

May 15, 2019

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REPORT AND RECOMMENDATION

SUBJECT: Department of Local Services, Roads file no. **V-2692**
Proposed ordinance no. **2018-0406**
Adjacent parcel no. **2225079025**

GOOD GROUND AND GIRL SCOUTS OF WESTERN WASHINGTON
Road Vacation Petition

Location: portion of NE 32nd Street, Carnation; County Road no. 1334

Petitioner: Girl Scouts of Western Washington
represented by **Elaine Morse**
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Petitioner: Good Ground, LLC
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King County: Department of Local Services, Roads
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SUMMARY OF RECOMMENDATIONS:

Department's Recommendation:
Examiner's Recommendation:

Vacate right-of-way, zero compensation
Vacate right-of-way, zero compensation

FINDINGS AND CONCLUSIONS:

Overview

1. Good Ground, LLC and the Girl Scouts of Western Washington petition the County to vacate a portion of NE 32nd Street near Carnation. Unlike the overwhelming majority of vacation petitions to reach us (which involve undeveloped, unopened rights-of-way), this case involves an actual, publicly maintained road, along with some open (but private) road. After hearing witness testimony and observing demeanor, studying the exhibits entered into evidence, and considering the parties' arguments, the relevant law, and potential policy implications, we recommend Council vacate the entire right-of-way and waive all compensation.

Background

2. The relevant section of NE 32nd Street, also known as County Road no. 1334, lies just east of the Snoqualmie Valley Trail. It continues as publicly maintained road through the Good Ground parcels. At the edge of Good Ground's property, the publicly maintained road ends. The public right-of-way continues as a *privately* maintained, secondary-access driveway across the Girl Scouts' Camp River Ranch. The right-of-way also provides Department of Natural Resources and Parks (DNRP) access to its flood control facilities. Ex. 20.
3. In March 2015, Good Ground sought to vacate the right-of-way, seeking to put up a gate, to assume maintenance for a road it described as deteriorating and in need of repair, to curb public cut-throughs, and to better manage traffic for its employees and visitors. Ex. 3. To avoid what would be an orphaned right-of-way area, King County Department of Local Services, Road Services Division (Roads) encouraged Good Ground to get the Girls Scouts to join the petition; Girl Scouts did so in February 2016. Ex. 1 at 2.
4. In September 2016, using an average assessed land value of \$0.56 per square foot, Roads calculated the compensation due for the 105,800 square-foot area to be vacated at \$59,298.40. Ex. 9. In October 2016, petitioners requested a reevaluation, proposing a 50% compensation reduction to \$29,649.20, a figure that included the anticipated grant of an easement allowing DNRP to continue using the road without having to pay for road upkeep. Ex. 10. In November 2016, Roads replied that while benefits are hard to quantify, the \$29,649.20 figure was reasonable. Ex. 11. However, in November 2017, Roads proposed zero compensation. Ex. 17. (The thrust of today's analysis involves compensation.)
5. In December 2017, Good Ground and DNRP negotiated an easement to allow DNRP to continue using the road for work on its flood protection facilities. If Good Ground installs an access gate or equivalent, Good Ground will provide DNRP with the key or code to continue access. Unless DNRP's use of the easement increases substantially, Good Ground will bear the entire cost of standard and commonplace maintenance and repair. Ex. 21.

6. In January 2018, Good Ground provided Girl Scouts with a limited purpose easement for secondary and emergency access, with Girl Scouts contributing to maintenance costs. Ex. 23. In May 2018, Girls Scouts provided DNRP a nonexclusive easement. Ex. 22. Good Ground and Girl Scouts provided utility easements to Qwest and Puget Sound Energy. Exs. 25–27. In August 2018, the Executive transmitted to Council a draft ordinance proposing vacation at zero compensation. Exs. 28–29.
7. As discussed below, we stayed this vacation, along with several other pending vacations, to give the Office of Performance, Strategy and Budget (PSB) time to come up with a comprehensive financial model for analyzing road vacations. PSB and Roads submitted prehearing materials. We conducted the public hearing on behalf of the Council on April 30.
8. Except as provided below, we adopt and incorporate the facts set forth in Roads’ report and in the statements of fact contained in proposed ordinance no. 2018-0406. Exs. 1 and 29. We are attaching to the copies of today’s recommendation we provide to Council: Roads’ report, PSB’s model, and maps showing the vicinity of the proposed vacation and the specific area to be vacated. Exs. 1, 18, 20 & 32.

