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Title: AN ORDINANCE authorizing the condemnation of the fee title to an existing road right of way, for public highway purposes, including permanent public access to a regionally significant railroad corridor "railbanked" under the federal Rails to Trails Act, 16 U.S.C. 1247(d), within council district three.

Sponsors: Kathy Lambert

Indexes: Condemnations, ERC/BNSF

Code sections:

Attachments: 1. 16825.pdf, 2. A. Waiver of Damages and Grant of Easement from Weyerhaeuser Timber Company to King County, 3. B. Reduced-Size Copy of King County Engineer's Office Survey No. 988, 4. C. Legal Descriptions--One Referenced Parcel for Condemnation and Its Associated Conveyance Document, 5. 2010-0258 Supporting Documents.pdf, 6. 2010-0258 Staff Report, 7. 2010-0258 Att 7 - Line Amendment BAR edits, 8. 2010-0258 - Att 2 Viciniy Map, 9. 2010-0258 - Att 3 Parcel Map, 10. 2010-0258 - Att 4 November 5, 2010 Letter, 11. 2010-0258 - Att 5 Photograph of Blockage, 12. 2010-0258 - Att 6 April 9, 2010 Letter, 13. 2010-0258 - David Bever Letter, 14. 2010-0258 - William Wall Letter, 15. 2010-0258 hearing notice.doc, 16. 2010-0258 - Rutherford Slough Presentation(4-27-10), 17. 2010-0258 REVISED Staff Report, 18. C. Legal Descriptions--One Referenced Parcel for Condemnation and Its Associated Conveyance Document, 19. A. Waiver of Damages and Grant of Easement from Weyerhaeuser Timber Company to King County, 20. B. Reduced-Size Copy of King County Engineer's Office Survey No. 988, 21. 2010-0258 - Rutherford Slough (4-27-10).ppt

Date	Ver.	Action By	Action	Result
5/17/2010	2	Metropolitan King County Council	Passed	Pass
4/27/2010	1	Environment and Transportation Committee	Passed Out of Committee Without a Recommendation	Pass
4/12/2010	1	Metropolitan King County Council	Introduced and Referred	

Clerk 05/17/2010

AN ORDINANCE authorizing the condemnation of the fee title to an existing road right of way, for public highway purposes, including permanent public access to a regionally significant railroad corridor "railbanked" under the federal Rails to Trails Act, 16 U.S.C. 1247(d), within council district three.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

A. In 1911, upon petition of Fall City-area property owners, King County Road No. 920, now known as Southeast 39th Place ("SE 39th Place"), was duly established by order of the King County board of commissioners. A record of the road establishment petition and proceedings ("the record") is on file in the map vault maintained by the road services division of the King County department of transportation. A copy of the record is on file with the King County council.

B. The record shows that King County acquired two portions of right of way for SE 39th Place in fee, and acquired a third portion of right of way for SE 39th Place by grant of easement from the Weyerhaeuser Timber Company ("Weyerhaeuser"). Specifically, on November 19, 1911, in a document entitled "Waiver of Damages for Falls City Road" ("the easement"), Weyerhaeuser granted King County an easement for a road generally sixty feet in width, over a route described in the easement and depicted on a survey map entitled "King County Engineer's Office Survey No. 988 C. Ronnei Petition" ("the survey"). A copy of the easement is Attachment A to this ordinance. A reduced-size copy of the survey is Attachment B to this ordinance. A full-size copy of the survey is on file with the King County council.

C. The easement granted by Weyerhaeuser runs over a parcel of land now identified as King County assessor's tax parcel no. 1124079028. The legal description for tax parcel no. 1124079028 is Attachment C to this ordinance.

D. Then and now, SE 39th Place served to connect the main thoroughfare between Carnation and Fall City, now known as State Route 203, to a railroad corridor ("the corridor"), which was then owned by the Chicago, Milwaukee and Puget Sound Railroad, and which still exists today.

E. In 1992, the Burlington Northern Santa Fe Railway Company, as successor in interest to the Chicago, Milwaukee and Puget Sound Railroad, contracted with King County to "railbank" the corridor under the National Trails System Act, 16 U.S.C. 1247(d), also known as the federal Rails to Trails Act, and sold the corridor to King County. The corridor now serves as the regional Snoqualmie Valley Trail.

F. From the time that SE 39th Place was first established in 1911, and until March 2010, the public used

SE 39th Place to access the corridor, first for railroad-related purposes, and then for recreational purposes.

Nonmotorized public access to the corridor continued even after motor vehicle access was restricted by a gate installed where SE 39th Place enters tax parcel no. 1124079028. Pedestrians, bicyclists and equestrians used the road to get to the corridor until March 2010.

G. In October 2009, Weyerhaeuser sold tax parcel no. 1124079028 to Rutherford Slough LLC ("the LLC"). The easement is listed as an exception to title in the deed conveying the parcel from Weyerhaeuser to the LLC.

H. In October 2009, personnel in the department of natural resources and parks learned that the LLC was considering restricting public access to SE 39th Place on tax parcel no. 1124079028. The director of the parks and recreation division and the deputy director of the department of natural resources and parks explained to representatives of the LLC that King County has a public highway easement for SE 39th Place, and that restricting public access would violate the easement. Thereafter, in an effort to be a good neighbor and partner, King County personnel made significant, repeated efforts to establish a cooperative relationship with the LLC, including numerous phone calls, emails and letters.

