

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation file no. **V-2726**
Proposed ordinance no. **2020-0294**
Adjacent parcel no(s). **8847400167, 2422069118, and 8847400085**

GARY HABENICHT AND RICHARD AND WENDY MELEWSKI

Road Vacation Petition

Location: 27405 SE 256th Street, Ravensdale

Applicant: **Gary Habenicht**
27405 SE 256th Street
Ravensdale, WA 98051
Telephone: (206) 571-2802
Email: gbhabenicht@gmail.com

Applicants: **Richard and Wendy Melewski**
5061 Lawai Road Unit 104
Koloa, HI 96756
Email: wmkauai@icloud.com

FINDINGS AND CONCLUSIONS:

Overview

1. Gary Habenicht and Richard and Wendy Melewski petition the County to vacate an approximately 32,717 square foot stretch of public right-of-way in Ravensdale. 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 **strongly recommend that Council grant the petition and not require compensation.**

Background

2. Except as noted below, we adopt and incorporate the facts set forth in Roads’ report and in proposed ordinance no. 2020-0294. That report, along with a map showing the area to be vacated, and a close-up survey, are in the hearing record and will be attached to the copies of our recommendation submitted to Council. Ex. 1 at 1-7; Ex. 21 at 005-06.
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 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. 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 road is useless to the county road system.
6. The public will benefit from its vacation. As discussed below, the County gains in avoided management and maintenance costs, jettisoned liability risk, and added property taxes. More importantly, vacation here would clear up confusion over the extent of County interests. A little background is in order.

7. The County was deeded the south half of S.A. Nelson Road in 1922. Ex. 21 at 005-06 (single-hatched, dark red area); Ex. 1 at 002. Petitioners are obtaining from the County what is clearly public right-of-way, just like in most vacations. Vacation of the southern half is straightforward.
8. The north half of Nelson is more convoluted. Ex. 21 at 005-06 (cross-hatched, orange area). It appears in some documents as County right-of-way, but Roads’ review indicates the County does not have a property interest in the north half of Nelson. Clearing up what Roads aptly deemed its “shadow” interest, and avoiding future confusion, are public benefits. In fact, Mr. Habenicht did not request the north half; the County asked him to add it to his petition to tidy things up. Ex. 13 at 005; Ex. 14 at 001.
9. Compounding the problem is that Nelson veers slightly off the county-maintained SE 256th Street, but runs mostly parallel. That has led to more confusion about the precise extent of 256th, exacerbated still further by historic survey discrepancies, including two reported section corners separated by a gap and surveys conflating Nelson and 256th. Ex. 8 at 003 (top left circle showing north portion of Nelson as 256th “established,” along with dual section corners in the bottom right). Clarifying the full extent of 256th creates additional public benefits. *See also* Ex. 23 at 004 (clearly excepting out a 30-foot strip of land for 256th as currently constructed and maintained from the vacation).
10. Vacation here is in the public interest.

What Compensation is Due?

11. As to the southern half of Nelson:
 - Vacation adds about \$3000 of value to the Melewski property (8847400085). Applying the Office of Performance, Strategy and Budget’s (PSB’s) updated model, the County’s expected gains in avoided management and maintenance costs, jettisoned liability risk, and added property taxes is \$4115. Ex. 17.
 - Similarly, vacation adds \$1000 of value to Habenicht parcel 8847400167, but gains the County an expected \$3116. Ex. 18.

Thus, vacation produces a slight County financial benefit for these two parcels, warranting a full compensation waiver.

12. As to the northern half of Nelson, vacation adds \$8000 to Habenicht parcel 2422069118’s value, against County gains of \$4096. This would seem to leave a net County loss of \$3747, and thus a requirement for compensation. Ex. 19. However, compensation seems inappropriate here for two reasons.
 - As noted above, this was not an area Mr. Habenicht sought to obtain. Rather, the County requested that he add it to the petition to clear up title confusion. Charging him for a strip he agreed to take at the County’s behest seems problematic.

- As noted above, the County appears not own any interest in this area. Using the example of traditional property transfers, while one could analogize vacating the southern half of Nelson to the County selling a warranty deed, the analogy for the north half would be only a quitclaim deed—the County probably does not have anything to sell, and it is simply relinquishing any claim it might have.

Thus, a full compensation waiver is warranted for parcel 2422069118.

RECOMMENDATION:

APPROVE proposed ordinance no. 2020-0294 to vacate the subject road right-of-way and waive the compensation requirement.

DATED December 29, 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 *January 22, 2021*, 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 DECEMBER 17, 2020, HEARING ON THE ROAD VACATION
PETITION OF GARY HABENICHT AND RICHARD AND WENDY MELEWSKI,
DEPARTMENT OF LOCAL SERVICES-ROADS FILE NO. V-2726**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake and Richard and Wendy Melewski.

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

- | | |
|----------------|---|
| Exhibit no. 1 | Roads Services report to the Hearing Examiner, sent December 2, 2020 |
| Exhibit no. 2 | Letter from Clerk of the Council transmitting petition, dated May 16, 2019 |
| Exhibit no. 3 | Petition for vacation of a county road, transmitted May 16, 2019 |
| Exhibit no. 4 | Letter to Petitioner acknowledging receipt of petition and explaining road vacation process, dated May 22, 2019 |
| Exhibit no. 5 | Email to Petitioner regarding revised petition, dated June 20, 2019 |
| Exhibit no. 6 | Signed revised petition |
| Exhibit no. 7 | Vacation area map |
| Exhibit no. 8 | Boundary line adjustment L98L0144 creating Lot L |
| Exhibit no. 9 | KC Ordinance 07286 |
| Exhibit no. 10 | KC Assessor’s information for Petitioner Habenicht’s properties |
| Exhibit no. 11 | KC Assessor’s information for Petitioners Melewskis’ properties |
| Exhibit no. 12 | Portion of Assessor’s map for NE 25-22-06 |
| Exhibit no. 13 | Final stakeholder notification with vicinity map and site map, sent October 9, 2019, with comment deadline of November 8, 2019 |
| Exhibit no. 14 | Email to Petitioner regarding addition of Northern 15 feet of S.A. Nelson Road to vacation, dated May 4, 2020 |
| Exhibit no. 15 | Roads Survey prepared legal description and exhibit of vacation area |
| Exhibit no. 16 | Email from Assessor’s Office regarding valuation of vacation area |
| Exhibit no. 17 | Compensation Calculation Model for Melewskis’ property APN 8847400085 |
| Exhibit no. 18 | Compensation Calculation Model for Habenicht’s property APN 8847400167 |
| Exhibit no. 19 | Compensation Calculation Model for Habenicht’s property APN 2422069118 |
| Exhibit no. 20 | Letter to Petitioners recommending approval, conveying County Road Engineer report, proposing compensation waiver, dated May 14, 2020 |
| Exhibit no. 21 | Road Engineer report |
| Exhibit no. 22 | Letter to KC Council recommending approval and transmitting proposed ordinance, dated August 27, 2020 |
| Exhibit no. 23 | Proposed ordinance |
| Exhibit no. 24 | Fiscal note |

Exhibit no. 25

Affidavit of posting, noting posting date of November 23, 2020

Exhibit no. 26

Reserved for future submission of Affidavit of publication noting posting dates
of

DS/jo

December 29, 2020

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CERTIFICATE OF SERVICE

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GARY HABENICHT AND RICHARD AND WENDY MELEWSKI

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 December 29, 2020.



Jessica Oscoy
Office Manager