



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**April 29, 2008**

**Ordinance 16082**

**Proposed No.** 2007-0524.2

**Sponsors** Gossett and Patterson

1 AN ORDINANCE denying the petition for the vacation of  
2 a portion of 164th Avenue SE, File V-2578; Petitioner:  
3 David M. Petrie.  
4

5 **STATEMENT OF FACTS:**

- 6 1. A petition has been filed requesting vacation of a portion of the 164th  
7 Avenue SE right-of-way hereinafter described.
- 8 2. The department of transportation records indicate that King County has  
9 not been maintaining the subject portion of 164th Avenue SE right-of-  
10 way. The records indicate that no public funds have been expended for its  
11 acquisition. The right-of-way is classified as "C-Class" and, in accordance  
12 with K.C.C. 14.40.020, the compensation due King County is based on  
13 fifty percent of the assessed value of the subject right-of-way, which was  
14 determined from records of the department of assessments. The  
15 compensation for the 9,847 square feet of vacation area was calculated to  
16 be \$4,652.81. King County is not in receipt of compensation from the  
17 petitioner.

- 18           3. The subject right-of-way contains portions of a soft-surface school  
19           walkway used for access between residential areas and the Liberty High  
20           School playfields.
- 21           4. The subject right-of-way is located with the city of Renton's pending  
22           Liberty Area Annexation. Should this annexation be approved, it has an  
23           estimated July 2008 effective date. As of the effective date, King County  
24           would no longer have jurisdiction over the subject right-of-way.
- 25           5. The department of transportation notified the various utility companies  
26           serving the area, the standard internal stakeholders, and the city of Renton  
27           for comments. The department of transportation has been advised that  
28           King County Water District Number 90 will require an easement over the  
29           existing water main located in the vacation area.
- 30           6. The department of natural resources and parks is in negotiations with  
31           the city of Renton to transfer ownership of adjacent Maplewood Heights  
32           Park to the city. The department of natural resources and parks requested  
33           that King County not divest public interest in the subject right-of-way, as  
34           it could affect future access to the park and interfere with the city's  
35           willingness to accept transfer of this property.
- 36           7. Through the stakeholder review process, the city of Renton has  
37           requested that King County not divest public interest in the subject right-  
38           of-way.
- 39           8. For the reasons stated above, the department of transportation cannot  
40           consider the subject portion of the right-of-way useless as part of the

41 county road system and believes the public would not benefit by the return  
42 of this unused area to the public tax rolls.

43 Due notice was given in the manner provided by law and a hearing was  
44 held by the office of the hearing examiner on November 28, 2007, and  
45 continued administratively with the record closed on January 2, 2008.

46 In consideration of the statement of facts regarding the subject vacation  
47 the council has determined that it is in the best interest of the citizens of  
48 King County to deny said petition.

49 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

50 SECTION 1. The council hereby adopts and incorporates herein as its findings  
51 and conclusions the findings and conclusions contained in the report and  
52 recommendation of the hearing examiner dated February 15, 2008, and denies the  
53 petition to vacate and abandon that portion of 164th Avenue SE as conveyed to King  
54 County by the recording of the Plat of Cedar Park Five Acre Tracts recorded in Volume  
55 15 of Plats, Page 91, records of King County, Washington as described below:

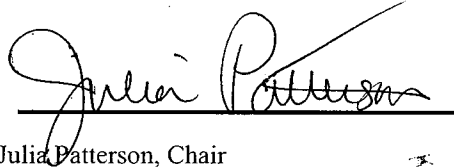
56 The west 15.00 feet of the east 30.00 feet of that portion of the east half of  
57 the east half of the southeast quarter of Section 14, Township 23 North,  
58 Range 5 East, Willamette Meridian, in King County, Washington, lying  
59 south of the easterly prolongation of the north line of Tract 5, of Block 4,  
60 in the Plat of Cedar Park Five Acre Tracts, recorded in Volume 15 of  
61 Plats, Page 91, records of King County, Washington, and lying north of

