

October 25, 2024

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
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REPORT AND RECOMMENDATION

SUBJECT: Department of Transportation file no. **V-2754**
Proposed ordinance no. **2024-0275**
Adjacent parcel nos. **042507-9008, 801610-0040, and 801610-0030**

BARAJAS, KIM, ANDERSON
Road Vacation Petition

Location: a portion of the unnamed Alley and Street in the Plat of Stillwater,
Carnation

Applicant: **Kyoung Kim**
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Carnation, WA 98014
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Applicants: **Patricia Barajas and Cuauhtemoc (Temo) Barajas Reina**
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Applicants: **Zoe and Derek Anderson**
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King County: Department of Local Services
represented by **Leslie Drake**
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FINDINGS AND CONCLUSIONS:

Overview

1. Patricia Barajas and Cuauhtemoc Barajas Reina, Zoe and Derek Anderson, and Michael and Kyoung Kim petition the County to vacate a stretch of public right-of-way at a portion of an unnamed alley and street in the Plat of Stillwater, Carnation.¹ The Department of Local Services, Road Services Division (Roads), urges vacation with a compensation requirement of \$730 for Baraja and Anderson parcels and \$3913 for the Kim parcel. On October 10, 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 vacation, but with reducing the Kim compensation requirement to a matching \$730.

Background

2. Except as provided below, we incorporate the facts set forth in Roads' report and in proposed ordinance no. 2024-0275. 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 001-006, Ex. D11 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. Vacation

¹ The Hongs were the owner of the third parcel at the time of the petition. The Kims agreed to step in after their purchase. The Hongs have no further role with this case.

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.

6. This “road” could hardly be more useless to the county road system (or even to the *private* road system). It consists of mere lines on a map, an area essentially just comprised of grass and trees. On a map, a short spur juts south off the arterial onto the Barajas property, where it T-bones and travels west to the Anderson property and east to the Kim property. Ex. D11 at 001. All three properties have access directly to the arterial. And the public will benefit from its vacation, with 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?

7. 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. 14–16.
8. Here, the Assessor concluded that adding the right-of-way to each property would increase the Barajas and Anderson properties’ values by \$5000 and the Kim property’s value by \$8243. Subtracting out the \$4177 the County is expected to gain from avoided liability risk, eliminated management costs, and jettisoned maintenance costs for each parcel, leaves \$730 for the Barajas and Andersons to pay to obtain the right-of-way, but \$3,913 for the Kims to pay. Exs. 14–16.
9. As we have discussed in previous recommendations, the mass appraisal method the Assessor uses to estimate how much adding square footage to a parcel benefits the parcel systematically understates the true value to a property owner from eliminating the public right-of-way. To use an example, suppose you wanted to buy property in a given neighborhood. While getting ready to put an offer in on Parcel A, with a \$505,000 asking price, you notice Parcel B—a property seemingly identical in all respects to Parcel A (size, improvements, view, topography, vegetation, school district, etc.)—with a \$500,000 asking price.
10. Intrigued by a potential “deal,” you investigate and learn that Parcel B has an unopened public right-of-way running through the middle of it. That public right-of-way would allow anyone to walk across your property, could restrict where you could build a house or other improvements—or, if a portion of the home was built into the right-of-way,

might make title insurance and thus a loan (and later home insurance) unavailable, a scenario we have encountered repeated in previous petitions—and would generally encumber your title. Would you (or any prospective purchaser in their right mind who has ever heard the phrase, “penny-wise, pound-foolish”) be willing to spend a half million on a property, yet only require a \$5,000 “discount” to buy the encumbered Parcel B instead of the free-and-clear Parcel A? Maybe a \$50,000 discount would make Parcel B competitively-priced, but not \$5,000.