Inquiries

9. Chapter RCW 36.87 sets the general framework for county road vacations, augmented by KCC chapter 14.40. There are at least four main inquiries. The first two relate to whether vacation is warranted: is the road useless to the road system and would vacation benefit the public? If the answers to these are both yes, the third and fourth relate to compensation: what is the appraised (or perhaps assessed) value of the right-of-way, and should this number be downwardly adjusted to capture avoided County costs?

Should Council Vacate the Right-of-Way?

10. Unlike the overwhelming majority of vacation petitions to reach us—which involve mere lines on a map—this right-of-way, as it runs rough the Good Ground parcels, is an actual, publically-maintained road. It provides secondary access to the Girls Scouts and primary access to DNRP’s Tolt River facilities. It continues as a road (albeit, a private driveway) across the Girl Scouts parcel. The road itself is not useless.
11. However, a petitioner’s burden is not to show that the road itself is useless, but 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 (emphasis added). “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.
12. None of the right-of-way is part of any transportation plan, or needed for the future County road system. Ex. 1 at 4. It serves only Good Ground, Girl Scouts, and DNRP

properties, along with various utilities. In light of the easements discussed above, keeping the right-of-way *public* serves no purpose and is not in the public interest.

13. We recommend vacation, although we emphasize there is no requirement that the Council vacate any right-of-way. While denial is mandatory where a petitioner fails to demonstrate legal uselessness, approval is discretionary even where a petitioner demonstrates legal uselessness. RCW 36.87.060(1). Vacation is a “political function” Council can chose not to exercise here.¹

Compensation (General Considerations)

14. Historically, petitioners seeking to acquire County rights-of-way have paid compensation. This has usually been calculated based off the dollars-per-square-foot, tax-assessed land values for the parcels into which the rights-of-way will merge, and occasionally arrived at by a professional appraiser a petitioner retains.

15. In early 2016, Washington law changed to allow local legislative bodies to:

adjust the appraised value 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. In late 2016, County code was similarly updated. KCC 14.40.020.A.1. In early 2017, we advised Roads that we expected Roads to create a model for calculating these adjustments, a model we could apply to future petitions.

16. However, Roads decided that its default would be not to “adjust,” but to outright eliminate, compensation. In each of the dozen or so petitions to reach us since the law changed to allow for adjustments, Roads has urged zero compensation. These raise the specter of the constitutional prohibition against gifting public property to private interests.²
17. It would not be a gift if the value was canceled out by the benefits the public gained from vacation. RCW 36.87.120. However, we were concerned with several arguments Roads asserted in arguing for eliminating compensation. We highlight two examples here.
18. First, as to the initial starting (assessed or appraised) value from which to calculate the adjustments, the lens we (and historically, Roads) employed was how much a right-of-way corridor would add to the abutting parcel it was merging into. For example, in

¹ *Coalition of Chilivist v. Okanogan County*, No. 34585–8–III, 2017 WL 1032774, at *4 (Wn. App. Mar. 16, 2017) (unpublished), *cert. denied*, 188 Wn. 2d 1022, 398 P.3d 1138 (Aug. 2, 2017).

² “No county...shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm....” WASH. CONST., art. VIII, § 7. The County code states that compensation is not mandatory (“[C]ompensation may be required,” KCC 14.40.020.A.1), but a local (or even state) law would not trump the constitution, if the constitution required a different result.

Janshen–V-2667, the abutting private property owner sought to pay less to acquire the right-of-way than Roads appraised it to be worth, arguing that the right-of-way should be valued as a stand-alone strip (which by definition would be relatively valueless). Roads (circa 2014) did not accept this argument, and we rejected it 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.³

However, after Roads made the decision to give away rights-of-way, Roads began advancing the *Janshen* petitioner’s argument in more recent vacation petitions. *See, e.g.* V-2710, Ex. 1 (“as a stand-alone strip of land, the vacation area for each parcel would not be usable as a building lot.”).

