

November 3, 2021

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

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**REPORT AND RECOMMENDATION**

SUBJECT: Department of Transportation file no. **V-2737**  
Proposed ordinance no. **2021-0322**  
Adjacent parcel nos. **7351000180, 7351000130, 7351000120, and 7967600140**

**ESTATE OF MARLENE AND JAMES MCCARTNEY**

Road Vacation Petition

Location: a portion of S. 278th Street right-of-way

Applicants: **Rosemary and Ryan Dowd**  
27844 38th Place S.  
Auburn, WA 98001  
Telephone: (206) 853-4602  
Email: [rosed@skylineproperties.com](mailto:rosed@skylineproperties.com)

Applicant: Estate of Marlene Marie McCartney  
*represented by* **James McCartney**  
27842 38th Place S  
Auburn, WA 98001  
Telephone: (818) 276-5335  
Email: [jamesmccartney@hotmail.com](mailto:jamesmccartney@hotmail.com)

Applicant: Estate of Miriam M. Helgeland  
*represented by* **Jerilyn Helgeland**  
3840 Star Lake Road  
Auburn, WA 98001  
Telephone: (206) 495-5563  
Email: jerihelgeland@gmail.com

Applicants: **Sharon and Robert Kiyohara**  
35808 SE 29th Street  
Auburn, WA 98001  
Email: kiyoharas@hotmail.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. Petitioners request that the County vacate public right-of-way at a portion of the S. 278th Street right-of-way abutting S. Star Lake Road. The Department of Local Services, Road Services Division (Road Services), urges vacation. 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 that the Council approve the vacation, waiving compensation for two of the parcels and requiring it for the other two parcels.**

### Background

2. Except as provided herein, we adopt and incorporate the facts set forth in Roads' report and in proposed ordinance no. 2021-0322. 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.
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 marked as S. 278<sup>th</sup> Street, but it has never been opened, constructed, or maintained for public use. Ex. 1 at 19. Petitioner Jerilyn Helgeland noted that decades ago they would occasionally drive it to access their property. Petitioner James McCartney noted that dirt bikes sometimes still try to make it up the hill today. Such access appears to have contributed to a worn down depression causing erosion as the edges expand. Ex. 3 at 008. Mr. McCartney explained that his main impetus for pursuing vacation is that his retaining wall is eroding away, sinkholes have developed, and he is worried his foundation may eventually crumble. If he can obtain the right-of-way, then he can expand and rebuild a retaining wall to shore up his home.
6. The right-of-way does not appear to have ever provided even informal access to any property other than to those owned by the Petitioners themselves. Petitioners all have alternative legal access. The Helgeland property is going through the subdivision process, and the proposed lots will not use today’s right-of-way for any type of access.<sup>1</sup> 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.
7. Our only hesitancy came after a member of the public, Keith Mullen, did his homework and discovered that S. Star Lake Road (the Road) has recently been reclassified from a local road to a collector arterial. That is important, because a collector arterial’s right-of-way should be 84 feet wide, wider than the Road’s existing 60-feet of right-of-way. Mr. Mullen questioned whether the County should vacate the first 24 feet of today’s right-of-way, to keep the option open for expanding the Road to an 84-foot right-of-way.
8. Road Services noted that the County is not requiring the proposed subdivision to dedicate property for an expanded Road. The absence of that requirement is not, by itself, definitive. If the County needed an expanded Road for reasons not directly related to traffic the plat will create, it could not use the preliminary plat process to require the developer to dedicate more property.<sup>2</sup> So not asking the developer to dedicate additional

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<sup>1</sup> Interestingly, the plat surveyor demarked today’s right-of-way as S. 277<sup>th</sup> St. instead of S. 278<sup>th</sup> St. Ex. 1 at 041. Whatever the name, it is the same corridor. (Again, there is no actual street.)

<sup>2</sup> No local government may impose any tax, fee, or charge, either direct or indirect, on the subdivision of land, except where “reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.” RCW 82.02.020 (*italics added*). This requirement incorporates the nexus and rough

frontage does not necessarily mean a lack of County interest in expanding the right-of-way

9. More to the point, Road Services checked with the County's Traffic and Planning shops and with the Road Engineer, and all clarified that there is no likelihood of actually widening the Road. Essentially, the Road reclassification is a paper transaction that elevates the Road in terms of function and maintenance priorities. There is no plan or funding to physically widen the Road.
10. While we have noted in this and other hearings that if there is a potential for future public access on a right-of-way, the thumb should be on the scale of retaining the public access option, that has been in the context of preserving a *linear* corridor. Here, the important linear corridor is the Road itself, which lies perpendicular to the right-of-way being vacated. If the improbable happened, and decades into the future there was some push to widen the Road, the County would need to acquire the necessary depth for the expansion along the entire length of the project. Needing to re-acquire a few feet of depth along the tip of the right-of-way area being vacated today would add little complexity or cost to a hypothetical future widening project; it would be more in the nature of a rounding error.
11. Typically, utilities get the relevant property owner to sign easements before the vacation goes through. However, but Lumen's policy is to wait until vacation is completed to get an easement. Ex. 19. That is Lumen's call. Petitioners have agreed to provide the easement. That is all anyone can do at this point.
12. We find that the road is useless to the county road system, that the public will benefit from its vacation—saving in expected management and maintenance costs (see directly below)—and that vacation is warranted.