62 the easterly prolongation of the south line of Tract 6, of Block 4, of said  
63 plat.  
64

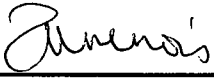
Ordinance 16082 was introduced on 10/8/2007 and passed by the Metropolitan King County Council on 4/28/2008, by the following vote:

Yes: 8 - Ms. Patterson, Mr. Dunn, Mr. Constantine, Ms. Lambert, Mr. Ferguson, Mr. Gossett, Mr. Phillips and Ms. Hague  
No: 0  
Excused: 1 - Mr. von Reichbauer

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

  
\_\_\_\_\_  
Julia Patterson, Chair

ATTEST:

  
\_\_\_\_\_  
Anne Noris, Clerk of the Council

APPROVED this 6 day of May, 2008.

  
\_\_\_\_\_  
Ron Sims, County Executive

RECEIVED  
2008 MAY -7 PM 12:32  
KING COUNTY COUNCIL CLERK

Attachments A. Hearing Examiner Report dated February 15, 2008

February 15, 2008

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

400 Yesler Way, Room 404  
Seattle, Washington 98104  
Telephone (206) 296-4660  
Facsimile (206) 296-1654  
Email: hearex@metrokc.gov

**REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL**

**SUBJECT:** Department of Transportation File No. **V-2578**  
Proposed Ordinance No. **2007-0524**  
Parcel No. **145750-0145** and **145750-0150**

**DAVID PETRIE**  
Road Vacation Petition  
Appeal from Notice of Denial

Location: Portion of 164th Avenue Southeast, unincorporated Renton area

Petitioner/  
Appellant: **David Petrie**  
811 South 273rd Court  
Des Moines, Washington 98198  
Telephone: (253) 946-6619

King County: Department of Transportation, Road Services Division  
*represented by* **Nicole Keller**  
201 South Jackson Street  
Seattle, Washington 98104-3856  
Telephone: (206) 296-3731  
Facsimile: (206) 296-0567

SUMMARY OF RECOMMENDATIONS:

Department's Administrative Decision:	Deny road vacation (appealed)
Department's Recommendation on Appeal:	Deny road vacation
Examiner's Recommendation:	Deny road vacation

DEPARTMENT'S REPORT:

The King County Department of Transportation's (Department's) original written report to the King County Hearing Examiner for Item No. V-2578 was received by the Examiner on September 24, 2007. An updated report dated October 8, 2007 was later submitted, and is the version received into the record.

PUBLIC HEARING:

After reviewing the Department's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on Item No. V-2578 was originally scheduled for hearing on October 17, 2007 and then tentatively rescheduled to be heard October 10, 2007 for the convenience of the Appellant/Petitioner. However, it was required to be rescheduled to October 31, 2007 because a proposed ordinance had not yet been introduced and referred. The October 31, 2007 hearing date was postponed at the Appellant/Petitioner's request due to illness. The hearing was convened November 28, 2007 by the Examiner in the ADR Conference Room, 400 Yesler Way, Seattle, WA 98104. Evidence, testimony and argument were received on November 28, 2007. The hearing was then continued administratively for receipt of additional documentary evidence sought by the Appellant/Petitioner regarding the position of the City of Renton and further Appellant/Petitioner argument in favor of vacation, which were received in several documents through January 2, 2008. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

## 1. General Information:

Road name and location:	Portion of 164th Avenue Southeast
Right of way classification:	C Class
Area:	9,847 square feet
Compensation:	\$4,652.81

