



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

Ordinance 19045

Proposed No. 2018-0010.2

Sponsors McDermott

1 AN ORDINANCE authorizing the vacation of a portion of
2 327th Avenue NE, Carnation, file no. V-2701; Petitioners
3 Matthew Benson, Tom and Janet Duvall, Warner Smith and
4 Roxana Andone.

5 STATEMENT OF FACTS:

6 1. A petition was filed requesting vacation of a portion of 327th Avenue
7 NE, Carnation, hereinafter described.

8 2. The road services section notified utility companies serving the area
9 and King County departments of the proposed vacation and has been
10 advised that Puget Sound Energy may have facilities in the vacation area
11 and will obtain written easements directly from the property owners. The
12 vacation shall not extinguish the rights of any utility company to any
13 exiting easements for facilities or equipment within the vacation area.

14 3. Road services records indicate that King County has not expended
15 public funds for the acquisition or maintenance of the subject portions of
16 327th Avenue NE, John McGee No. 2 Road right-of-way. The subject
17 area is an unopened right-of-way.

18 4. Due notice was given in the manner provided by law. The office of the
19 hearing examiner held a public hearing on March 15, 2018, and September

20 30, 2019.

21 5. The examiner found that the subject right-of-way is useless as part of
22 the county road system, concluded that the public will benefit from its
23 vacation, and set the appropriate amount of compensation due from each
24 petitioner.

25 6. For the reasons stated in the examiner's November 6, 2019, report and
26 recommendation, the council determines that it is in the best interest of the
27 citizens of King County to grant said petition and vacate the right-of-way,
28 at the compensation levels set out in sections 2. through 4. of this
29 ordinance.

30 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

31 SECTION 1. The rights-of way in question are three segments of:

32 A strip of land 60 feet wide in the West Half of the Southwest Quarter of
33 Section 3, T. 25 N., R. 7 E., W.M., King County Washington lying 30 feet
34 on each side of the following described center line:

35 Beginning at the intersection of the centerline of 327th
36 Avenue NE (John McGee No. 2 County Road) as
37 established by King County Survey No. 2208, approved
38 March 1, 1926 and the West line of said Section 3, at a
39 point 936 feet, more or less, south of the northwest corner
40 of said Southwest Quarter; thence southeasterly and
41 southerly along the center line of 327th Avenue NE to a
42 point on the south line of said Section 3 which is 1029 feet,

43 more or less, east of the southwest corner of said Section 3
44 and the terminus of the line herein described.

45 The sidelines of said 60 foot strip are to be extended or shortened to meet
46 at angle points and to terminate at the west line of said Southwest Quarter
47 or the east right-of-way line of State Route 203, whichever is farthest east
48 and the south line of said Southwest Quarter.

49 Situated in the County of King and State of Washington.

50 Containing approximately 2.94 acres, more or less.

51 SECTION 2. The council, on the effective date of this ordinance, hereby vacates
52 and abandons that portion of 327th Avenue NE, John McGee No. 2 Road right-of-way
53 running through the Benson property, King County Assessor's parcel no. 0325079018,
54 subject to the conditions set forth in this section. Vacation of -9018 is contingent on
55 petitioner paying \$4,505 to King County within 90 days of the date the council takes final
56 action. If King County does not receive \$4,505 by that date, there is no vacation and the
57 right-of-way associated with parcel -9018 remains King County's. If payment is timely
58 received, the clerk shall record an ordinance against parcel -9018. Recording an
59 ordinance against parcel -9018 will signify that payment has been received, the
60 contingency is satisfied, and the right-of-way associated with parcel -9018 is vacated.

61 SECTION 3. The council, on the effective date of this ordinance, hereby vacates
62 and abandons that portion of 327th Avenue NE, John McGee No. 2 Road right-of-way
63 running through the Smith and Andone property, King County Assessor's parcel no.
64 0352079011, subject to the conditions set forth in this section. Vacation of -9011 is
65 contingent on petitioners paying \$5,255.86 to King County within 90 days of the date the

66 council takes final action. If King County does not receive \$5,255.86 by that date, there is
67 no vacation and the right-of-way associated with parcel -9011 remains King County's. If
68 payment is timely received, the clerk shall record an ordinance against parcel -9011.