19. Second, as to the avoided-liability adjustment, Roads pointed to Risk Management having paid out over \$3 million to resolve Roads-related claims in a single year. That provided a snapshot of *total* liability, but no way to scale that into a figure to assign to a particular vacation petition. More concerning was that even as a snapshot, it seemed to be missing an obvious, critical distinction. The risks involving an *actual* public road are obvious—say, a car skidding off the road or hitting a pedestrian crossing that street, and an injured party suing the County for faulty road design, construction, or maintenance. However, those risks bear little resemblance to the vast majority of our vacation petitions, which involve no actual road at all, but mere lines on the map in the middle of private property. (In one, the right-of-way was “basically a brambled area in the middle of forest land.”⁴)
20. We pressed Roads hard to come up with a comprehensive methodology for calculating these adjustments, so that Council would have this data available as it decides how to handle road vacations. Roads would not do so. That left us without a non-arbitrary way to assess matters. We could not even say, with any confidence, whether a given adjustment was closer to a dollar or \$10 or \$100 or \$1,000 or \$10,000 or \$100,000.
21. Thus, we stayed several pending road vacation petitions and turned to PSB to help us come up with that model. PSB answered the call, completing a report at the end of January 2019 that “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. 32.

³ https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2014/V-2667_Janshen.ashx?la=en at ¶ 13.

⁴ https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2706_HsiClaremontForest.ashx?la=en at ¶ 8.

22. We scheduled prehearing conferences and hearings for three of the stayed cases—this case, *Wyman–V-2700*, and *Creighton–V-2684*. PSB provided individual worksheets for each of the parcels. Finally, PSB’s director testified under oath at our April 30 hearing and answered questions about the model.⁵
23. PSB explained how it assessed the various adjustments for different categories of vacations—opened public roads, frequently traversed public areas, and unopened and undeveloped rights-of-way. PSB used 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. Ex. 37. 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 different avoided maintenance costs (per category). It also explained why it did not include petition-processing costs in its assessment. Ex. 32.
24. We start our analysis with the initial valuation. PSB worked with the Assessor to get an individualized assessment of what value merging the right-of-way area would add to each specific parcel. Ex. 32. The Assessor came up with a total valuation of \$18,300 here, which is significantly *less* than the \$29,649 than the petitioner’s valuation came up with—a number that had already been reduced (from \$59,298.40) to include the benefit to DNRP from retaining access without having any maintenance responsibilities. Yet the Assessor has no particular dog in the fight, and we conclude that the Assessor’s work provides a defensible baseline. It seems a workable default to quickly and inexpensively (as opposed to a full-blown professional appraisal) get a starting value. In addition, this value seems more accurate than just taking a per-square-foot-value-of-the-abutting-property snapshot from the Assessor’s website, as we had previously done.⁶
25. As to added taxes, PSB took the appraised value of the parcel, multiplied by the combined property tax rate for the General Fund and Roads Fund, and multiplied by escalating annual costs over 10 years, discounted by the official discount rate.
26. As to liability risks, PSB used an average of five years of claims, judgments, and settlements against Roads, divided by the total number of road miles, and multiplied by the parcel’s mileage and by 10 years of increasing annualized costs, at the official discount rate. For frequently traversed public areas, PSB explained that, with substantially fewer claims, the liability risk was 1/10 of the opened public road rate. For undeveloped, unopened rights-of-way, PSB assigned zero liability savings, explaining that any minimal liability savings would be better addressed in the avoided maintenance cost category. Ex. 32. This seems sound.

⁵ Council passed a proviso requiring PSB to produce a model by February 1, 2018, and then to participate in one examiner hearing by May 1. Ord. 18835 at § 19. PSB produced the model on January 31, and participated in our April 30 hearing. While an examiner is not the final arbiter of anything proviso-related, from our perspective we consider PSB’s duties fully discharged. We appreciate PSB’s assistance.

⁶ We do not give substantial weight or deference to any County department’s work. Exam. Rule XV.F.3. Any petitioner or other party would remain free to challenge the Assessor’s work in a future case.

