

October 2, 2023

**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-2741**; proposed ord. **2023-0204**
Adjacent parcel nos. **3750602673, 3750602694, and 3750602185**

SPRAGUE, SHERER, GROSCOST

Road Vacation Petition

Location: a portion of S. 372nd Street/8th Street

Applicants: **Duane and Marty Grosco**
37117 42nd Ave S
Auburn, WA 98001
Telephone: (253) 927-3493
Email: dmgrosco@comcast.net

Applicant: **Vicky Sherer**
37205 42nd Ave S
Auburn, WA 98001
Telephone: (253) 797-2682
Email: thesherers@comcast.net

Applicants: **Rufus and Ann Sprague**
P.O. Box 1945
Milton, WA 98354
Telephone: (253) 740-1000
Email: rufusmsprague@gmail.com

King County: Department of Local Services
represented by **Leslie Drake**
201 S Jackson Street
Seattle, WA 98104
Telephone: (206) 477-7764
Email: leslie.drake@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Applicants petition the County to vacate an approximately 14,400 square-foot stretch of public right-of-way at a portion of S. 372nd Street/8th Street. The Department of Local Services, Road Services Division (Roads), urges vacation and a waiver of compensation for two of the parcels (Sprague and Sherer) and vacation with the compensation requirement for the remaining parcel (Groscost). On September 20, 2023, we conducted a remote 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 that Council vacate the right-of-way outright (meaning no compensation requirement or other contingencies) for the Sprague and Sherer parcels, and vacate with the right-of-way with a compensation requirement for the Groscost parcel.

Background

2. Except as provided below, we incorporate the facts set forth in Roads' report and in proposed ordinance no. 2023-0204. That report, and a map showing the 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. D1 at 001-05, D5 at 001.
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 [1] road useless to the road system and [2] would vacation benefit the public? If the answers to these are both yes, the third and fourth relate to compensation: [3] what is the appraised (or perhaps assessed) value of the right-of-way, and [4] how should this number be adjusted to capture avoided County costs? We analyze each of those below.

Is Vacation Warranted?

4. A petitioner has the burden to show that the "road is [1] useless as part of the county road system and [2] 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).
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. It is basically a treed area between the Sprague and Sherer properties to the south and the Groscost property to the north. As one County commenter phrased it, this stretch of right-of-way is an:

Excellent example of a street the County should divest itself of responsibility for. The adjacent properties are fully developed to have better access to the local street system through driveways connecting to other streets. This [stretch of right-of-way] is not cost-effective to construct a through street on this alignment whereas it represents only a liability to the County for having to clear danger trees from the wooded right-of-way that might, in the future, pose a danger to houses on the adjacent lots that are constructed without the normal setback to the street [right-of-way].

Ex. D1 at 033.

6. Vacation would have no adverse effect on the provision of access and fire and emergency services to the abutting properties and surrounding area. The petitioners have already provided, or will provide, the necessary utility easements. The right-of-way is not necessary for the present or future public road system for travel or utilities purposes.
7. We find that the road is useless to the county road system. We also find that the public will benefit from its vacation, with the savings in expected avoided management and maintenance costs and increased property taxes discussed below. We conclude that vacation here is warranted.

What Compensation is Due?

8. Where vacation is appropriate, we calculate compensation by [3] starting with the increase in property values the receiving parcel will garner from the extra square footage the (formerly) public right-of-way area adds to the parcel; this figure is generated by the Assessor. However, that is only the starting point, because [4] State and County law allow local legislative branches to adjust the appraised value to reflect the expected value to the public from avoided liability risk, eliminated management costs, and jettisoned maintenance costs, along with increased property taxes. RCW 36.87.070; KCC 14.40.020.A.1. Performance, Strategy, and Budget created a model for calculating these adjustments, updated annually. Roads then applies those figures to a given parcel. Exs. 12-14.
9. This means that the appropriate level of compensation to require is a somewhat individualized inquiry, producing different results for different parcels. Here, there are three different parcels. The increase in property values the Sprague property and the Sherer property would see from adding the right-of-way square footage is slightly *less* than the expected value to the County from jettisoning the right-of-way. Exs. 12-13. Thus, if Council approves the vacation there would be no further action for the Spragues or Sherers to take.
10. However, the increase in property values the Groscost property would see from adding the right-of-way square footage exceeds the expected value to the County. Ex. 14. Thus, if Council approves the vacation, the Groscosts would need to decide whether or not to pay \$3746 to enhance the size of their property. If they determine it is not worth it, that portion of the right-of-way would remain public.
11. There are scenarios where vacation should be an all-or-nothing proposition. For example, suppose the right-of-way went through the Sprague property, then the Sherer property, then dead-ended on the Groscost property. Vacating the right-of-way just through the Sprague