69 Recording an ordinance against parcel -9011 will signify that payment has been received,
70 the contingency is satisfied, and the right-of-way associated with parcel -9011 is vacated.

71 SECTION 4. The council, on the effective date of this ordinance, hereby vacates
72 and abandons that portion of 327th Avenue NE, John McGee No. 2 Road right-of-way
73 running through the Duvall property, King County Assessor's parcel no. 0325079010,
74 subject to the conditions set forth in this section. Vacation of -9010 is contingent on
75 petitioners paying \$4,310.24 to King County within 90 days of the date the council takes
76 final action. If King County does not receive \$4,310.24 by that date, there is no vacation
77 and the right-of-way associated with parcel -9010 remains King County's. If payment is
78 timely received, the clerk shall record the ordinance against parcel -9010. Recording an

79 ordinance against parcel -9010 will signify that payment has been received, the
80 contingency is satisfied, and the right-of-way associated with parcel -9010 is vacated.
81

Ordinance 19045 was introduced on 1/8/2018 and passed by the Metropolitan King County Council on 12/11/2019, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn, Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci



KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Rod Dembowski, Chair

ATTEST:

Melani Pedroza, Clerk of the Council

APPROVED this 19 day of DECEMBER, 2019.

Dow Constantine, County Executive

Attachments: A. Hearing Examiner Report dated November 6, 2019

RECEIVED
2019 DEC 19 PM 3:42
CLERK
KING COUNTY COUNCIL

November 6, 2019

**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-2701**
Proposed ordinance no. **2018-0010**
Adjacent parcel nos. **0325079010, 0325079011, 0325079018**

BENSON, DUVALL, SMITH, AND ANDONE
Road Vacation Petition

Location: a portion of 327th Avenue NE, Carnation

Petitioner: **Matthew Benson**
7930 327th Avenue NE
Carnation, WA 98014
Telephone: (425) 306-0174
Email: mbenson@nwgeophysics.com

Petitioners: **Tom and Janet Duvall**
PO Box 277
Carnation, WA 98014
Telephone: (425) 831-1012
Email: jcnine47@gmail.com

Petitioners: **Warner Smith and Roxana Andone**
PO Box 538
Carnation, WA 98014
Telephone: (206) 601-8412
Email: warner.smith@outlook.com

King County: Department of Local Services
represented by **Leslie Drake**
201 S Jackson Street
Seattle, WA 98104
Telephone: (206) 684-1481
Email: leslie.drake@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Today's case involves a petition from three private parties to vacate an unopened portion of 327th Avenue NE near Carnation. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we recommend that Council grant the petition, contingent on petitioners paying for their respective right-of-way segment.

Background

2. In 2016, the Bensons, Smith/Andones, and Duvalls filed a petition to vacate the County right-of-way that runs through the middle of each of their properties. Ex. 3. Under the code then in place, the Roads Services Section (Roads) calculated the compensation due for the vacation at \$4,505 for the Bensons, \$5,255.85 for the Smith/Andones, and \$4,310.24 for the Duvalls.
3. As detailed in many of our recommendations to Council, the state changed the law later in 2016 to allow local legislative bodies to downwardly adjust the appraised value of a right-of-way "to reflect the value of the transfer of liability or risk, the increased value to the public in property taxes, the avoided costs for management or maintenance, and any limits on development or future public benefit." RCW 36.87.120. County law soon followed. KCC 14.40.020.A.1. However, the Roads Services Section (Roads) was unable to come up with a comprehensive methodology for calculating those downward adjustments, instead arguing for full waivers for all petitions coming before us.
4. Even without a sound methodology to back it up, we went along with Road's request in *V-2669*, recommending entirely waving compensation in May 2017. Council flatly *rejected* our recommendation, requiring full compensation. Thus, in our October 2017 recommendation in *V-2703*, we wrapped up a recommendation with a pledge to Council that:

We assure Council that in future cases involving vacations to private ownership, we will not send up a recommendation to Council unless we can vouch for a transparent explanation, tracking the math, for how we quantified a conclusion to partially or fully waive compensation, thus ensuring that Council will not inadvertently be gifting public property interests.

