

April 17, 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
www.kingcounty.gov/independent/hearing-examiner

REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation file no. **V-2721**
Proposed ordinance no. **2020-0065**
Adjacent parcel no. **5230000230**

TROY AND KATHLEEN SOLLY

Road Vacation Petition

Location: 10273 147th Avenue SE 98059

Applicants: **Troy and Kathleen Solly**
20728 SE 119th Street
Issaquah, WA 98027
Telephone: (425) 652-2599
Email: troyasolly@gmail.com

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

FINDINGS AND CONCLUSIONS:

Overview

1. Troy and Kathleen Solly petition the County to vacate an approximately 5,508 square foot stretch of public right-of-way at 10273 147th Avenue SE 98059. Ex. 3 at 033-39. 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, studying the exhibits entered into evidence, and considering the parties' arguments and the relevant law, **we recommend that the Council vacate the right-of-way and waive all compensation.**

Background

2. Except as provided herein, we adopt and incorporate the facts set forth in Roads’ report and in proposed ordinance no. 2020-0065. 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, 10, and 11. Our most substantive change is that the report and submitted maps show the area as 5,279 square feet. Ex. 1 at 004; Ex. 10 at 001. We pointed out at hearing that the Department’s Survey Unit wrote that the area was 5,508 square feet. Leslie Drake, Roads’ representative, responded that we should use the slightly larger figure, to avoid potentially leaving a few unclaimed feet of property. Ex. 3 at 27-28.
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, and Under What Conditions?

5. The subject right-of-way segment is not currently opened, constructed, or maintained for public use, and it is not known to be used informally for access to any property. As discussed below, neighbors testified in support of vacation. 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. The corresponding right-of-way on the other side of SE 174th Avenue SE was vacated in 1987. Ex. 7.
6. The current right-of-way contains a utility easement for Comcast. Comcast did not object to vacation, so long as it retained an easement. Ex. 2 at 004. The Sollys signed and recorded an easement agreement for Comcast. Ex. 1 at 002, Ex. 12.
7. One issue we probed at hearing involved drainage. A written response in the record from the Department’s Road Drainage Design team described a twelve-inch drainage system in the right-of-way that has not been maintained by the County but that must be maintained by the property owners to drain runoff from approximately eight adjacent parcels. Ex. 3 at 031; Ex. 3 at 020-23. That commenter noted that a private drainage

easement may be needed; he recommended vacation but with a private drainage easement. Ex. 3 at 032.

8. Neighbor Susan Slayton described the “continuous” battle with drainage. She named the creek on the Solly property as Greene’s Creek, which flows into May Creek. She supports the Sollys’ vacation efforts. Neighbor Jill Summerfield discussed that stream and flooding in the vicinity of the Solly parcel; drainage has been a huge issue for the neighborhood. She also supports the Sollys’ efforts to site a house on their property, but she hopes that mitigation would be required to protect the stream.
9. Ms. Drake responded that the culvert and drainage were not created, installed, or accepted by the County. The drainage system is and would remain private, whether vacation happens or not. Roads only seeks easements for items that are related to a road (like access) or for something like utilities (here, Comcast) or that the County has control over (like *public* drainage improvements). She opined that if the Sollys attempt to develop the property, the Permitting Division would handle drainage review.
10. Although the drainage issue gives us pause, Roads’ position seems correct. Currently there is no public or franchisee easement in or along the creek. If the Sollys want to develop their property, they will need Permitting’s review, and one issue Permitting looks closely at is drainage. The Sollys cannot touch the stream without regulatory approvals, but that would be the same whether Council vacates the right-of-way or not. It might be *preferable* if the Sollys and their neighbors formalized some sort of private drainage arrangement, but that is independent of vacation. Vacation itself will not exacerbate the situation. We do not recommend predicating vacation on a private drainage easement.
11. We find that the road is useless to the county road system, that the public will benefit from its vacation—saving \$2,000 in expected management and maintenance costs—and that vacation is warranted. Ex. 15.

What Compensation is Due?

12. Roads recommends zero compensation. We emphasize that this recommendation has *nothing* to do with the problem we encountered, and brought to Council’s repeated attention, during an unfortunate stretch between 2017 and 2019.
13. During that interim period, Roads argued for full waivers for all vacation petitions, based on assertions of large liabilities and maintenance costs avoided by jettisoning unopened rights-of-way, but without any quantitative support for that proposition or a comprehensive methodology for calculating those adjustments. Eventually, with the help of a Council budget proviso, we were able to enlist the Office of Performance, Strategy and Budget (PSB) to come up with a sound financial model to calculate a net savings from vacating a right-of-way. Roads properly applied PSB’s model here. Ex. 15.
14. Instead, Roads asserts that the right-of-way adds no value to the Solly parcel (and thus there is no starting number from which to subtract the PSB adjustments). That position may sound a little familiar; in its push to give away rights-of-way, Roads argued that

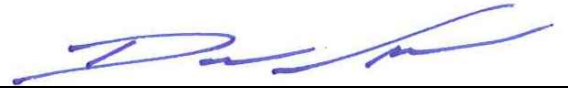
rights-of-way should be valued as standalone strips; such narrow slivers are almost always undevelopable and thus valueless by themselves. That was a departure from the historic practice of valuing rights-of-way by looking to the abutting property into which the right-of-way would merge. However, in today's case, Roads analyzed the correct property unit, asking the Assessor's office how much adding the right-of-way would increase the value of the (what would become larger) Solly property.