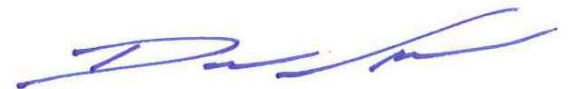
and Sherer properties would be a bad idea, leaving an orphaned public in-holding on the Groscost property the County could not easily access if, for example, someone dumped waste on the remaining, isolated public right-of-way stretch.

12. That is not the case here. If the Groscosts elect not to participate, the entire southern half of the right-of-way will merge into the Sprague and Sherer properties, while the northern half of the right-of-way would remain, extending between two actually-constructed public streets. And at 30 feet in width, the northern half would be plenty of space for the County to navigate if for some reason they needed to get in there. There is no need to condition the Sprague or Sherer vacation on what the Groscosts choose to do.

RECOMMENDATION:

1. We recommend that Council APPROVE proposed ordinance no. 2023-0204 to vacate the subject road right-of-way abutting parcels 375060-2673 (Sprague) and 375060-2694 (Sherer), with no compensation requirement or contingencies.
2. We recommend that Council APPROVE proposed ordinance no. 2023-0204 to vacate the subject road right-of-way abutting parcel 375060-2185 (Groscost), CONTINGENT on petitioner paying \$3746 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$3746 by that date, there is no vacation and the associated right-of-way remains King County's. If payment is timely received, the Clerk shall record an ordinance against parcel 375060-2185. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 375060-2185 is vacated.

DATED October 2, 2023.



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 26, 2023**, 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 20, 2023, HEARING ON THE ROAD VACATION
PETITION OF SPRAGUE, SHERER, GROSCOST, DEPARTMENT OF
TRANSPORTATION FILE NO. V-2741**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake, Vicky and Ron Sherer, and Rufus and Ann Sprague.

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

Exhibit no. D1	Roads Services report to the Hearing Examiner
Exhibit no. D2	Petition transmittal letter, dated October 2, 2020, to the County Road Engineer
Exhibit no. D3	Petition for Vacation of a County Road, received October 1, 2020
Exhibit no. D4	Letter to Petitioners, dated October 21, 2020, acknowledging receipt of Petition.
Exhibit no. D5	Exhibit map depicting vacation area
Exhibit no. D6	Plat Jovita Heights Addition
Exhibit no. D7	King County Assessor's information for Petitioners Sprague's property, APN 3750602673
Exhibit no. D8	King County Assessor's information for Petitioner Sherer's property, APN 3750602694
Exhibit no. D9	King County Assessor's information for Petitioner Groscost's property, APN 3750602185
Exhibit no. D10	Final notice sent of review to agencies on February 10, 2021
Exhibit no. D11	Email exchange with Assessor's Office regarding valuation of vacation area.
Exhibit no. D12	Compensation calculation model spreadsheet for Petitioners Sprague's property, APN 3750602673
Exhibit no. D13	Compensation calculation model spreadsheet for Petitioner Sherer's property, APN 3750602694
Exhibit no. D14	Compensation calculation model spreadsheet for Petitioner Groscost's property, APN 3750602185
Exhibit no. D15	Cover letter to Petitioners dated June 7, 2021, with a copy of the County Road Engineer's Report

- Exhibit no. D16 County Road Engineer’s Report
- Exhibit no. D17 Signed easement between Rufus and Ann Sprague and PSE
- Exhibit no. D18 Signed easement between Vicki M. Brown and Ronald K Brown and PSE
- Exhibit no. D19 Signed easement between Duane Groscost and PSE
- Exhibit no. D20 Ordinance transmittal letter, dated May 25, 2023, from King County Executive to Councilmember Dave Upthegrove
- Exhibit no. D21 Proposed Ordinance
- Exhibit no. D22 Declaration of Posting
- Exhibit no. D23 Confirmation of publication in the Seattle Times for Sept 6 and 13
- Exhibit no. D24 Affidavit of Publication for date of hearing – to be supplied by Clerk of the Council