

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

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REPORT AND RECOMMENDATION

SUBJECT: Department of Local Services, Roads file no. **V-2684**
Proposed ordinance no. **2018-0012**
Adjacent parcel no. **5229300240**

MICHAEL AND VALERIE CREIGHTON

Road Vacation Petition

Location: a portion of 166th Avenue SE (Kendall Avenue), Renton

Petitioners: **Michael and Valerie Creighton**
6947 Coal Creek Parkway SE #720
Newcastle, WA 98059
Telephone: (253) 380-2357
Email: valeriejcreighton@gmail.com

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

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Approve vacation, waive all compensation
Examiner's Recommendation:	Approve vacation, conditioned on receiving \$2,902 in compensation

FINDINGS AND CONCLUSIONS:

1. This matter involves Michael and Valerie Creighton’s petition to vacate 13,089 square feet of public right-of-way on a portion of 166th Avenue SE (Kendall Avenue), Renton. We conducted the public hearing on behalf of the Council. After hearing witness testimony and observing demeanor, studying the exhibits entered into evidence, and considering the parties’ arguments and the relevant law, we recommend that Council vacate the right-of-way upon payment of \$2,902 of compensation.
2. This recommendation is one of three road vacation reports we are sending up today. The substantive analysis for how we approach the initial valuation of rights-of-way and adjustments to that valuation is contained in our companion recommendation in V-2692.¹ We incorporate that analysis by reference. This document addresses only Creighton-specific information.
3. In September 2013, Michael and Valerie Creighton petitioned the County to vacate the public right-of-way at the western edge of their property, stating that they needed the vacation to acquire “setback distance from the rear property line for development of our proposed house.” Ex. 3. Despite the time-sensitive nature of the Creightons’ petition, their petition was not transmitted to Council until December 2017, four-plus years after they filed it.
4. One delay occurred after the division now known as the Department of Local Services, Roads Services Division (Roads) advised the Creightons that, although they were the sole property owner abutting the right-of-way stretch being vacated, and thus the only acquiring property owner, they nonetheless had to get their neighbors to sign their petition.
5. It was wise to *inform* the neighbors of the Creightons’ petition, in case neighbors needed the right-of-way to access their properties or otherwise might have wanted to oppose vacation (none did). However, the idea that these neighbors needed to sign the Creightons’ petition was incorrect, as only the Creightons would be acquiring any property interests. Thus, putting the Creightons proper petition “on hold,” delayed things while the Creightons were forced to gather the neighbors’ superfluous signatures. Ex. 13 at 001.
6. The Creightons obliged Roads’ request, obtaining the neighbors signatures and sending an amended petition. Roads then compounded the problem by calculating the average assessed values of these neighboring properties—properties mostly of higher value on a square foot basis than the Creightons’. In April 2015, Roads advised the Creightons that they owed the *average* assessed value of all 10 properties. Thus instead of a compensation number derived from the Creightons’ \$0.95 per square foot property, they were assigned a compensation number more than double that, based on a \$2.05 per square foot figure derived from the neighborhood.


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

7. In May 2015, Roads sent another letter to the Creightons, again using the higher neighborhood average of \$2.05 per square foot. Ex. 14. In July 2016, Roads sent the Creightons another letter adjusting the owed compensation upward again (based on more recent Assessor data), and again erroneously using neighborhood averages, this time at \$2.28 per square foot. Ex. 15.
8. In September 2016, Roads notified the Creightons that code changes were afoot and again put their petition on hold. Ex. 16. In July 2017, Roads notified the Creightons' that it was willing to recommend a full waiver of compensation, per the downward adjustments the newly enacted RCW 36.87.120 allowed. Ex. 17.
9. We held a truncated hearing in March 2018. That hearing showed that vacation is appropriate. The right-of-way "is useless as part of the county road system and...the public will be benefitted by its vacation and abandonment." RCW 36.87.020. Never improved as a road, it does not provide access to any property. 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.
10. The sticking point was compensation. We explained how under the previous code, compensation (correctly calculated) would be \$6,217. We pressed Roads to come up with a comprehensive methodology for calculating the RCW 36.87.120 adjustments, but Roads would not. We thus stayed this case, along with all other pending vacation petitions, to allow the Office of Performance, Strategy and Budget (PSB) to create a quantitative model.
11. In our March 2018 order staying the Creightons' petition, we afforded the Creightons the choice of either paying the \$6,217 or waiting to see how the (future) PSB model applies to their property. Observing that the Creightons found themselves in the position they were in through no fault of their own, we opined that they should not be not be penalized if a PSB analysis comes up with a higher amount. We committed to recommending that compensation be the lower of \$6,217 or the number produced by the (future) PSB model. We closed by reiterating that "we appreciate the Creightons' long-suffering patience. We will get there eventually."
12. After PSB developed the model and presented it in January 2019, we held a prehearing conference in the Creightons' case, and then set it for hearing. PSB calculated that the value of adding the right-of-way to the Creightons' parcel was \$5,000. From this, PSB subtracted \$98 as the present value of anticipated, property tax revenue the County would receive, and subtracted another \$2,000 for unopened right-of-way maintenance and management costs. This results in compensation of \$2,902, significantly less than the \$6,217 that would have applied if we had proceeded last spring. Ex. 32.
13. We held a brief and uneventful hearing on April 30. The Creightons are eager to proceed with vacation. We see no reason why they should need to wait any longer.