27. For avoided maintenance costs on opened roads, PSB took Roads’ annual operating budget, divided it by the total County road miles in the system, and multiplied it by parcel mileage and by 10 years of increasing annual revenue costs at the proper discount rate. For frequently traversed public areas, PSB accorded no adjustment, as Road expends almost nothing managing these rights-of-way. For undeveloped, unopened rights-of-way, PSB provided options: actual Roads response costs for a particular parcel; typical costs incurred on similar parcels; or 2% of Roads’ annual expenditures on items like illegal dumping, tree removal, and enforcement associated with unopened rights-of-way. Ex. 32. This too seems sound.
28. As to processing cost, currently petitioners pay nothing beyond a \$100 application fee. In a previous case, Roads estimated that its processing costs were in the neighborhood of \$20,000 per petition. Roads has since stated that it has become more efficient, although it has not provided any new estimate. Certainly, the Roads’ representative currently shepherding these vacation petitions has greatly improved the process.⁷ But even if Roads (or any entity) dramatically streamlined the process, \$100 would be a drop in the bucket. Aside from the Good Ground properties (which involve publicly-maintained road), the benefit the County gains from vacating the Girl Scouts (\$2,000 or \$98, depending on how one categorizes the right-of-way), *Wyman* (\$2,079), and *Creighton* (\$2,098) rights-of-way is relatively minimal. Ex. 37; *Wyman* Ex. 26; *Creighton* Ex. 32. It is difficult to envision how, no matter how efficiently we all work, it will cost *less* than \$2,000 to process any petition.
29. PSB, however, explained that such processing costs should *not* be included in the analysis. PSB opined that there is statutory right to petition for vacation, that Roads would likely not reduce staff if it stopped disposing of rights-of-way and would simply reappportion the labor hours, and that charging a petitioner the cost of processing an application would make it more difficult to jettison surplus property. This is the only portion of PSB’s analysis that gives us some pause.
30. State law allows a county to recover the expense of processing vacation petitions. RCW 36.87.070. Our code follows suit, allowing Roads to charge petitioners for the “costs associated with the processing, investigation, determination of value, appraisals and the cost of the public hearing pertaining to the petition.” KCC 14.40.1060. The other main branch of the Department of Local Services, Permitting, recoups its costs of processing applications. In most Permitting scenarios, owners have a vested right to develop their own *private* property under the zoning regulations in place of the time of an application, yet Permitting recoups its costs. Conversely, in road vacations the property in question is public, not private, and vacation of even useless rights-of-way is *always* discretionary, never a right. RCW 36.87.060(1) (for useless roads, “the County legislative authority may vacate the road”).
31. It is also difficult to see how more work does not translate into at least some opportunity costs. For our office, every new case we receive increases the likelihood that at some

⁷ In our companion recommendation in *Creighton–V-2684*, we note some previously poor handling of a petition.

point in the future we will need to assign a case to a *pro tem* examiner, at \$150 an hour. Yet even if we had the capacity to handle all our cases “in house” and never needed to recuse ourselves, each additional hour we spend on any new application or appeal means one less hour available to devote to other endeavors, such as proposing amendments to the code or our Rules, improving our hearing guides or website, or working on ESJ initiatives.

32. To be sure, jettisoning open, publicly maintained roads saves the County a bundle. (As seen below, vacating the public road to Good Ground saves the County \$189,896.) Enabling the County to efficiently jettison publicly opened and maintained roads is important. Eating the cost of processing a petition to vacate an actual public road seems a wise investment, saving the Road Fund significant money in the long run. However, as noted above, the benefits from vacating frequently traversed public areas and undeveloped, unopened rights-of-way are relatively small: Girl Scouts (\$2,000 or \$98, depending on how one categorizes the right-of-way); *Wyman* (\$2,079); and *Creighton* (\$2,098). We have difficulty seeing how such benefits outweigh the County’s—including Roads’, the examiner’s, and the Council’s—costs of processing a petition.
33. In the end, we recognize that questions about application fee setting are above our paygrade. We identify this issue for Council, and now return to the model.
34. PSB noted that every year its model will need to be updated to, for example, employ Risk Management’s updated numbers. PSB opined that the annual update would only require an hour so of work each year.
35. Despite this, Roads continues to argue for a policy of zero compensation. Ex. 1 at 6-7. Here, it asserts that compensation would be “insignificant in comparison to the County’s potential liability from its mere retention,” and in today’s companion cases it argues that requiring compensation may result in the County left to “carry full responsibility for these random pieces of property.” Ex. 1 at 7; *Wyman* Ex. 26 at 3; *Creighton* Ex. 31 at 3. While we have one petition on our docket involving an undeveloped right-of-way that Roads’ has had to repeatedly respond to, there is no indication that any of the other unopened rights-of-way were even on Roads’ radar screen before a petitioner approached the County.
36. Moreover, PSB undertook a thorough quantification of how to calculate items like liability and caring costs. Applying that to the today’s case shows that the overwhelming benefits come from avoided maintenance cost for an opened, publicly maintained road. This is not surprising, as Roads noted that its cost to maintain a mile of public road—including the roadway itself, drainage, the roadside, traffic—is currently budgeted at over \$18,000 per year. Ex. 16 at 001. Thus, in today’s case, the gains PSB calculated from the combined categories of added property taxes and transferred liability risk on all analyzed parcels, and avoidance of maintenance cost on just the undeveloped, unopened rights-of-way is \$4,686, while the avoided maintenance cost on the publicly maintained road is \$187,204.

