

February 7, 2024

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

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**REPORT AND RECOMMENDATION**

SUBJECT: Department of Transportation file no. **V-2730**  
Proposed ordinance no. **2023-0423**  
Adjacent parcel no(s). **375060-8010, 375060-8049, and 375060-8052**

**BRETT SHERROD, CHRISTIAN DENZLER, JERALD LAITILA**  
Road Vacation Petition

Location: a portion of S. 368th Street/10th Street

Petitioner: **Christian Denzler**  
36728 32nd Ave S  
Auburn, WA 98001  
Telephone: (425) 319-0100  
Email: [denzler@vexicon.com](mailto:denzler@vexicon.com)

Petitioner: **Jerald Laitila**  
36803 34th Ave S  
Auburn, WA 98001  
Email: [jerryj17@yahoo.com](mailto:jerryj17@yahoo.com)

Petitioner: **Brett Sherrod**  
36721 34th Ave S  
Auburn, WA 98001  
Telephone: (253) 266-6211  
Email: [bsmustangman@gmail.com](mailto:bsmustangman@gmail.com)

King County: Department of Local Services  
*represented by* **Leslie Drake**  
201 S Jackson Street  
Seattle, WA 98104  
Telephone: (206) 477-7764  
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## FINDINGS AND CONCLUSIONS:

### Overview

1. Brett Sherrod, Christian Denzler, and Jerald Laitila petition the County to vacate a stretch of public right-of-way at a portion of S. 368th Street/10th Street. The Department of Local Services, Road Services Division (Roads), urges vacation. On February 7, 2024, 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 the Council approve the vacation. As explained below, there is only one property from which compensation should be required as a condition of vacation.

### Background

2. Except as provided below, we incorporate the facts set forth in Roads' report and in proposed ordinance no. 2023-0423. 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. Ex. 1 at 001-04; Ex. 14.
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. 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. Utilities will retain their easements.
6. 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.

7. Normally, when a stretch of right-of-way is vacated the property abutting one side of the right-of-way takes half of the square footage, and the property abutting other side takes the other half. This case is interesting. Given how the abutting parcels were initially created, the entire right-of-way was carved out from land to the south; thus the vacated right-of-way will return only to the lots to the south. *See* Ex. 4 at 005. The two properties to the north of the right-of-way (the Sherrod lot and one of the Denzler lots) will not add any square footage when vacation is complete. It is only the abutting properties to the south (the other Denzler lot and the two Laitila lots) that add square footage. Ex. 14.

### 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. This means that the appropriate level of compensation to require is a somewhat individualized inquiry, producing different results for different parcels.
9. Here, the Assessor opines that the smaller of the Laitila lots (375060-8049) will not appreciate at all in value from the additional square footage. Ex. 18. That seems counterintuitive; how can adding 4500 ft.<sup>2</sup>—which almost doubles the size of the existing 4940 ft.<sup>2</sup> lot *not* add any value? *Compare* Ex. 18 *with* Ex. 12. However, in past petitions where we required someone from the Assessor's office to appear at our public hearing to explain a similar incongruity, staff satisfactorily described how, due to the mass appraisal model they employ, certain smaller value gains are not captured. Here, the figure would likely be very low anyway, given that the larger Laitila lot (375060-8052, which is thus acquiring more square footage) is only estimated to appreciate by \$3000. Ex. 17. The southerly Denzler lot (375060-8010, which will acquire the most square footage) is expected to appreciate by \$7000.
10. From those gains we then subtract the value the County sees from jettisoning a stretch of right-of-way; the model this year calculates that \$4096 per segment. That completely offsets the gain to the larger Laitila lot. It only partially offsets the gain to the Denzler lot, resulting in compensation due of \$2758. Mr. Denzler is under no compulsion to acquire the right-of-way. If he chooses not to acquire it, the public area will simply continue to bisect his two adjoining properties and he will be no worse off than he was when the petition started.

