

May 7, 2020

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**  
King County Courthouse  
516 Third Avenue Room 1200  
Seattle, Washington 98104  
Telephone (206) 477-0860  
[hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov)  
[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**REPORT AND RECOMMENDATION**

SUBJECT: Department of Transportation file no. **V-2716**  
Proposed ordinance no. **2020-0064**  
Adjacent parcel no. **7558800400**

**STEWART SCHILL AND WESLIE BROWN**  
Road Vacation Petition

Location: a portion of 90th Avenue SW

Applicants: **Stewart Schill** and **Weslie Brown**  
3705 Fredonia Drive  
Los Angeles, CA 90068  
Telephone: (323) 252-6080  
Email: [stewartschill@att.net](mailto:stewartschill@att.net); [weslie.brown@att.net](mailto:weslie.brown@att.net)

King County: Department of Transportation  
*represented by* **Leslie Drake**  
201 S Jackson Street  
Seattle, WA 98104  
Telephone: (206) 684-1481  
Email: [leslie.drake@kingcounty.gov](mailto:leslie.drake@kingcounty.gov)

FINDINGS AND CONCLUSIONS:

Overview

1. Stewart Schill and Weslie Brown (Petitioners) seek to vacate an approximately 2,980 square-foot stretch of public right-of-way at a portion of 90th Avenue SW. The Department of Local Services, Road Services Division (Roads), urges vacation and a waiver of all compensation. We conducted the public hearing on behalf of the Council. After hearing witness testimony and observing their demeanor, studying the exhibits entered into evidence, and considering the parties' arguments and the relevant law, we recommend vacation and a full waiver.

## Background

2. Except as provided herein, we adopt and incorporate the facts set forth in Roads' report and in proposed ordinance no. 2020-0064. That report and a map showing the area to be vacated are in the hearing record and will be attached to copies of our recommendation submitted to Council. Exs. 1 and 7.
3. 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?
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 ("*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).

## Is Vacation Warranted?

5. The subject right-of-way is not a segment of road, but a possible future turnaround area along a graveled road. Ex. 1 at 018; Ex. 3 at 005, 011. Reading through the file, our concern was that this dead end road does not have a turnaround meeting the current County standards. Vacation thus raised a potential emergency response vehicle issue.
6. At hearing, Roads explained that it made three separate attempts to obtain a comment or response from the Vashon Island Fire Department, and it received none. The vacation area is not an actual turnaround, just a blackberry bramble, so the turnaround is only theoretical. Ex. 16 at 003. The road abutting the vacation area serves only the Petitioners and their immediate neighbor (who has not objected to vacation). And because the vacation area is near the top of a steep hill (exceeding maximum road grade restrictions), it does not appear the roadway could be extended. The cumulative assessment within the Department of Local Services—including Permitting, Roads Maintenance, the Survey Unit, Traffic Engineering, and Drainage—is that vacation is not problematic. Ex. 1 at 003.
7. We thus find that the right-of-way is useless to the county road system. The public will benefit from its vacation, saving in expected management and maintenance costs, along with adding expected property taxes. Ex. 9. We recommend that Council vacate the right-of-way. We reiterate, however, that vacation is discretionary and not mandatory. RCW 36.87.060(1) ("*may* vacate").

### What Compensation is Due?

8. Roads recommends zero compensation. Roads' recommendation comes directly from the Assessor staff's statement that merging the right-of-way square footage into the Petitioners' parcel will add no value to Petitioners' parcel Ex. 8.
9. We discussed a similar issue at length in *Solly*—V-2721. An opinion that the Sollys' lot would not benefit from becoming larger (via the additional right-of-way square footage) raised a yellow flag for us. However, it was at least theoretically understandable: the Assessor's records characterized the Sollys' lot as "unbuildable" due to environmental restrictions, and the Assessor noted that adding square footage to an unbuildable lot does not add to the lot's value.
10. We opined in *Solly* that increasing the lot's size would almost by definition make development at least slightly more feasible than without that additional square footage—for example, creating more room for buffer averaging and more options for how to align a potential development to avoid environmentally-restricted area. However, there was no question that development would be challenging for the Sollys, with or without the vacation. So, we recommended that Council waive all compensation.
11. Conversely, Petitioners' property here is developable, and their intention is to site a residence on it. While they could probably do so without vacation, they were candid that steep slopes throughout much of their property complicate development, and that the relatively flat vacation area would be a logical spot for a septic drainfield. And why would anyone be motivated enough to start and stick with a vacation proceeding unless those petitioners conclude it would enhance their property?<sup>1</sup>
12. Thus, an opinion that adding the right-of-way adds zero value to the property seems counterintuitive here. We recommend that Council waive all compensation today because the best evidence in the record as to added value is Assessor staff's opinion that merging the right-of-way area will not increase Petitioners' lot's value. But we will ensure that this does not happen again, and that we will have more than just a few lines in an email supporting a future statement that adding square footage to an abutting property adds zero value to that property.
13. Thus, if Assessor staff opines in a future petition that merging the right-of-way square footage into the abutting lot adds zero value to that lot, Roads should arrange to have someone from the Assessor's office available to participate in our public hearing. (Being available for us to patch in by phone would be just fine, and more protective of staff time.) There may be a totally understandable explanation. We will just make sure that we have that back-and-forth colloquy on the record at a hearing, so that if our recommendation to Council in a future petition mirrors today's, we will be able to articulate for Council why increasing a lot's size adds nothing to that lot's value.