11. Yet, that is how the Assessor operates. And to avoid gumming up the County process for jettisoning useless rights-of-way, and to allow owners freer use of their properties while also avoiding a gift-of-public-funds problem, we have somewhat reluctantly accepted the Assessor’s methodology. So, while the Barajas and Andersons ship has come in (in terms of significantly increasing their respective property’s market value at a cost of only \$730), there is nothing unfair about allowing them to acquire the public right-of-way on essentially the same terms as every past successful vacation petitioner has been offered.
12. The fairness wrinkle here is that the Kims would need to pay over five times more than their neighbors to obtain the same benefit. While the Barajas were driving the bus on the petition (so they can more easily develop their property), the Kims were not even a part of the initial petition. Moreover, vacating the right-of-way across the other two properties while leaving a portion of the Kim property public, would create a landlocked, orphaned public right-of-way stretch that is not good either for the public or for clearing up private titles. So, it is in the public interest to have the Kims follow through. We thus recommend reducing the Kims’ compensation to the same as their neighbors.

RECOMMENDATION:

1. We recommend that Council APPROVE proposed ordinance no. 2024-0275 to vacate the subject road right-of-way abutting parcel 042507-9008 (Barajas), CONTINGENT on petitioner paying \$730 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$730 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 042507-9008. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 042507-9008 is vacated.
2. We recommend that Council APPROVE proposed ordinance no. 2024-0275 to vacate the subject road right-of-way abutting parcel 801610-0030 (Anderson), CONTINGENT on petitioner paying \$730 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$730 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 801610-0030. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 801610-0030 is vacated.

3. We recommend that Council APPROVE proposed ordinance no. 2024-0275 to vacate the subject road right-of-way abutting parcel 801610-0040 (Kim), CONTINGENT on petitioner paying \$730 to King County within 90 days of the date Council takes final action on this ordinance. If King County does not receive \$730 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 801610-0040. Recording an ordinance will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel 801610-0040 is vacated.

DATED October 25, 2024.



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 **November 18, 2024**, an electronic appeal statement must be sent to Clerk.Council@kingcounty.gov, to 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 OCTOBER 10, 2024, HEARING ON THE ROAD VACATION PETITION OF BARAJAS, KIM, ANDERSON, DEPARTMENT OF TRANSPORTATION FILE NO. V-2754

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake and Costa Philippides.

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

Exhibit no. D1	Roads Services report to the Hearing Examiner, sent September 24, 2024
Exhibit no. D2	Petition transmittal letter dated March 17, 2022, to the County Road Engineer.

Exhibit no. D3	Petition for Vacation of a County Road received March 17, 2022
Exhibit no. D4	Letter to Petitioners dated April 6, 2022, acknowledging receipt of Petition.
Exhibit no. D5	Revised Petition
Exhibit no. D6	King County Assessor's information for Petitioners' property, APN 0425079008
Exhibit no. D7	King County Assessor's information for Petitioners' property, APN 8016100030
Exhibit no. D8	King County Assessor's information for Petitioners' property, APN 8016100040
Exhibit no. D9	Plat of Stillwater
Exhibit no. D10	Boundary Line Adjustment recorded 20070305900009
Exhibit no. D11	Exhibit Map
Exhibit no. D12	Copy of notice sent of review to agencies on 05/23/2022
Exhibit no. D13	Email exchange with Assessor's Office regarding valuation of vacation area.
Exhibit no. D14	Compensation calculation model spreadsheet for Petitioners' property, APN 0425079008
Exhibit no. D15	Compensation calculation model spreadsheet for Petitioners' property, APN 8016100030
Exhibit no. D16	Compensation calculation model spreadsheet for Petitioners' property, APN 8016100040
Exhibit no. D17	Cover letter to Petitioners dated October 13, 2023, with a copy of the County Road Engineer's Report
Exhibit no. D18	County Road Engineer's Report
Exhibit no. D19	Email from Kyong Kim September 16, 2024
Exhibit no. D20	Ordinance transmittal letter dated August 26, 2004, from King County Executive to Councilmember Dave Upthegrove
Exhibit no. D21	Proposed Ordinance
Exhibit no. D22	Declaration of Posting
Exhibit no. D23	Publication of Notice of Hearing
Exhibit no. D24	Letter to abutting property owner, September 23, 2024