

April 11, 2023

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

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**REPORT AND RECOMMENDATION**

SUBJECT: Department of Transportation file no. **V-2733**  
Proposed ordinance no. **2022-0447**  
Adjacent parcel nos. **3751605119, 3751605003, and 3751605063**

**SERGEY AND VERA KONDRATYEV**

Road Vacation Petition

Location: a portion of 49th Avenue S / Kansas Street

Applicants: **Sergey and Vera Kondratyev**  
5306 352nd Street  
Auburn, WA 98001  
Email: [serg\\_kon2002@yahoo.com](mailto:serg_kon2002@yahoo.com); [elenabuzunov@gmail.com](mailto:elenabuzunov@gmail.com)

King County: Department of Local Services  
*represented by* **Leslie Drake**  
201 S Jackson Street  
Seattle, WA 98104  
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FINDINGS AND CONCLUSIONS:

Overview

1. Sergey and Vera Kondratyev petition the County to vacate an approximately 13,216 square-foot stretch of public right-of-way at a portion of 49th Avenue S/Kansas Street, just south of S 362nd Street. The Department of Local Services, Road Services Division (Roads), urges vacation and a waiver of all compensation. On March 28, 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 approve vacation and also (although with some hesitancy) waive compensation.**

## Background

2. Except as provided below, we incorporate the facts set forth in Roads’ report and in proposed ordinance no. 2022-0447. 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. 1, 12.
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 crosshatched vacation area looks like this:



6. The subject right-of-way segment is a wooded area not currently opened, constructed, or maintained for public use, and it is not known to be used informally for access to any property. Adjacent properties already have sufficient access. The Lakehaven Water and Sewer District requested and obtained an easement for future sewer and water lines through the Kondratyev property. Ex. 13. 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. 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. There is no question that vacation is warranted.

#### What Compensation is Due?

8. Compensation is the more complex topic today.
9. 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.
10. Here, the Assessor looked at these on a parcel-by-parcel basis, finding that adding the right-of-way area would add nothing to parcels -5003 and -5063, and \$4,000 to parcel 5119. Ex. 14. Because vacation added less private value than the expected County gains from eliminating management costs, jettisoning maintenance costs, and increasing property taxes on each of the three parcels, applying the model returned findings of zero compensation owed. Exs. 15-17. However, in keeping with our fiduciary duty, we raised a prehearing concern that analyzing each parcel separately might miss the forest through the trees, potentially ignoring the actual “before” and “after” impact of a road vacation.
11. Ours is not the usual scenario where, say, the Kondratyevs own -5119 and -5063 on the west side of the right-of-way, and neighbors own 5003 on the east side. In that standard configuration, the Kondratyevs would be slightly enhancing their lot sizes by adding a linear strip along their eastern boundary, while the neighbors would be doing the same along their western boundary. It would not be surprising that such a minor enhancement would not increase private property values enough to offset the County savings from jettisoning an unused public right-of-way.
12. Yet because in reality the Kondratyevs own all the property on both sides of the to-be-vacated right-of-way, the impact of vacation removing a public area currently bisecting

the Kondratyevs' holdings results in a much larger, unencumbered, three-lot, two-acre-plus assemblage in an urban area. Vacation would thus seem to significantly enhance the development potential of the combined parcels. We asked for Local Services to arrange for someone from the Assessor's office to participate in our public hearing, and Local Services and the Assessor obliged.

13. The Assessor's representative explained that they use the mass appraisal model they employ, which is more of a broad brush strokes than a formal, individual appraisal of a particular property. And he noted that because of high water tables and other complexities and uncertainties with these properties, there are real questions about the properties' developability. He felt it would be speculative to assign a highest and best use here as a subdivision or to otherwise upwardly adjust the value added to the parcels from vacation.
14. The Kondratyevs testified that they plan to build one single-family home on their holdings.
15. We have some reticence to waiving compensation here. High water tables can severely diminish development potential, but in an urbanizing area with planned sewer and potable water lines (exhibit 1 at 17), issues like whether a property "percs" pose less of a hurdle. A Local Services environmental unit saw no critical areas or other environmental issues with the property. Ex. 1 at 003 (n.11). Yet the clearest evidence in our record is the Assessor's measured testimony that it would be speculative to apply a higher added value to these parcels. We ultimately agree with Local Services' recommendation to waive compensation.

RECOMMENDATION:

APPROVE proposed ordinance no. 2022-0447 to vacate the subject road right-of-way, without requiring any compensation.

DATED April 11, 2023.



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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 *May 5, 2023*, 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 MARCH 28, 2023, HEARING ON THE ROAD VACATION  
PETITION OF SERGEY AND VERA KONDRATYEV, DEPARTMENT OF LOCAL  
SERVICES FILE NO. V-2733**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Jeff Darrow, Leslie Drake and Vera Kondratyev.

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

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|----------------|--|
| Exhibit no. 1  | Roads Services report to the Hearing Examiner, sent March 13, 2023   |
| Exhibit no. 2  | Letter from Clerk of the Council to DLSP transmitting petition, dated May 21, 2020   |
| Exhibit no. 3  | Petition for vacation of a county road, transmitted May 21, 2020   |
| Exhibit no. 4  | Letter from DLSP to Petitioner acknowledging receipt of petition, dated May 28, 2020                                       |
| Exhibit no. 5  | Vacation area map  |
| Exhibit no. 6  | Aerial photograph  |
| Exhibit no. 7  | King County Assessor’s information for property APN 3751605003   |
| Exhibit no. 8  | King County Assessor’s information for property APN 3751605063   |
| Exhibit no. 9  | King County Assessor’s information for property APN 3751605119   |
| Exhibit no. 10 | Notification from Petitioners of purchase of APN 3751605119  |
| Exhibit no. 11 | Final stakeholder notification, sent August 6, 2020  |
| Exhibit no. 12 | Revised exhibit map, including ownership of APN 3751605119   |
| Exhibit no. 13 | Easement from Petitioners in favor of Lakehaven Water and Sewer District   |
| Exhibit no. 14 | Email between Assessor’s Office on valuation of vacation area  |
| Exhibit no. 15 | Compensation calculation model spreadsheet for APN 3751605003  |
| Exhibit no. 16 | Compensation calculation model spreadsheet for APN 3751605063  |
| Exhibit no. 17 | Compensation calculation model spreadsheet for APN 3751605119  |
| Exhibit no. 18 | Letter from DLSP to Petitioners including Road Engineer report, dated March 3, 201   |
| Exhibit no. 19 | Road Engineer Report   |
| Exhibit no. 20 | Letter from DLSP to King County Council recommending approval and transmitting proposed ordinance, dated November 28, 2022 |
| Exhibit no. 21 | Proposed ordinance   |
| Exhibit no. 22 | Fiscal note  |
| Exhibit no. 23 | Declaration of posting   |
| Exhibit no. 24 | Affidavit of publication, <i>to be supplied by Clerk of Council</i>  |