NE-29-24-08 |
| Exhibit no. 9 | Final agency notice re: comment deadline of November 7, 2016, dated October 6, 2016 |
| Exhibit no. 10 | Letter from KCDOT to Petitioner recommending approval and requesting Statutory Warranty Deed for exchange property in lieu of compensation, dated March 6, 2017 |
| Exhibit no. 11 | Washington Secretary of State registration detail for Claremont Forest |
| Exhibit no. 12 | Road Services County road engineer report, dated March 16, 2017 |
| Exhibit no. 13 | Statutory warranty deed, dated March 9, 2017 |
| Exhibit no. 14 | Letter from KCDOT to KC Council recommending approval, dated March 6, 2017 |
| Exhibit no. 15 | Letter from King County Executive to Councilmember Joe McDermott transmitting proposed ordinance, dated April 26, 2017 |
| Exhibit no. 16 | Proposed ordinance no. 2017-0320 |
| Exhibit no. 17 | Fiscal note, dated March 17, 2017 |
| Exhibit no. 18 | Affidavit of posting, noting posting date of August 29, 2017 |
| Exhibit no. 19 | <i>Reserved for future submission of affidavit of publication</i> |

DS/vsm