## RECOMMENDATION:

1. We recommend that Council APPROVE proposed ordinance no. 2023-0423 to vacate the subject road right-of-way abutting the Laitilia parcels (375060-8049 and 375060-8052), with no compensation requirement or contingencies.
2. We recommend that Council APPROVE proposed ordinance no. 2023-0423 to vacate the subject road right-of-way abutting the Denzler parcel (375060-8010), CONTINGENT on petitioner paying \$2758 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$2758 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 375060-8010. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 375060-8010 is vacated.

DATED February 7, 2024.



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David Spohr  
Hearing Examiner

### NOTICE OF RIGHT TO APPEAL

A party may appeal an Examiner report and recommendation by following the steps described in KCC 20.22.230. By **4:30 p.m.** on **March 4, 2024**, an electronic appeal statement must be sent to [Clerk.Council@kingcounty.gov](mailto:Clerk.Council@kingcounty.gov), to [hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov), and to the party email addresses on the front page of this report and recommendation. Please consult KCC 20.22.230 for the exact filing requirements.

If a party fails to timely file an appeal, the Council does not have jurisdiction to consider that appeal. Conversely, 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 in the appeal process.

**MINUTES OF THE FEBRUARY 7, 2024, HEARING ON THE ROAD VACATION  
PETITION OF BRETT SHERROD, CHRISTIAN DENZLER, JERALD LAITILA,  
DEPARTMENT OF TRANSPORTATION FILE NO. V-2730**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake and Chris Denzler. The following exhibits were offered and entered into the record:

- Exhibit no. 1 Roads Report to the Hearing Examiner, submitted January 22, 2024
- Exhibit no. 2 Petition transmittal letter, to the County Road Engineer from the Clerk of Council, dated January 28, 2020
- Exhibit no. 3 Petition for Vacation of a County Road, received January 27, 2020
- Exhibit no. 4 Letter to petitioners, acknowledging receipt of petition, dated February 10, 2020
- Exhibit no. 5 Letter to Petitioners, regarding revised petition, dated May 28, 2020
- Exhibit no. 6 Petition signature page with all signatures
- Exhibit no. 7 Letter to Petitioners acknowledging receipt of revised petition
- Exhibit no. 8 Plat Jovita
- Exhibit no. 9 King County Assessor’s information for Petitioners’ property, APN 2721049047
- Exhibit no. 10 King County Assessor’s information for Petitioners’ property, APN 2721049059
- Exhibit no. 11 King County Assessor’s information for Petitioners’ property, APN 3750608010
- Exhibit no. 12 King County Assessor’s information for Petitioners’ property, APN 3750608049
- Exhibit no. 13 King County Assessor’s information for Petitioners’ property, APN 3750608052
- Exhibit no. 14 Exhibit map depicting vacation area
- Exhibit no. 15 Final notice sent of review to agencies on October 23, 2020
- Exhibit no. 16 Email exchange with Assessor’s Office regarding valuation of vacation area
- Exhibit no. 17 Compensation calculation model spreadsheet for Petitioners’ property, APN 375060-8052
- Exhibit no. 18 Compensation calculation model spreadsheet for Petitioners’ property, APN 375060-8049
- Exhibit no. 19 Compensation calculation model spreadsheet for Petitioners’ property, APN 375060-8010
- Exhibit no. 20 Cover letter to Petitioners, with a copy of the County Road Engineer’s Report, dated December 29, 2020
- Exhibit no. 21 County Road Engineer’s Report
- Exhibit no. 22 Easement between PSE and Jerald Laitila
- Exhibit no. 23 Easement between PSE and Christian Denzler
- Exhibit no. 24 Emails to Lakehaven Water and Sewer District regarding easements
- Exhibit no. 25 Ordinance transmittal letter, from King County Executive to Councilmember Dave Upthegrove dated November 8, 2023
- Exhibit no. 26 Proposed Ordinance
- Exhibit no. 27 Declaration of Posting
- Exhibit no. 28 Affidavit of Publication for date of hearing – to be supplied by Clerk of the Council