

September 5, 2019

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

King County Courthouse
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REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation file no. **V-2709**
Proposed ordinance no. **2018-0009**
Adjacent parcel nos. **7930000220, 7930000180, 7930000170**

GKW PROPERTIES AND TAMARA TALLARITI
Road Vacation Petition

Location: SW 284th Street and a portion of Cliff Avenue, Vashon Island

King County: Department of Local Services, Road Services Section
represented by **Leslie Drake**
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Petitioners: GKW Properties
represented by **Geoff and Kelly Woton**
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Petitioners: **Tamara and Jeff Tallariti**
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SUMMARY OF RECOMMENDATIONS:

Department's Recommendation:

Approve vacation, waive compensation

Examiner's Recommendation:

Approve vacation, waive compensation

FINDINGS AND CONCLUSIONS:

1. This public right-of-way involves 21,707 square feet of SW 284th Street and Cliff Avenue on Vashon Island. Tamara Tallariti and GKW Properties, LLC (GKW) petitioned the County to vacate it. Except as provided herein, we adopt and incorporate the facts set forth in Roads' reports (exhibits 1 and 23) and in proposed ordinance no. 2018-0009. Those documents, along with maps showing the vicinity of the proposed vacation and the specific area to be vacated (exhibits 5 and 6), will be attached to those copies of this recommendation submitted to Council.
2. Chapter RCW 36.87 sets the general framework for county road vacations, augmented by KCC chapter 14.40. There are at least four main, 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 should this number be downwardly adjusted? Whether the public benefits from a vacation depends in part on the compensation the County obtains and the costs the County avoids.
3. We held two public hearings here on behalf of the Metropolitan King County Council. The first was in February 2018 and focused largely on whether vacation was warranted.
4. 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 meets the standard. RCW 36.87.060(1).
5. The original scope of the vacation petition appeared to infringe on utility easements and cut off access to other properties. Ex. 3 at 004. The petition was amended to reduce its scope. Ex. 5 at 003. A utility easement to Puget Sound Energy has been recorded for existing utility facilities. The amended right-of-way segment to be vacated serves no public purpose. It is not currently opened, constructed, or maintained for public use, and is not known to be used informally for access to other properties. Vacation 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.
6. Whether the public will be benefitted by the vacation—the second part of RCW 36.87.060(1)—has both a standalone, intangible component and a financial component. The more the County would financially benefit by vacating a right-of-way, the more the public would benefit from transferring that interest into private hands. We discuss the dollars directly below, but we see nothing indicating that vacating this right-of-way is inconsistent with the public interest.

7. The February 2018 hearing was truncated, however, because the Roads Services Section (Roads) was unable to come up with a comprehensive methodology for calculating the downward adjustments to the appraised value “to reflect the value of the transfer of liability or risk, the increased value to the public in property taxes, the avoided costs for management or maintenance, and any limits on development or future public benefit.” RCW 36.87.120; KCC 14.40.020.A.1. We thus stayed this and other pending road vacation petitions and turned to Performance, Strategy and Budget (PSB) to help us come up with a sound financial model.
8. PSB answered the call, completing a thorough report at the end of January 2019 that, per the Executive’s transmittal letter, “furthers the King County Strategic Plan goal of exercising sound financial management by understanding administrative costs and valuation of rights-of-way in road vacation petitions.” We resumed the public hearing in August 2019.
9. As to compensation, the PSB model starts by working with the Assessor to get an individualized assessment of what value merging the right-of-way area would add to each specific parcel. Ex. 29. Here, vacation will increase the GKW property’s value by \$1000, and the two Tallariti properties will increase by \$1000 and \$3000 respectively.
10. PSB’s model assessed the various downward adjustments to compensation for different categories of vacations—opened public roads, frequently traversed public areas, and unopened and undeveloped rights-of-way. PSB used information from the Office of Risk Assessment—whom PSB described as having a complete methodology for calculating claims judgments and settlements, per mile—to arrive at a number for avoided liability risk. PSB explained which types of taxes (General Fund and Roads Fund) would figure into the mix and which would not (other taxes such as levy lid lifts). PSB analyzed the different avoided maintenance costs (per category). It also explained why it did not include petition-processing costs in its assessment. Ex. 29.
11. We have previously detailed the workings of PSB’s model in great detail, and Council has adopted it in past vacation decisions.¹ Despite this, Roads continues to argue for a policy of zero compensation. Here, it asserts that compensation would be “insignificant in comparison to the County’s potential liability from [the right-of-way’s] mere retention.” Ex. 28 at 4. Roads still has not offered—after years of our requesting one—a model to quantify liability savings or other RCW 36.87.120 adjustments. Conversely, PSB worked with County’s Office of Risk Management Services develop a detailed formula for this calculation. Ex. 29 at 1. While liability savings from closing *open* public roads are significant, liability savings for vacating unopened, undeveloped rights-of-way like today’s are, in PSB’s words, “Zero. There are few claims, judgments or settlements on these types of property.” Ex. 29 at 2.
12. Despite their continued protestations, Roads has yet to offer any substantive analysis for how PSB’s model fails to adequately capture some hidden cost. Nor has it offered

¹ See, e.g., https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2019/V-2692_GoodGround_GirlScoutsWW_Report_CDversion.ashx?la=en.

anything remotely resembling a commensurate alternative. If Roads produces a competing model to the version PSB and Risk Management created for calculating liability risk and other RCW 36.87.120 adjustments, we will carefully study it. Short of that, this is the last time we squander any time and energy—ours or Council’s—acknowledging Roads’ recycled, tired arguments, unsupported by any serious financial accounting.