#### What Compensation is Due?

13. We calculate compensation by 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 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 that model and updates it annually. Road Services then applies those figures to a given parcel. Exs. 13-16.

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proportionality takings tests articulated in [Nollan v. California Coastal Comm'n](#), 483 U.S. 825 (1987), and [Dolan v. City of Tigard](#), 512 U.S. 374 (1994). *Common Sense Alliance v. Growth Management Hearings Bd.*, 189 Wn. App. 1026 (2015) (unpublished).

14. This means that the appropriate level of compensation to require is a somewhat individualized inquiry, producing different results for different parcels. Here there are four different parcels.
15. For the McCartney and Dowd parcels, merging the right-of-way into the private property either adds no value to the receiving parcel, or adds less value than the County gains from avoiding management and maintenance costs and from increased property taxes. Exs. 13-14. Thus, there is no compensation to require prior to finalizing vacation. Vacation can proceed without any contingencies for the right-of-way abutting the McCartney and Dowd parcels.
16. For the other two parcels, merging the right-of-way into the private property adds more value than the County gains from avoiding management and maintenance costs and from increased property taxes. Thus, vacation related to those parcels should be contingent on payment of the calculated compensation. For Kiyohara that is \$809 and for Helgeland, \$6,684. Exs. 15-16.

#### RECOMMENDATION:

1. We recommend that Council APPROVE proposed ordinance no. 2021-0322 to vacate the subject road right-of-way abutting parcels 735100-0180 (McCartney) and 735100-0130 (Dowd), with no compensation requirement or contingencies.
2. We recommend that Council APPROVE proposed ordinance no. 2021-0322 to vacate the subject road right-of-way abutting parcel 735100-0120 (Kiyohara), CONTINGENT on petitioner paying \$809 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$809 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 735100-0120. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 735100-0120 is vacated.
3. We recommend that Council APPROVE proposed ordinance no. 2021-0322 to vacate the subject road right-of-way abutting parcel 735100-0140 (Helgeland), CONTINGENT on petitioner paying \$6,684 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$6,684 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 735100-0140. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 735100-0140 is vacated.

DATED November 3, 2021.



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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), 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 **November 29, 2021**, 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 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 OCTOBER 21, 2021, HEARING ON THE ROAD VACATION PETITION OF ESTATE OF MARLENE AND JAMES MCCARTNEY, DEPARTMENT OF TRANSPORTATION FILE NO. V-2737**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were James McCartney, Leslie Drake, Jerilyn Helgeland, and Keith Mullen.

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

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|----------------|--|
| Exhibit no D1. | Roads Services report to the Hearing Examiner, sent October 6, 2021              |
| Exhibit no D2. | Letter from Clerk of the Council transmitting petition, dated September 17, 2020 |
| Exhibit no D3. | Petition for vacation of a county road, transmitted September 16, 2020           |
| Exhibit no D4. | Letter to Petitioner acknowledging receipt of petition dated October 15, 2020    |
| Exhibit no D5. | Vacation area map  |
| Exhibit no D6. | Legal description and vacation area as prepared by Petitioner’s surveyor         |
| Exhibit no D7. | KC Assessor’s information for Petitioner McCartney property, APN 73510000180     |

- Exhibit no D8. KC Assessor’s information for Petitioner Dowd property, APN 73510000130
- Exhibit no D9. KC Assessor’s information for Petitioner Kiyohara property, APN 73510000120
- Exhibit no D10. KC Assessor’s information for Petitioner Helgeland property, APN 73510000140
- Exhibit no D11. Final stakeholder notification with vicinity and site map, sent May 19, 2017
- Exhibit no D12. Emails with Assessor’s Office on valuation of vacation area
- Exhibit no D13. Compensation calculation model spreadsheet for Petitioner McCartney property, APN 7351000180
- Exhibit no D14. Compensation calculation model spreadsheet for Petitioner Dowd property, APN 7351000130
- Exhibit no D15. Compensation calculation model spreadsheet for Petitioner Kiyohara property, APN 7351000120
- Exhibit no D16. Compensation calculation model spreadsheet for Petitioner Helgeland property, APN 7351000140
- Exhibit no D17. Letter to Petitioner including County Road Engineer report, dated April 5, 2021
- Exhibit no D18. Road Engineer report
- Exhibit no D19. Emails regarding easement to Lumen
- Exhibit no D20. Letter to KC Council transmitting proposed ordinance, dated August 19, 2021
- Exhibit no D21. Proposed ordinance
- Exhibit no D22. Fiscal note
- Exhibit no D23. Affidavit of posting
- Exhibit no D24. Reserved for future submission of Affidavit of publication*

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

- Exhibit no. P1. Comment from Keith Mullen, received October 18, 2021

DS/jo