I. On October 30, 2009, parks and recreation division director Kevin Brown and department of natural resources and parks deputy director Bob Burns met with representatives of the LLC to discuss the access issue, including the LLC's concerns regarding impacts from the public's continued use of SE 39th Place to access the Corridor. On November 5, 2009, Kevin Brown sent a letter to a representative of the LLC addressing the concerns discussed at the October 30 meeting, including specific proposals to address parking, signage, potential trespassing, maintenance, hours of operation and trash collection at tax parcel no. 1124079028.

J. Thereafter, Kevin Brown and Bob Burns attempted to schedule follow-up meetings to confirm that the LLC's concerns had been addressed. They contacted representatives of the LLC not only by phone, but also at least nine times by letter and email to set up a meeting. Despite these efforts, representatives from the LLC were not available to meet.

K. Representatives of the LLC finally agreed to hold a follow-up meeting on March 25, 2010. A representative of the LLC also expressed a commitment in two separate phone conversations, one with King County councilmember Kathy Lambert and another with Bob Burns, that the LLC would not physically block public access to SE 39th Place on the LLC property.

L. Despite those assurances, and some time prior to the March 25, 2010, meeting, the LLC installed or caused ecology blocks to be installed to bar public access to SE 39th Place over tax parcel no. 1124079028.

M. Katy Terry, Bob Burns, King County councilmember Kathy Lambert and others met with LLC representatives on March 25, 2010. At that meeting, the LLC's representatives made it clear that the LLC would not remove the ecology blocks. The LLC's representatives stated that they would not even consider removing the ecology blocks unless and until King County authorized the LLC to develop tax parcel no. 1124079028 under a not-yet-developed plan involving single-family residential development, with access from an entirely new road to be constructed at county expense.

N. The public has a significant investment in the corridor and has a right to access and use the regional trail that occupies the corridor.

O. As a railroad right of way "railbanked" under 16 U.S.C. 1247(d), the corridor is preserved under federal law for the future restoration of interstate rail service.

P. RCW 64.04.180 declares that railroad properties, including but not limited to rights of way, land held in fee and used for railroad operations, bridges, tunnels and other facilities, are declared to be suitable for public use upon cessation of railroad operations on the properties. The statute further declares that it is in the public interest of the state of Washington that such properties retain their character as public utility and transportation corridors, and that they may be made available for public uses including highways, other forms of mass transportation, conservation, energy production or transmission or recreation.

Q. Chapter 8.08 RCW authorizes counties to exercise the power of eminent domain to acquire land and property for public use.

R. RCW 36.75.040 authorizes the board of county commissioners of each county to acquire land for county road purposes by condemnation, and to exercise the right of eminent domain as provided by law.

S. RCW 36.68.010 authorizes counties to establish park and playground systems for public recreational purposes and to acquire lands, buildings and other facilities for such purposes by condemnation.

T. RCW 36.89.030 authorizes counties to establish, acquire, develop, construct and improve open space, park, recreation and community facilities, and to acquire lands, buildings and other facilities for such purposes by condemnation.

U. RCW 67.20.020 authorizes counties and other entities to acquire by condemnation land for parks and other recreational facilities, and roads leading from said parks and other recreational facilities to nearby highways.

V. The King County council finds that it is necessary for King County to acquire additional property rights in the right of way for SE 39th Place over tax parcel no. 1124079028 to ensure perpetual public access from State Route 203 to the corridor.

W. The King County council finds that in light of the "railbanked" status of the corridor, and the possibility that the corridor could be returned to active use for interstate rail service, it is necessary for King County to acquire sufficient property rights to ensure public vehicle access from State Route 203 to the corridor in perpetuity.

X. In order to acquire the property and property rights required to ensure public access from State Route 203 to the corridor in perpetuity, it is necessary for King County to condemn additional property rights in the road corridor that was established over tax parcel no. 1124079028 by order of the King County board of commissioners in 1911.

Y. The King County council finds that public health, safety, necessity and convenience demand that King County acquire fee title to the road corridor established over tax parcel no. 1124079028 by order of the King County board of commissioners in 1911, and that the property, property rights and rights in property to

the road corridor established over tax parcel no. 1124079028 by order of the King County board of commissioners in 1911 be condemned, appropriated, taken and damaged for the purposes herein described.

SECTION 2. The King County council has deemed it necessary and in the best interest of the citizens of King County that fee title to the road right of way described in Attachments A and B to this ordinance be condemned, appropriated, taken, and damaged as described in Attachment C to this ordinance, for public road purposes, including, but not limited to, nonmotorized access to the Snoqualmie Valley Trail, and subject to the making or paying of just compensation to the owners herein in the manner provided by law.

SECTION 3. The attorneys for King County are hereby authorized and directed to begin to prosecute the proceedings provided by law to condemn, take and appropriate the land and other property interests, property rights and rights in property necessary to carry out this ordinance.

Legal newspaper two consecutive weeks

Newspaper: Seattle Times