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<sup>1</sup> We have occasionally seen vacations where a property owner gets roped into a neighbor's vacation petition. In such case, there is no inference to draw from the fact that that the property owner is joining in a petition.

**RECOMMENDATION:**

APPROVE proposed ordinance no. 2020-0064 to vacate the subject road right-of-way and waive all compensation.

DATED May 7, 2020.



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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). Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal. KCC 20.22.230 also requires that the appellant provide copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner’s recommendation.

Prior to the close of business (4:30 p.m.) on *June 1, 2020*, an electronic copy of the appeal statement must be sent to [Clerk.Council@kingcounty.gov](mailto:Clerk.Council@kingcounty.gov) and a paper copy of the appeal statement and the \$250 appeal fee must be mailed to King County Council Clerk at 516 3rd Ave, Room 1200, Seattle, WA 98104, by first-class USPS mail, postage prepaid, postmarked June 1 or earlier. For tracking purposes, you may want to consider using USPS “Priority Service,” which will allow you to track delivery. Due to the Governor’s 20-25 proclamation “Stay Home – Stay Healthy,” the King County Council Clerk is no longer accepting in-person delivery of appeals.

Unless both a timely and sufficient appeal statement and filing fee are filed by *June 1, 2020*, the Clerk of the Council shall place on the agenda of the next available Council meeting a proposed ordinance implementing the Examiner’s recommended action. 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.

If a timely and sufficient appeal statement and filing fee are filed by *June 1, 2020*, the Examiner will notify all parties and interested persons and provide information about “next steps.”

**MINUTES OF THE APRIL 23, 2020, HEARING ON THE ROAD VACATION  
PETITION OF STEWART SCHILL AND WESLIE BROWN, DEPARTMENT OF  
TRANSPORTATION FILE NO. V-2716**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake, Stewart Schill, and Weslie Brown.

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 April 7, 2020  |
| Exhibit no. 2  | Petition transmittal letter dated December 19, County Road Engineer from the Clerk of Council  |
| Exhibit no. 3  | Letter and Petition for Vacation of a County Road with attachments. Received December 19, 2017   |
| Exhibit no. 4  | Letter to Petitioner dated January 8, 2018 acknowledging receipt of Petition   |
| Exhibit no. 5  | Copy of second notice sent to stakeholders on February 26, 2018 with Petitioner's survey and map, and site map showing vacation area               |
| Exhibit no. 6  | King County Assessor's information for Petitioners' Property, APN 7558800400   |
| Exhibit no. 7  | Site map depicting vacation area   |
| Exhibit no. 8  | Email from Adam Neel, King County Department of Assessments dated July 15, 2019 with valuation information   |
| Exhibit no. 9  | Compensation calculation model spreadsheet for V-2716  |
| Exhibit no. 10 | Letter to Petitioner with County Road Engineer Report on Vacation Petition V-2716  |
| Exhibit no. 11 | County Road Engineer Report on Vacation Petition V-2716  |
| Exhibit no. 12 | Signed Easement in favor of Puget Sound Energy   |
| Exhibit no. 13 | Ordinance transmittal letter dated January 28, 2020, from King County Executive to Councilmember Claudia Balducci. (note: signed copy unavailable) |
| Exhibit no. 14 | Proposed Ordinance   |
| Exhibit no. 15 | Fiscal Note  |
| Exhibit no. 16 | General photos of vacation area  |
| Exhibit no. 17 | Declaration of Posting   |
| Exhibit no. 18 | Affidavit of Publication for date of hearing – to be supplied by Clerk of the Council  |

DS/jf