2. Notice of hearing on the Department's denial report and the appeal was given as required by law, and a hearing was conducted by the Examiner on behalf of the Metropolitan King County Council.<sup>1</sup>
3. Except as provided below, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department's report to the Examiner for the November 28, 2007, public hearing. The Department's report will be attached to those copies of this report and recommendation that are submitted to the County Council.
4. Maps showing the vicinity of the proposed vacation and the specific area to be vacated appear in the hearing record as exhibit nos. 7 and 9.
5. The subject right-of-way segment is the westerly 15 feet of a half-street right-of-way (the 30 feet west of the defined centerline of the road alignment; the area east of the defined centerline is not public right-of-way). It was dedicated to the public in the *Plat of Cedar Park Five Acre Tracts* abutting to the west. Extending directly north of the current terminus of the improved portion of 164<sup>th</sup> Avenue Southeast at a cul de sac, the right-of-way is not currently opened, constructed or maintained for public road use, and is not known to be used informally for road access to any

<sup>1</sup> "Any appeal filed by a petitioner shall be processed by the zoning and subdivision examiner in the same manner as vacations recommended for approval." [KCC 14.40.015.B.3]

- property (in fact, it currently is physically blocked to such access). It is used as a pedestrian walkway from the cul de sac northward to the Liberty High School grounds, improved with a soft-surface trail (*i.e.*, not paved or concrete sidewalk). It is also used for public utility purposes by King County Water District No. 90, with a water main in place. (If the right-of-way were to be vacated, an easement to the District would be necessary to be retained for the construction, repair and maintenance of its water utility facilities.)
6. The property abutting to the west of the right-of-way (the beneficiary of the requested vacation) is proposed for development to suburban-density residential development. The right-of-way is not necessary for vehicular access to the development as designed, but is desired to be vacated so it can be used as part of the development.
  7. The property abutting to the east of the half-width right-of-way is King County's undeveloped Maplewood Heights Park (park). The right-of-way is not currently used as a road access to the park. King County and the City of Renton (City) are currently in negotiations over possible transfer of the park property to the City.
  8. There are no current plans for the park's development or improvement. The City and the King County Department of Natural Resources and Parks (DNRP) (which has in some measure deferred substantive input in this matter to the City, given the current negotiations) have taken the position that since park development plans are unknown at this time, development options for the park should not be foreclosed by the requested vacation, which would preclude or limit the range of choices of providing access to the park and the utilization of park property. Both agencies recommend against the requested vacation.
    - A. The City has deemed the right-of-way necessary for future park access, and also necessary for pedestrian access between the 164th Avenue Southeast cul de sac and Liberty High School. The City also "desires to preserve [its] right to develop the park in keeping with the City's public process for park design and development."
    - B. DNRP notes that "164th Avenue Southeast is the future entry into Maplewood Heights Park and vacation [of the right-of-way] could impair park development."
  9. The County Department of Development and Environmental Services (DDES) has also recommended against the vacation.
  10. Given the positions and recommendations of the City and the other county agencies, the Department (KCDOT) issued a notice of administrative denial of the requested vacation as provided by KCC 14.40.015.B. The instant appeal resulted. The Department continues to recommend against the vacation. The Department does note that the "roadway has limited ability to be extended through from the current cul de sac." The Department also notes that if the vacation occurs, a tract would be required of any property development of the vacated area to maintain the aforementioned pedestrian trail.
  11. In transmitting the vacation issue to the County Council for consideration, the County Executive has recommended that the proposed ordinance granting the vacation not be approved.
  12. The Appellant/Petitioner disputes the City's and county agencies' positions regarding potential park access and utilization needs, asserting by presentation of preliminary design drawings that access into the park can be adequately provided (in the judgment of the Appellant/Petitioner and his consulting professional advisors) without the right-of-way requested to be vacated, instead

providing the access via the remaining right-of-way width and/or utilization of park property.