13. We conclude that waiving compensation is appropriate here, but for quantitatively supported reasons.
14. GKW is an easy call. Per the Assessor, vacation enhances GKW’s property (parcel 793000-0220) by \$1000. Applying PSB’s methodology, the County gains \$2020 in avoided costs, meaning vacation produces a net \$1020 benefit to the County. A full waiver of compensation is appropriate for the GKW parcel
15. The analysis is a little more involved for the Tallariti holdings because there are two abutting parcels. For the 793000-0170, the analysis is the same as GKW’s: vacation enhances the private property value by \$1000, while the County gains \$2020 in avoided costs, meaning vacating -0170 produces a net \$1020 benefit to the County. However, for -0180, vacation enhances the private property value by \$3000, while the County will see \$2059 in gain, meaning compensation for -0180 should be set at \$941.
16. However, that assumes we should treat the Tallariti properties independently. Identifying the appropriate unit of property against which to assess the effect of a governmental action was tackled most recently and thoroughly by the Supreme Court in *Murr v. Wisconsin*, 137 S.Ct. 1933 (2017). The Court found “flawed,” and rejected a request to adopt, a presumption that lot lines define the relevant property in every instance. *Id.* at 1947. The Court held that no single consideration can supply the exclusive test for determining the relevant property unit; instead courts must consider multiple factors. *Id.* at 1945.
17. Here we find it appropriate to consider the contiguous Tallariti parcels as a whole, rather than as two independent parcels. Under that analysis, the combined impact of vacating the right-of-way across both -0170 and -0180 enhances private property values by \$4000 but saves the County \$4079, meaning vacation produces a net \$79 public benefit. Under that approach—which we think the correct one for analyzing the Tallariti holdings—completely waiving compensation is appropriate.

RECOMMENDATION:

APPROVE proposed ordinance no. 2018-0009 to vacate the subject road right-of-way and waive all compensation.



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 *September 30, 2019*, 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 FEBRUARY 27, 2018, HEARING ON THE ROAD VACATION PETITION OF GKW PROPERTIES AND TAMARA TALLARITI, DEPARTMENT OF TRANSPORTATION FILE NO. V-2709

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake and Tamara Tallariti.

The following exhibits were offered and entered into the hearing record on February 27, 2018:

Exhibit no. 1	Roads Services report to the Hearing Examiner, sent February 13, 2018
Exhibit no. 2	Letter from Clerk of the Council to KCDOT transmitting petition, dated December 15, 2016
Exhibit no. 3	Petition for vacation of a county road, transmitted December 12, 2016
Exhibit no. 4	Revised vacation petition
Exhibit no. 5	Site map
Exhibit no. 6	Vicinity map
Exhibit no. 7	Spring Beach plat
Exhibit no. 8	King County Assessor records for parcel no 7930000220
Exhibit no. 9	Assessor records for parcel no. 7930000170
Exhibit no. 10	Letter from KCDOT to Petitioner acknowledging receipt of petition and explaining road vacation process, dated December 21, 2016
Exhibit no. 11	Final agency notice to stakeholders, sent March 9, 2017
Exhibit no. 12	Letter from KCDOT to Petitioner recommending approval and conveying Road Engineer report, dated September 13, 2017

- Exhibit no. 13 County Road Engineer report
- Exhibit no. 14 Petitioner's easement waiver for Cliff Avenue, Spring Beach plat, dated July 17, 2017
- Exhibit no. 15 Letter from KCDOT to Margaret Campbell conveying County Road Engineer report, dated January 30, 2018
- Exhibit no. 16 Letter from KCDOT to William Schaefer conveying County Road Engineer report, dated January 30, 2018
- Exhibit no. 17 Letter from KCDOT to Margaret Campbell conveying County Road Engineer report, dated February 5, 2018
- Exhibit no. 18 Letter from KCDOT to KC Council recommending approval and transmitting proposed ordinance, dated October 18, 2017
- Exhibit no. 19 Proposed ordinance
- Exhibit no. 20 Fiscal note
- Exhibit no. 21 Affidavit of posting, noting posting date of January 26, 2018

The following exhibit was entered into the hearing record on March 5, 2018:

- Exhibit no. 22 Affidavit of publication, noting advertising on February 14 and 21, 2018

**MINUTES OF THE AUGUST 23, 2019, HEARING ON THE ROAD VACATION
PETITION OF GKW PROPERTIES AND TAMARA TALLARITI, DEPARTMENT OF
TRANSPORTATION FILE NO. V-2709**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake and Kelly Woton.

The following exhibit was entered into the hearing record on August 23, 2019:

- Exhibit no. 23 Roads Services report to the Hearing Examiner, August 8, 2019
- Exhibit no. 24 E-mail, from Jeffrey Darrow, sent July 22, 2019
- Exhibit no. 25 Valuation of Roads Right-of-Way, parcel 7930000220
- Exhibit no. 26 Valuation of Roads Right-of-Way, parcel 7930000170
- Exhibit no. 27 Valuation of Roads Right-of-Way, parcel 7930000180
- Exhibit no. 28 Affidavit of Notice, dated August 1, 2019
- Exhibit no. 29 Roads Right-of-Way Valuation Model, dated January 31, 2019

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