RECOMMENDATION:

APPROVE proposed ordinance no. 2018-0012 to vacate the subject road right-of-way, provided that within 90 days of the date Council takes final action, the Creightons pay to King County \$2,902, or other such amount of compensation Council shall determine. If King County does not receive the required compensation by the specified date, there is no vacation and the right-of-way remains King County's.

DATED May 15, 2019.



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 **June 10, 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 MARCH 15, 2018, HEARING ON THE ROAD VACATION
PETITION OF MICHAEL AND VALERIE CREIGHTON, DEPARTMENT OF
TRANSPORTATION FILE NO. V-2684**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake and Michael and Valerie Creighton.

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

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| Exhibit no. 1 | Roads report to the Hearing Examiner, sent February 28, 2018 |
| Exhibit no. 2 | Letter from Clerk of the Council to Roads transmitting petition, dated September 11, 2013 |
| Exhibit no. 3 | Petition for vacation of a county road, transmitted September 11, 2013 |
| Exhibit no. 4 | Revised petition for vacation of a county road, transmitted March 24, 2014 |
| Exhibit no. 5 | Vacation area map |
| Exhibit no. 6 | May Valley Division no. I plat map |
| Exhibit no. 7 | Aerial photograph |
| Exhibit no. 8 | Vicinity map |
| Exhibit no. 9 | Vacation area topographical iMap |
| Exhibit no. 10 | Vacation area iMap with Environmental Sensitive Areas overlay |
| Exhibit no. 11 | King County ordinance no. 8237 |
| Exhibit no. 12 | Final stakeholder notification, sent May 2, 2016, with comment deadline of June 1, 2016 |
| Exhibit no. 13 | Letter from Roads to Petitioner updating them on status and progress, dated April 20, 2015 |
| Exhibit no. 14 | Letter from Roads to Petitioner updating them on status and progress, dated May 22, 2015 |
| Exhibit no. 15 | Letter from Roads to Petitioner recommending approval, conveying County Road Engineer report, proposing compensation, dated July 6, 2016 |
| Exhibit no. 16 | Letter from Roads to Petitioner confirming on hold status, as requested by Petitioners, dated September 23, 2016 |
| Exhibit no. 17 | Letter from Roads to Petitioner recommending approval, conveying County Road Engineer report, proposing compensation waiver, dated July 13, 2017 |
| Exhibit no. 18 | Road Engineer report, dated June 12, 2017 |
| Exhibit no. 19 | Letter from Roads to KC Council recommending approval and transmitting proposed ordinance, dated October 11, 2017 |
| Exhibit no. 20 | Proposed ordinance |
| Exhibit no. 21 | Fiscal note |
| Exhibit no. 22 | Affidavit of posting, noting posting date of February 16, 2018 |
| Exhibit no. 23 | Notification of petition letter to William Briere, dated January 26, 2018 |
| Exhibit no. 24 | Notification of petition letter to Patricia and Colby Crane, and Bart and Paula Crane, dated January 26, 2018 |

- Exhibit no. 25 Notification of petition letter to Gurdip Kaur and Brar Gursewak, dated January 26, 2018
- Exhibit no. 26 Notification of petition letter to May Valley Alliance Church, dated January 26, 2018
- Exhibit no. 27 Notification of petition letter to David and Rosemary Moore, dated January 26, 2018
- Exhibit no. 28 Notification of petition letter to William Schaefer, dated January 26, 2018
- Exhibit no. 29 Notification of petition letter to Barry and Cynthia Thompson, dated January 26, 2018
- Exhibit no. 30 Affidavit of publication noting publication dates of February 28 and March 7, 2018

The following exhibits were offered and entered into the hearing record on April 30, 2019:

- Exhibit no. 31 Supplemental Roads report to the Hearing Examiner, transmitted April 15, 2019
- Exhibit no. 32 Compensation calculation spreadsheet
- Exhibit no. 33 Affidavit of posting, noting posting date of March 29, 2019
- Exhibit no. 34 Affidavit of publication noting publication dates of April 18 and 25, 2019
- Exhibit no. 35 Email from Jeffrey Darrow with valuation amounts, sent March 21, 2019

DS/vsm