5. In today's case, we held our initial public hearing in March 2018. At that point, Roads was still unable to come up with a methodology. We thus stayed this petition (and other pending road vacation petitions) and turned to the Executive's Office of Performance, Strategy and Budget (PSB) to help us come up with a sound financial model.
6. PSB answered the call, completing a thorough report at the end of January 2019 that, per the Executive's transmittal letter, "furthers the King County Strategic Plan goal of exercising sound financial management by understanding administrative costs and

valuation of rights-of-way in road vacation petitions.” Ex. 38 at 001. We—and Council—have successfully applied that methodology in all of the other stayed vacation petitions. Today’s petition is the last one in the batch of stayed petitions.

7. We held a prehearing conference on July 26, and set a second public hearing for August 29. The day before that hearing, the Duvalls stated that they would be unable to attend the hearing and asked for a postponement to allow them to participate. We granted that request and rescheduled our hearing for September 29. We now answer the two critical questions.

Is Vacation Warranted?

8. A petitioner has the burden to show that the “road is useless as part of the county road system and 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 where a petitioner fails to meet the standard, approval is discretionary where a petitioner meets the standard. RCW 36.87.060(1).
9. This portion of 327th Avenue NE was not opened, constructed, or maintained for public use, and it is not known to be used informally for access to any property. Vacation of the right-of-way would have no adverse effect on the provision of access and fire and emergency services to the abutting properties and surrounding area. A utility easement to Puget Sound Energy has been recorded for existing utility facilities. The right-of-way is not necessary for the present or future public road system for travel or utilities purposes. Vacation is not inconsistent with public interest.

What Compensation Is Due?

10. The PSB model starts by working with the Assessor to get an individualized evaluation of what value merging the right-of-way area adds to each parcel. That is only the starting point, because we adjust downward to reflect transferred liability risk, avoided management or maintenance, and increased tax revenue.
11. PSB uses information from the Office of Risk Assessment—whom PSB described as having a complete methodology for calculating claims judgments and settlements, per mile—to arrive at a number for avoided liability risk. PSB explained which types of taxes (General Fund and Roads Fund) would figure into the mix and which would not (other taxes such as levy lid lifts). PSB analyzed the avoided maintenance costs. PSB also explained why it did not include petition-processing costs in its assessment. Ex. 38. We have previously detailed the workings of PSB’s model, and Council has adopted it in past vacations.
12. In several petitions that we stayed pending PSB’s analysis, we informed the petitioners that once PSB came up with a rigorous model and righted the ship, if that new number turned out to be higher, we would recommend that Council accept the original, lower compensation amount. We reasoned that, due to no fault of any petitioner, Roads had

taken an unfortunate detour. We explained that it did not seem fair to charge a petitioner more than he or she would have paid if they had been allowed to expeditiously go through with their original petition under the previous paradigm.

13. In every petition to reach us since PSB performed its analysis, the model has produced a *lower* compensation due than under the previous regulatory regime. So in cases such as *V-2687* and *V-2700*, our pledge was a moot point, simply disappearing into the ether once PSB's model produced a lower figure. Petitioners paid the lower, PSB-calculated figure and acquired the right-of-way.
14. Today's case is different. The PSB model produces a higher compensation-due number than that calculated under the old system. That is not altogether surprising. In the other recent road vacations, the public right-of-way ran along the *edge* of a particular parcel. One would presume that such an encumbrance would not exert too large a downward pressure on the market value of the larger parcel (as compared to a similarly-situated parcel without such an encumbrance). But here the public right-of-way actually runs smack dab down the middle of each of the three petitioner's properties. One would expect that such an encumbrance would produce a larger downward pressure on market value than a similarly-situated parcel either without such an encumbrance at all, or with the encumbrance only on the periphery of the parcel.
15. In any event, application of PSB's model increased the amounts from:
 - \$4,505 to \$5,843 for the Benson property (Ex. 34);
 - \$5,255.86 to \$7,803 for the Smith/Andone property (Ex. 35); and
 - \$4,310.24 to either \$4,862 or \$34,273 for the Duvall property, depending on which Assessor zone is used (Exs. 33, 36, 37).

For the reasons described in paragraph 12, we recommend allowing vacation at the initial-calculated, lower amounts.