13. The Appellant/Petitioner requests that the Examiner recommend overriding the City's and county agencies' positions regarding the vacation and their desire that the right-of-way be retained for future use. That essentially would have the effect of imposing the Appellant/Petitioner's park access design on the City and County.
14. The Appellant/Petitioner argues that:
  - A. The burden is on the jurisdiction with authority to vacate public right-of-way to prove that the right-of-way at issue is necessary to be retained, in essence arguing that unless the agency can prove that the right-of-way segment is directly and currently required for the public use, it must be vacated.
  - B. The "road system" context in which right-of-way usefulness is to be determined under Chapter 36.87 RCW is the through-road grid system, not minor access roads such as the one at issue. In other words, the Appellant/Petitioner contends that unless the right-of-way is necessary for through road construction, it is not "useful."
15. The Appellant/Petitioner also implies that there exists a residual right by the originally dedicating adjacent property (owner) to in effect demand vacation in its favor upon petition. The Examiner finds no such preemptive right established by law or duly enacted policy.
16. Under the present circumstances of the park development status and the City's and county agencies' information and recommendations, it cannot be found that:
  - A. Vacation of the right-of-way would have no adverse effect on the provision of access to the surrounding area (specifically, the park).
  - B. The right-of-way is not useful for the present or future public road system.

#### CONCLUSIONS:

1. The applicable law on the authority of the County to vacate public right-of-way rests in state statute, RCW 36.87.060(1), which in pertinent part reads as follows:

If the county road is found useful as a part of the county road system it shall not be vacated, but if it is not useful and the public will be benefited by the vacation, the county legislative authority *may* vacate the road or any portion thereof. [Emphasis added]

2. The Appellant/Petitioner's desired interpretation of the applicable law and the resultant approval test that applies to vacating public right-of-way is untenable. First, the "road system" context for considering usefulness of a right-of-way is not limited to through street use or necessity. There is no support for that notion in the law. The "road system" includes any public road providing access to any property or area; minor roads such as cul de sacs, dead ends and public road accesses to special purpose parcels such as the park in this case are not excluded from the "road system" merely because they do not provide through connection to other roads.



3. Second, the test of review under the law is not that the agency with jurisdiction must prove that the right-of-way is imminently necessary in order to deny a petition for vacation. That is in essence a reversal of the burden of proof. In fact, the test is multi-part, favors the public interest in the right-of-way rather than the desires and expectations of a petitioner, and in the final analysis is purely discretionary in any case.
- A. The first part of the test is the general provision that “if the county road is found *useful* as a part of the county road system *it shall not be vacated. . .*” (emphasis added) That test does not require an agency to prove imminent necessity to have authority to deny a vacation petition; instead, it holds that if a jurisdiction finds the right-of-way useful, it is barred from vacating it, from divesting the public of the right-of-way. The realm of found “useful”-ness is broad and includes any possibility of future usefulness which the agency may determine. The term “useful” is not defined in the statute, so statutory interpretation resorts to the common and ordinary meaning. “Useful” is defined in common dictionaries variously as “*adj.*: capable of being put to use: Serviceable; *esp.*: having utility”<sup>2</sup>; “*adj.* Capable of being used advantageously; serviceable.”<sup>3</sup>; “*adj.* that can be used; serviceable; helpful”(emphasis in original)<sup>4</sup> As can be seen from the cited definitions, the term “useful” extends to the *potential* (“capable”; “serviceable”) for use as well as immediate usability; the term “useful” does not require an actual or immediate *necessity* of use. In this context, therefore, the term “useful” includes not just an immediate need of the right-of-way for use in the road system, but also any perceived need, desire or inclination to merely preserve a right-of-way for possible future use and improvement. That future usefulness is what lies at the heart of the City’s and county agencies’ recommendations that the right-of-way not be vacated, because it may be useful in the future for park access.
- B. The second part of the test is that in a vacation action the right-of-way must be expressly found to be “not useful” *and* that “the public will be benefited by the vacation.” Here, as seen above the City’s and county agencies’ findings and recommendations do not support a finding that the right-of-way would be “not useful.” It is instead convincingly found useful to the City and to the County to preserve it pending possible use for access in the park’s development. It also cannot be found that “the public will be benefited by the vacation.” The City and county agency findings and recommendations provide the best formal indication of the public benefit that would be affected by the proposed vacation, and their position is that the public will not be benefited by the vacation, since their flexibility and effectiveness in managing park resources for the public good will be adversely limited by the vacation. It is appropriate to grant considerable deference to the findings and recommendations of those jurisdictions and agencies, since they have administrative responsibility for and/or proper interest (such as the City’s possible assumption of park ownership) in the operation and administration of the park.
- C. Lastly, even if a right-of-way is found to be “not useful” and that “the public will be benefited by the vacation,” the agency with jurisdiction, in this case the County through its legislative authority, the County Council, is left with full discretion whether or not to vacate the right-of-way, by the use of the word “may” in the pertinent portion of RCW 36.87.060(1).

