



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

Ordinance 19620

Proposed No. 2022-0447.2

Sponsors Balducci and Upthegrove

1 AN ORDINANCE authorizing the vacation of a portion of
2 49th Avenue S / Kansas Street, file no. V-2733; Petitioners:
3 Sergey and Vera Kondratyev.

4 **STATEMENT OF FACTS:**

5 1. A petition was filed requesting vacation of a portion of 49th Avenue South /
6 Kansas Street in the Jovita Heights Addition Plat, hereinafter described.

7 2. The department of local services notified utility companies serving the area
8 and King County departments of the proposed vacation Lakehaven Water and
9 Sewer District was the only utility that required an easement over the vacation
10 area, and they have since obtained it from petitioners Sergey and Vera

11 Kondratyev. The vacation shall not extinguish the rights of any utility company
12 to any existing easements for facilities or equipment within the vacation area.

13 3. The department of local services's records indicate that this segment of right of
14 way is unopened and unmaintained.

15 5. The department of local services considers the subject portion of right of way
16 useless as part of the county road system and believes the public would benefit by
17 the return of this segment of right of way to the public tax rolls and recommended
18 approval of the vacation.

19 6. The department of local services also recommended that no additional
20 compensation be due for the vacation of this portion of 49th Avenue

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21 South/Kansas Street in the Jovita Heights Addition Plat to the property of
22 petitioners Sergey and Vera Kondratyev, King County Assessor's Parcel Numbers
23 375160-5119, 375160-5003, and 375160-5063.

24 7. Due notice was given in the manner provided by law. The office of the
25 hearing examiner held the public hearing on March 28, 2023.

26 8. As detailed in the April 11, 2023, recommendation, the hearing examiner
27 found that the road segment subject to this petition is not useful as part of the
28 King County road system, concluded that the vacation of this segment of road will
29 benefit the public through the transfer of responsibility for management and
30 return of the property to the public tax roll, and recommended approval of the
31 vacation petition without the requirement of additional compensation from the
32 petitioners.

33 9. For the reasons stated in the examiner's report and recommendation, the
34 council determines that it is in the best interest of the citizens of King County to
35 grant said petition and vacate the right of way.

36 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

37 SECTION 1. The council, on the effective date of this ordinance, hereby vacates
38 and abandons a portion of 49th Avenue South/Kansas Street right of way as dedicated to
39 King County by the recording of the 1911 plat of Jovita Heights Addition, recorded in
40 Volume 20 of Plats at Page 12, records of King County Washington as described below:

41 Those portions of 49th Ave S./Kansas St. abutting Lots 1
42 through 6, Block 115 and also abutting Lots 26 through 30,
43 Block 116, all in the Plat of Jovita Heights Addition

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44 according to the plat filed in Vol. 20 of Plats at Page 12,
45 records of King County, Washington.
46 Situate in the Southeast Quarter of Section 27 Township


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- 47 21, Range 4 King County, Washington.
- 48 Containing 13,200 square feet, more or less.

Ordinance 19620 was introduced on 12/6/2022 and passed by the Metropolitan King County Council on 5/23/2023, by the following vote:

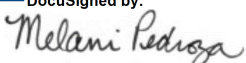
Yes: 9 - Balducci, Dembowski, Dunn, Kohl-Welles, Perry, McDermott, Upthegrove, von Reichbauer and Zahilay

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

DocuSigned by:

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Dave Upthegrove, Chair

ATTEST:

DocuSigned by:

8DE1BB375AD3422...

Melani Pedroza, Clerk of the Council

APPROVED this 23rd day of May, 2023.

DocuSigned by:

4FBCAB8196AE4C6...

Dow Constantine, County Executive

Attachments: A. Hearing Examiner Report, dated April 11, 2023

April 11, 2023

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

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; elenabuzunov@gmail.com

King County: Department of Local Services
represented by **Leslie Drake**
201 S Jackson Street
Seattle, WA 98104
Telephone: (206) 477-7764
Email: leslie.drake@kingcounty.gov

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

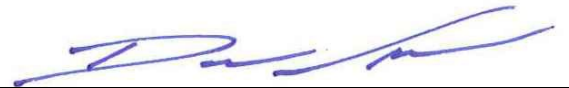
the Kondratyevs' holdings results in a much larger, unencumbered, three-lot, two-acre-plus assemblage in an urban area. Vacation would thus seem to significantly enhance the development potential of the combined parcels. We asked for Local Services to arrange for someone from the Assessor's office to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



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 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:

- | | |
|----------------|--|
| 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> |

Certificate Of Completion

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Source Envelope:	
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Certificate Pages: 5	Initials: 0
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Envelopeld Stamping: Enabled	Melani Pedroza
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	401 5TH AVE
	SEATTLE, WA 98104
	Melani.Pedroza@kingcounty.gov
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dave.upthegrove@kingcounty.gov
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Melani Pedroza
melani.pedroza@kingcounty.gov
Clerk of the Council
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Dow Constantine
dow.constantine@kingcounty.gov
King County Executive
Security Level: Email, Account Authentication (None)

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