16. Even the lower compensation does not sit well with today's petitioners. That is completely understandable.
17. Part of that is a misunderstanding of how rights-of-ways are valued. Petitioners figured that because the rights-of-way themselves are useless—no one could purchase it and build anything on it—the right-of-way has no value. That is a misinterpretation even some professional appraisers have made. For example, in *V-2667*, the abutting private petitioner hired an appraiser in an effort to pay less to acquire the right-of-way than Roads had appraised it to be worth. The appraiser made a similar argument, one we (and ultimately Council) rejected thusly:

The premise of Ms. Janshen's appraiser treating the road as an unbuildable, stand-alone parcel has some intuitive appeal but is ultimately incorrect and significantly undervalues the road area's value.... The highest and best use of the road property is not as a "stand-alone,"

marginal lot. Instead, it will become part of a single, contiguous, unencumbered Janshen homesite. Pegging the value of the road area to the overall Janshen property, and then comparing the Janshen property to sales of other single family lots, is correct.

18. And part of that is unmet expectations. At the time of the original petition, the requirement was for compensation to be paid, so the parties went into it eyes wide open. Mr. Benson and the Smith/Andones deposited the initial amounts listed for their respective properties in paragraph 2, although they have since taken back their deposits.
19. However, state law changed later in 2016. The statute that actually passed in Olympia gave to the local legislative branches the authority to “adjust the appraised value to reflect” certain cost savings, RCW 36.87.120. Roads may been working off the earlier Senate Bill that—had it passed—would have given the authority to make those adjustments to the “appraising agency” (in King County, meaning Roads). 2016 Reg. Sess. S.B. 6314; 6314-S AMH LG JONC 091. Regardless of how or why, the bottom line is that Roads apparently informed many petitioners that the County would give away the right-of-way. Who would not latch onto the prospect of getting something for free?
20. In V-2697, the petition where the Council formally adopted the current model, we recommended that “Council adopt PSB’s thoughtful analysis as the benchmark going forward,” but we candidly raised this concern for Council to be aware of before it made its final decision. We phrased it as follows:

while the state clearly assigned the adjustment task to the legislative branch, Roads informed multiple petitioners that compensation should be zero. Having recalibrated their expectations to zero compensation, it will be upsetting for petitioners already in the pipeline to learn that they will need to pay compensation (albeit at a reduced dollar level). We will not be surprised if some current petitioners become upset enough to walk away. We do not want to overstate this concern—the only two other petitioners that have gone to hearing since PSB disseminated its model (the Wymans and the Creightons) have accepted the adjusted compensation figures and remain ready to proceed. So even in the short run, the adjustment may not prove disastrous. However, there may be some ruffled feathers in the short run.

21. That may describe today’s case. Petitioners are under no compulsion to acquire the stretch of public right-of-way running through each of their properties. We will phrase it, as we have in previous recommendations, so that each petitioner has the autonomy to make the decision that best meets that petitioner’s individual situation. No petitioner’s ability to acquire the right-of-way splitting his or her own parcel will be hampered by any other petitioner’s election not to exercise that option.

RECOMMENDATION:

1. We recommend that Council APPROVE proposed ordinance no. 2018-0010 to vacate each of the three road right-of-way segments, each with a condition on recording the vacation ordinance for each stretch of right-of-way.

2. Vacation of the portion of the right-of-way running through parcel 032507–9018 (Benson) is contingent on petitioner paying \$4,505 to King County within 90 days of the date Council takes final action. If King County does not receive \$4,505 by that date, there is no vacation and the right-of-way associated with parcel -9018 remains King County's. If payment is timely received, the Clerk shall record an ordinance against parcel -9018. Recording an ordinance against parcel -9018 will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel -9018 is vacated.
3. Vacation of the portion of the right-of-way running through parcel 032507–9011 (Smith/Andone) is contingent on petitioners paying \$5,255.86 to King County within 90 days of the date Council takes final action. If King County does not receive \$5,255.86 by that date, there is no vacation and the right-of-way associated with parcel -9011 remains King County's. If payment is timely received, the Clerk shall record an ordinance against parcel -9011. Recording an ordinance against parcel -9011 will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel -9011 is vacated.
4. Vacation of the portion of the right-of-way running through parcel 032507–9010 (Duvalls) is contingent on petitioners paying \$4,310.24 to King County within 90 days of the date Council takes final action. If King County does not receive \$4,310.24 by that date, there is no vacation and the right-of-way associated with parcel -9010 remains King County's. If payment is timely received, the Clerk shall record the ordinance against parcel -9010. Recording an ordinance against parcel -9010 will signify that payment has been received, the contingency is satisfied, and the right-of-way associated with parcel -9010 is vacated.