<sup>2</sup> Webster’s New Collegiate Dictionary 1288 (1977)

<sup>3</sup> Second College Edition, The American Heritage Dictionary 1331 (1985)

<sup>4</sup> Webster’s New World Dictionary of the American Language 825 (1975)

4. Regarding the Appellant/Petitioner's implication that there exists a residual right by the originally dedicating adjacent property (owner) to in effect demand vacation, the Examiner finds no such preemptive right established by law or duly enacted policy.
5. As the right-of-way is generally found useful, does not meet the specific tests of being expressly found "not useful" as part of the King County road system and of the public being benefited by its vacation, the petition fails to meet the tests for road vacation established by the applicable law.
6. As the proposed vacation does not conform to the law, it should not be granted.

RECOMMENDATION:

DENY the requested vacation of the subject road right-of-way by declining to adopt proposed Ordinance No. 2007-0524.

NOTE: If the Council determines that the vacation should be approved, the cash compensation for the defined monetary value of the vacated area, \$4,652.81, must be deposited with the County as a condition precedent to vacation (subject to Council consideration of alternative compensation or waiver, neither of which is requested by the Petitioner nor recommended by the Department or the Examiner). [KCC 14.40.020 and .030] Also, an easement in favor of King County Water District No. 90 would need to be executed and recorded prior to vacation. The matter should therefore be continued in order that such items may be completed satisfactorily prior to ordinance enactment.

Recommended February 15, 2008.

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Peter T. Donahue  
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL  
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before* **February 29, 2008**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before* **March 7, 2008**.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3<sup>rd</sup> Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE NOVEMBER 28, 2007, PUBLIC HEARING ON DEPARTMENT OF TRANSPORTATION, ROAD SERVICES DIVISION FILE NO. V-2578.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Nicole Keller and Kelly Whiting, representing the Department; Wayne Potter and Daniel Balmelli, representing the Petitioner, and David Petrie, the Petitioner.

The following exhibits were offered and entered into the record on November 28, 2007:

- Exhibit No. 1 Report to the Hearing Examiner for the November 28, 2007 hearing, with 20 attachments
- Exhibit No. 2 Petition transmittal letter, dated October 10, 2006 to KC Department of Transportation, from Clerk of the Council
- Exhibit No. 3 Petition for vacation of a County road including legal descriptions of petitioners' properties
- Exhibit No. 4 Copy of petitioner's proposed development plan
- Exhibit No. 5 Copy of filing fee – check #58820 dated October 5, 2006 from the petitioner
- Exhibit No. 6 Receipt #809 for filing fee
- Exhibit No. 7 Vicinity map
- Exhibit No. 8 King County plat map of Cedar Park Five Acre Tracts recorded in Volume 15 of Plats, Page 91, records of King County, Washington
- Exhibit No. 9 Map depicting vacation area
- Exhibit No. 10 Letter dated November 13, 2006 to the petitioner acknowledging receipt of the petition and describing the vacation process
- Exhibit No. 11 Letter dated August 8, 2007 to the petitioner identifying DOT recommendation for denial of the proposed vacation request
- Exhibit No. 12 Transmittal letter dated August 17, 2007 to the Council providing the recommendation of KCDOT and the County Road Engineer
- Exhibit No. 13 Memo dated September 4, 2007 to DOT and the Hearing Examiner from the Clerk of the Council indicating an appeal had been filed of the vacation denial
- Exhibit No. 14 Letter of appeal dated August 31, 2007 from the petitioner
- Exhibit No. 15 Letter of appeal Attachment #1; photograph of the site with notes
- Exhibit No. 16 Letter of appeal Attachment #2; detail of project plans (see exh. 4)
- Exhibit No. 17 Copy of the appeal fee, check 2065 dated August 31, 2007 from the petitioner
- Exhibit No. 18 Receipt #851 from the King County Council for the filing fee dated September 4, 2007
- Exhibit No. 19 Title only ordinance transmittal letter dated October 2, 2007 from King County Executive Ron Sims to Councilmember Larry Gossett
- Exhibit No. 20 Title only ordinance