15. Thus, Roads did exactly what it should do. So, while our discussion of a full waiver of compensation for an unopened right-of-way merging into private property might sound a little, "Here we go again," it is decidedly not.
16. Instead, the wrinkle here is that the Assessor's records show the Solly lot as unbuildable. Ex. 13 at 001. Assessor staff noted that adding right-of-way area to an unbuildable lot does not add value. Ex. 14 at 001. That raised a yellow flag for us, given that the Solly property (with or without the additional right-of-way square footage) is adjacent to similarly-sized properties with single-family homes. Mr. Solly was candid that he and his wife are pursuing vacation with an eye to eventually building a home for themselves on the property. Ex. 10.
17. Ms. Drake explained that it has no way to re-analyze the build-ability question, and that Roads relied on what already was in the public record. She did point to numerous environmental constraints on the Solly property; in addition to flooding, there are fish concerns and a variety of environmental setbacks. She opined that siting a septic system on the property would be challenging.
18. It would give us more pause if the Solllys were savvy market participants who bought the property on the open market with insight that environmental constraints and regulatory restrictions could be overcome and a home built. However, Mr. Solly explained that when he moved back to the area after college, his stepmom gave the property to him, as they had no use for it. He echoed Ms. Drake's—and the neighbors'—testimony that streams and drainage are significant hindrances to development. The Solllys have not started any permit processes.
19. Increasing the lot's size would almost by definition make development slightly more feasible than without that additional square footage. For example, there would be more room for buffer averaging and more options for how to align a potential development to avoid restricted area. However, there is no question development will be challenging, with or without the vacation. It is possible that years down the road this property will have a house on it, but there is nothing approaching a guarantee. And the process of trying to get there is complicated, expensive, and uncertain. A market participant might take a flyer and purchase the property with an eye towards development, but that would be a discounted purchase, given development hurdles and unpredictability.
20. In sum, the best evidence in the record is the Assessor listing the property as unbuildable and the Assessor staff's opinion that adding right-of-way area to an unbuildable lot does not increase the lot's value. We recommend that Council waive all compensation here.

RECOMMENDATION:

APPROVE proposed ordinance no. 2020-0065 to vacate the subject road right-of-way and the compensation requirement.

DATED April 17, 2020.



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 **May 11, 2020**, 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 APRIL 3, 2020, HEARING ON THE ROAD VACATION
PETITION OF TROY AND KATHLEEN SOLLY, DEPARTMENT OF
TRANSPORTATION FILE NO. V-2721**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake, Troy Solly, Susan Slayton, and Jill Summerfield.

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

- | | |
|----------------|---|
| Exhibit no. 1 | Roads Services report to the Hearing Examiner, sent March 19, 2020 |
| Exhibit no. 2 | Letter from Clerk of the Council to King County Department of Transportation (KCDOT) transmitting petition, dated July 3, 2018 |
| Exhibit no. 3 | Petition for vacation of a county road, transmitted July 2, 2018 |
| Exhibit no. 4 | Final stakeholder notification, sent September 27, 2018, with comment deadline of October 29, 2018 |
| Exhibit no. 5 | Letter from KCDOT to Petitioner acknowledging receipt of petition and explaining road vacation process, dated July 12, 2018 |
| Exhibit no. 6 | Plat Map May Valley Co-Op Community |
| Exhibit no. 7 | Ordinance 8023 vacating eastern portion SE 104 th Street under road vacation file V-1895, enacted April 1987 |
| Exhibit no. 8 | Letter from KCDOT to Petitioner recommending approval, conveying County Road Engineer report, proposing compensation waiver, dated October 23, 2019 |
| Exhibit no. 9 | Road Engineer report |
| Exhibit no. 10 | Vacation area map |
| Exhibit no. 11 | Vicinity map |
| Exhibit no. 12 | Notification of petition letter to Comcast, dated November 26, 2018 |
| Exhibit no. 13 | KC Assessor's information for Petitioner's property, APN 523000-0230 |
| Exhibit no. 14 | Email from Sheila Frawley with valuation information, dated July 15, 2019 |
| Exhibit no. 15 | Compensation calculation model spreadsheet |
| Exhibit no. 16 | Letter from KCDOT to KC Council recommending approval and transmitting proposed ordinance, dated January 28, 2020 |
| Exhibit no. 17 | Proposed ordinance |
| Exhibit no. 18 | Fiscal note |
| Exhibit no. 19 | Aerial photograph |
| Exhibit no. 20 | Affidavit of publication, noting posting date of March 11, 2020 |

DS/JO

April 17, 2020

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CERTIFICATE OF SERVICE

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TROY AND KATHLEEN SOLLY
Road Vacation Petition

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND RECOMMENDATION** to those listed on the attached page as follows:

EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED April 17, 2020.



Jessica Oscoy
Legislative Secretary