DATED November 6, 2019.



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 **December 2, 2019**, 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 15, 2018, HEARING ON THE ROAD VACATION
PETITION OF BENSON, DUVAL, SMITH, AND ANDONE, DEPARTMENT OF
TRANSPORTATION FILE NO. V-2701**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake, Janet Duvall, Matthew Benson, Warner Smith, and Tom Duvall.

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

Exhibit no. 1	Roads Services report to the Hearing Examiner, sent February 28, 2018
Exhibit no. 2	Letter from Clerk of the Council to KCDOT transmitting petition, dated May 18, 2016
Exhibit no. 3	Petition for vacation of a county road, transmitted May 18, 2016
Exhibit no. 4	Letter from KCDOT to Petitioners acknowledging receipt of petition and explaining road vacation process, dated August 3, 2016
Exhibit no. 5	Letter from KCDOT to Petitioners providing revised legal description for right-of-way, dated August 8, 2016
Exhibit no. 6	Revised petition for vacation of a county road
Exhibit no. 7	Site map depicting vacation area
Exhibit no. 8	Aerial photograph depicting vacation area
Exhibit no. 9	Vicinity map
Exhibit no. 10	Abstract of quit claim deed for subject property, dated February 7, 1907, recording no. 603852
Exhibit no. 11	KCDOT notification letter to stakeholders requesting responses by no later than September 12, 2016
Exhibit no. 12	Letter from KCDOT to Petitioners providing compensation estimated, dated September 21, 2016
Exhibit no. 13	Letter from KCDOT to KC Council recommending approval, dated October 10, 2016
Exhibit no. 14	Letter from KCDOT to Petitioners recommending approval, County road engineer's report, and compensation amounts due, dated October 10, 2016
Exhibit no. 15	Compensation payment from Matthew Benson, check no. 1009710103 in the amount of \$4,505.49
Exhibit no. 16	Compensation payment from Warner Smith, check no. 0169201874 in the amount of \$5,255.58
Exhibit no. 17	Letter from KCDOT to Petitioners regarding need for easements and intention to re-evaluate compensation due to recent King County Code updates, dated January 13, 2017

- Exhibit no. 18 Letter from KCDOT to Petitioners with update on easements required and revising compensation due to complete waiver, dated July 13, 2017
- Exhibit no. 19 Easement between Warner Smith and Roxana Andone and Puget Sound Energy, dated July 22, 2017
- Exhibit no. 20 King County iMap of subject area with environmental areas filter applied
- Exhibit no. 21 County Road Engineer's report, dated June 13, 2017
- Exhibit no. 22 Letter from KCDOT to Council Chair recommending approval and transmitting proposed ordinance, dated October 11, 2017
- Exhibit no. 23 Proposed ordinance
- Exhibit no. 24 Fiscal note
- Exhibit no. 25 Affidavit of posting, noting posting date of February 16, 2018
- Exhibit no. 26 Hearing notification letter from KCDOT to Bran and Calab Donnelly, dated January 25, 2018
- Exhibit no. 27 Hearing notification letter from KCDOT to Givanni and Paula Fagioli, dated January 25, 2018
- Exhibit no. 28 Hearing notification letter from KCDOT to BJ Morris, Guardian to Eugene Oliver, dated January 25, 2018
- Exhibit no. 29 Hearing notification letter from KCDOT to Galen Trabont, dated January 25, 2018
- Exhibit no. 30 Affidavit of publication, received March 14, 2018

The following exhibits were offered and entered into the hearing record on September 30, 2019:

- Exhibit no. 31 Department Supplemental Report
- Exhibit no. 32 Map CADS170299
- Exhibit no. 33 E-mail from Elizabeth Shirer, dated August 6, 2019
- Exhibit no. 34 Valuation for parcel no. 0325079018 Benson
- Exhibit no. 35 Valuation for parcel no. 0325079011 Smith/Andone
- Exhibit no. 36 Valuation for parcel no. 0325079010 Duvall
- Exhibit no. 37 Valuation for parcel no. 0325079010 Duvall
- Exhibit no. 38 Letter from Dow Constantine to Rod Dembowksi, attaching Roads Right-of-Way Valuation Model, January 31, 2019

DS/jo