- Exhibit No. 21 Fiscal Note
- Exhibit No. 22 Notice of October 17, 2007 Hearing from the Hearing Examiner Office
- Exhibit No. 23 Notice of the October 10, 2007 hearing rescheduled from October 17, 2007
- Exhibit No. 24 Affidavit of posting for the October 10, 2007 hearing
- Exhibit No. 25 Notice of the October 31, 2007 hearing (rescheduled from October 10, 2007)
- Exhibit No. 26 Affidavit of posting for the October 31, 2007 hearing
- Exhibit No. 27 Affidavit of Publication for the October 31, 2007 hearing
- Exhibit No. 28 Notice of Hearing Cancellation and Rescheduling to November 28, 2007 from the Hearing Examiner Office
- Exhibit No. 29 Affidavit of posting for the November 28, 2007 hearing
- Exhibit No. 30 Affidavit of Publication for the October 31, 2007 hearing
- Exhibit No. 31 Affidavit of Publication for the November 28, 2007 hearing
- Exhibit No. 32 Mr. Petrie's argument paper along with photographs
- Exhibit No. 33 Park access map
- Exhibit No. 34 Parcel map showing the topography, Maplewood Heights Park and access points

The following exhibits were received and entered into the record during the administrative continuance through January 2, 2008:

- Exhibit No. 35 Email from Dave Petrie to Wayne Potter dated November 29, 2007 re: meeting with Renton Parks
- Exhibit No. 36 Email from Dave Petrie to Wayne Potter dated November 29, 2007 re: meeting with Renton Parks-Appeal
- Exhibit No. 37 Email from Dave Petrie to Daniel Balmelli dated November 30, 2007 re: Renton County Council objection to Renton Parks position
- Exhibit No. 38 Email from Dave Petrie to Marty Wine dated December 14, 2007 re: Letter to Mayor Kathy Keolker, City of Renton on the vacation of 164th Avenue Half-Street
- Exhibit No. 39 Email from Dave Petrie to Marty Wine dated December 14, 2007 re: the road vacation hearing of November 28, 2007
- Exhibit No. 40 Email from Dave Petrie to the Hearing Examiner dated December 19, 2007 re: letter sent to the Hearing Examiner on the non-compliant denial of road vacation V-2578
- Exhibit No. 41 Email from Dave Petrie to Julia Patterson dated December 20, 2007 re: the non-compliant denial of road vacation V-2578
- Exhibit No. 42 Letter from Jay Covington, City of Renton to David Petrie dated December 21, 2007 re: City of Renton's opposition to granting the vacation
- Exhibit No. 43 City of Renton Memorandum to Dave Petrie, Peter Donnelly, Wayne Potter and Dan Balmelli dated December 26, 2007 re: denial of right of way vacation of 164th Avenue SE
- Exhibit No. 44 Email from Dave Petrie to the Hearing Examiner dated January 1, 2008 outlining Mr. Petrie's case