37. Roads still has not offered—after years of our begging—a model to quantify that responsibility. It did not offer an explanation of how PSB’s model fails to adequately capture some hidden cost. We recommend that Council adopt PSB’s thoughtful analysis as the benchmark going forward.
38. We raise three concerns for Council to be aware of before it makes its final decision. The first is not really a hurdle. The second may be a temporary speedbump. The third could have a longer tail.
39. First, one concern Roads has raised in the past is that requiring compensation might keep Roads from vacating publicly maintained roads it can no longer afford to maintain. Here, using today’s case as an example, vacating the public street to Good Ground cumulatively saves the County \$189,896; this swamps the \$11,500 value being transferred to Good Ground, resulting in zero compensation due. Except for some very valuable property—the proposed vacation of a portion of Occidental Avenue to build a nine-figure NBA stadium comes to mind⁸—the savings from vacating an actual, open public road will swamp the right-of-way’s value, resulting in zero compensation due. Thus, the worry that retaining a general compensation requirement means the County will not be able to expeditiously eliminate actual public roads turns out to be a red herring. Even under PSB’s rigorous financial model, actual public roads will be vacate-able without requiring any compensation.
40. Second, while the state clearly assigned the adjustment task to the legislative branch,⁹ 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 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.¹⁰ So even in the short run, the adjustment may not prove disastrous. However, there may be some ruffled feathers in the short run. For *future* petitions, so long as accurate expectations are set from the get-go in, vacations should proceed smoothly. After all, each of the petitions on our docket started during the period that Roads was requiring compensation, and that did not dissuade petitioners from pushing forward.

⁸ Geoff Baker, “Seattle City Council kills sale of street for Sodo arena; Sonics fans despair,” Seattle Times, Feb. 20, 2017. <https://www.seattletimes.com/sports/nba/seattle-city-council-kills-sale-of-street-for-sodo-arena/>.

⁹ The original Senate bill designated the “appraising agency” (here, Roads) as the entity to make those adjustments, but the House version the legislature ultimately adopted designated the “board” (here, the examiner and ultimately the Council) to make to adjustment to the valuation that the appraising agency (Roads) presents. Wash. H.R. Amend., 2016 Reg. Sess. S.B. 6314; 6314-S AMH LG JONC 091.

¹⁰ Girl Scouts did not participate in our prehearing conference or hearing, so we have little insight there. At hearing, Good Ground described the advantages to Girl Scouts from vacating the Girl Scouts portion of the right-of-way. In addition, as of 2016 Girl Scouts was prepared to pay a higher compensation figure than what would be applicable now if Council does not waive compensation.

41. Third and finally, all our vacation recommendations to date have involved petitioners who proactively approached the County, seeking to acquire a right-of-way they obviously valued. They would not have undertaken the effort to petition for vacation in the first place—especially given that at the time each started the process, the expectation was that compensation would be due—unless they really valued the acquisition. Here, Good Ground affirmatively approached the County. However, Girl Scouts only entered the picture *after* Roads encouraged Good Ground to expand the area and add Girl Scouts, to avoid leaving an orphaned section of right-of-way.
42. Anticipating this scenario, we have inquired in past hearings about the origin of the petition—whether the owner initiated vacation or whether Roads proactively sought to vacate a particular stretch. We opined that this origin might matter. Roads has rejected that as a factor, but it could be a helpful tool, especially to allow Roads to proactively tackle some specific right-of-way that has proven (or risks becoming) a thorn in its side.
43. Certainly, we want to avoid strategic behavior or gamesmanship—Neighbor A desiring to acquire a stretch of right-of-way, but waiting on the sideline while Neighbor B alone petitions for vacation, knowing that Roads will want to vacate the whole stretch and thus Neighbor A will eventually get a freebie if she sits out long enough. In addition, outside the context of actual, publicly maintained roads, the benefit will usually be minimal, and thus the “cost” of leaving lines on a map will usually be minimal as well. Thus, we do not place too much weight on this concern. We propose leaving flexibility to deal with it, as the bulleted-points in the next paragraph sketch out.
44. Ultimately, compensation is a policy call for Council to make. Our goal in this two-year odyssey to get a model was enabling Council to have all the facts, (accurate) figures, and arguments available to it when it makes its decision. We *think* the best approach is to continue requiring compensation:
 - Start with the Assessor’s estimate on what merging the right-of-way into a particular parcel will add to that parcel’s value;
 - Then apply the RCW 36.87.120 reductions, as calculated using PSB’s model; and
 - Keep the flexibility to potentially eliminate all compensation for a particular parcel, where something about the *specific* context of a *particular* vacation warrants it, even if the model does not show this. (In fact, we recommend just such a complete waiver for the Girl Scouts acquisition here, as analyzed below.)
45. However, we reiterate that this is a fundamental policy question for Council to make.

The long-standing rule in Washington is that road vacation is a *political function* that belongs to municipal authorities, and is not judicially reviewable absent fraud, collusion, or interference with a vested right.¹¹

While we may have a lingering gift-of-public-funds concern, we assume that Council (if it so chooses) has the requisite authority to waive compensation across the board, even without dollar figures to back it up. Our fight has always been to ensure that Council has accurate information on which to base its decision. With PSB's help, we have accomplished this. If Council decides to eliminate compensation for all vacation petitions, it will not be over any objection from us.

Compensation (Today's Properties)

46. Good Ground is the easy case, and needs little analysis. Per the Assessor's calculation, Good Ground's property values (spread across all four of its parcels) will increase by a total of \$11,500. Ex. 1 at 5–6; Ex. 31. Conversely, under PSB's model the total expected gains to the County from jettisoning those four segments of public road is \$189,896. We see no reason not to completely waive compensation for Good Ground.
47. Girl Scouts' private driveway is in a different box. The Assessor determined that adding the right-of-way to Girl Scouts' holdings would increase the value by \$6,800. Ex. 37. As a tax-exempt entity, Girl Scouts pays no property taxes. Thus, there is no future tax revenue to be gained from vacation. Ex. 37.
48. Categorizing the Girl Scouts' property is a little tougher. One reason we selected the three petitions we send up today was that we thought this mix addressed all three categories: open public roads (Good Ground), undeveloped lines on a map (*Wyman* and *Creighton*), and frequently traversed public areas (Girl Scouts' driveway). We analogized the Girl Scouts scenario to a past vacation petition, where the right-of-way property lines ran through a softball diamond, baseball outfield, a parking lot and perhaps a structure or two, all in a public park—i.e. significantly more people use the right-of-way in that scenario than in the more typical lines on the map in the middle of somebody's backyard scenario.¹²
49. PSB and Roads, however, categorized the Girl Scouts driveway as unopened, undeveloped right-of-way. At hearing, PSB and Roads explained that they had some trouble categorizing this portion of the right-of-way, but ultimately concluded that because it was encased in private property and never publicly improved, it was less like the right-of-way in the middle of the public park and more like an undeveloped right-of-way. That is plausible. Also, although avoided liability would be higher in the frequently traversed public areas context (\$98 versus \$0), avoided maintenance would be lower (\$0 versus \$2,000). Thus categorizing the Girl Scouts undeveloped right-of-way results in a

¹¹ *Coalition of Chilmist v. Okanogan County*, No. 34585–8–III, 2017 WL 1032774, at *4 (Wn. App. Mar. 16, 2017) (unpublished, emphasis added), *cert. denied*, 188 Wn. 2d 1022, 398 P.3d 1138 (Aug. 2, 2017).

¹² https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2703_DNRP_REPLACEt.ashx?la=en at ¶ 8.

lower compensation figure (\$4,800 versus \$6,702).¹³ We can accept the Roads and PSB categorization.

50. We see three reasons for waiving the \$4,800 otherwise due from Girl Scouts.¹⁴
51. First, in previous recommendations we have *sua sponte* analyzed one of the criteria RCW 36.87.120 lists as a justification for downwardly adjusting compensation: “any limits on development.” This is different from the private applicant’s position we (and Roads) rejected in *Janshen* and the Roads position we rejected recently. Those arguments related to how one *initially* values property. This topic is about a later adjustment to that initial assessment.
52. Any competent appraiser, as part of the “highest and best use” analysis, should already capture limits on development. So, for example, for a road vacation involving Designated Forest Land-zoned property (which by definition has very severe zoning restrictions), the Assessor’s value for the abutting property was less than three cents per square foot.¹⁵ Again, that was the *initial* valuation. It would be absurd if the legislature meant to double count and reduce compensation to reflect the identical limits on development that anyone with a minimal understanding of the valuation process would have needed to incorporate to reach the initial valuation.
53. We thus do not know quite what the legislature was driving at, and reading the legislative history provided nothing on this topic. Nevertheless, we start from the twin statutory construction canons that we should interpret statutes to avoid rendering any language superfluous, while at the same time avoiding absurd results. *Chelan Basin Conservancy v. GBI Holding Co.*, 190 Wn.2d 249, 264, 413 P.3d 549 (2018). We therefore presume the legislature must have envisioned some type of development limit—a limit *not* already captured by a competent valuation, and not an exception that would swallow the rule—that could occasionally serve as a basis for a later downward adjustment to an initial valuation.
54. In a previous recommendation, we focused on a possible application of this adjustment in the *public* acquisition context (there, DNRP was acquiring the right-of-way from Roads).¹⁶ We also described one potential application in the private acquisition context—where the vacated right-of-way area will not be developed into something else,

¹³ Ex. 37. Tax savings is not an issue because the Girl Scouts property is tax-exempt. *Id.*

¹⁴ Roads noted that, in 1973, Council vacated the eastern portion of the right-of-way on the Girl Scouts property, without requiring compensation—the implication being that this created some sort of precedent. However, there the County received, “[a]s consideration for the subject vacation a 30 foot road deed is being given by the petitioners for access to the Tolt River Flood Control Project.” Ord. 1862 at § 4. Therefore, the 1973 vacation sounds less like a departure from the compensation requirement and more like accepting real property in lieu of cash compensation, as KCC 14.40.020.A continues to allow. We do not see the 1973, no cash compensation vacation to the Girl Scouts as a basis for waiving compensation today.

¹⁵ https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2706_HsiClaremontForest.ashx?la=en at ¶ 10.

¹⁶ https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/applications/road%20vacation/2017/V-2703_DNRP_REPLACEt.ashx?la=en at ¶¶ 18–23.

but will remain a private easement or road.¹⁷ That is the Girl Scouts scenario: the to-be-vacated right-of-way will remain a driveway, with utility and other easements remaining in place, with the road just becoming completely private.

55. Second, as noted above, one of our concerns has been donating public property interests to private owners. Although gift-of-public-funds restrictions are not necessarily legally ameliorated by the fact that the Girl Scouts is a registered 501(c)3 nonprofit organization (EIN number 91-6060940), our concern—or at least the optics—seems lessened, given Girl Scouts’ status and the continuing use of the property as a children’s camp.
56. Third, as also noted above, this is the first recommendation we have issued where a petitioner did not proactively approach the County to acquire a right-of-way, but was instead essentially added at Roads’ initiative. Although Roads has argued that the context in which the petition arose should not be a factor, we think it can—in the appropriate scenario—be a legitimate basis for reducing or eliminating compensation.
57. As with all vacations, it is up to Council to decide what if any compensation to require. We strongly recommend that Council waive compensation Good Ground, and moderately recommend that Council waive compensation for Girl Scouts.

RECOMMENDATION:

APPROVE proposed ordinance no. 2018-0406 to vacate the subject rights-of-way, and require zero compensation.

DATED May 15, 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 **June 10, 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

¹⁷ *Id.* at ¶¶ 32–33

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 APRIL 30, 2019, HEARING ON THE ROAD VACATION
PETITION OF GOOD GROUND AND GIRL SCOUTS OF WESTERN
WASHINGTON, DEPARTMENT OF TRANSPORTATION FILE NO. V-2692**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Leslie Drake, Dwight Dively, Gary Remlinger, and Cheryl Paquette.

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

- | | |
|----------------|--|
| Exhibit no. 1 | Roads Services report to the Hearing Examiner, sent April 15, 2019 |
| Exhibit no. 2 | Letter from Clerk of the Council to KCDOT transmitting petition, dated March 18, 2015 |
| Exhibit no. 3 | Petition for vacation of a county road, received March 18, 2015 |
| Exhibit no. 4 | Letter from Girl Scouts of Western Washington regarding vacation petition, dated March 13, 2015 |
| Exhibit no. 5 | Legal description and vacation area map, dated October 7, 2015 |
| Exhibit no. 6 | Updated legal description, dated February 10, 2016 |
| Exhibit no. 7 | King County Ordinance no. 1862 |
| Exhibit no. 8 | Final stakeholder notification, sent August 8, 2016, with comment deadline of September 7, 2016 |
| Exhibit no. 9 | Letter from KCDOT to Petitioner recommending approval, conveying County Road Engineer report, and stating compensation estimates, dated September 20, 2016 |
| Exhibit no. 10 | Letter from Petitioners with revised compensation proposal, dated October 15, 2016 |
| Exhibit no. 11 | Letter from Roads accepting Petitioners’ revised compensation amount, dated November 14, 2016 |
| Exhibit no. 12 | Email from Petitioner requesting an extension of time, sent February 9, 2017 |
| Exhibit no. 13 | Letter from Roads granting 60-day extension, dated February 13, 2017 |
| Exhibit no. 14 | Letter from Roads granting 60-day extension, dated May 1, 2017 |
| Exhibit no. 15 | Letter from Roads granting 90-day extension, dated September 13, 2017 |
| Exhibit no. 16 | King County Road Engineer’s Report on vacation, dated October 27, 2017 |

- Exhibit no. 17 Letter from Roads conveying Road Engineer’s Report, dated November 30, 2017
- Exhibit no. 18 Vicinity map
- Exhibit no. 19 Site map depicting vacation area
- Exhibit no. 20 Aerial photograph
- Exhibit no. 21 Easement from Good Ground and King County
- Exhibit no. 22 Easement from Girl Scouts of Western Washington and King County
- Exhibit no. 23 Easement from Good Ground to Girl Scouts of Western Washington
- Exhibit no. 24 Easement from Good Ground to Home Farm
- Exhibit no. 25 Easement from Good Ground to Qwest Corporation
- Exhibit no. 26 Easement from Good Ground to Puget Sound Energy
- Exhibit no. 27 Easement from Girl Scouts of Western Washington to Puget Sound Energy
- Exhibit no. 28 Letter from KCDOT to KC Council recommending approval and transmitting proposed ordinance, dated August 14, 2018
- Exhibit no. 29 Proposed ordinance 2018-0406
- Exhibit no. 30 Fiscal note
- Exhibit no. 31 Email from Jeffrey Darrow with valuation data, sent March 21, 2019
- Exhibit no. 32 Right-of-way valuation model, dated January 31, 2019
- Exhibit no. 33 Compensation calculation spreadsheet for Good Ground parcel no. 2225079012
- Exhibit no. 34 Compensation calculation spreadsheet for Good Ground parcel no. 2225079025
- Exhibit no. 35 Compensation calculation spreadsheet for Good Ground parcel no. 2225079027
- Exhibit no. 36 Compensation calculation spreadsheet for Good Ground parcel no. 2225079034
- Exhibit no. 37 Compensation calculation spreadsheet for Girl Scouts of Western Washington parcel no. 2225079001
- Exhibit no. 38 Photographs of NE 32nd Street
- Exhibit no. 39 Affidavit of posting, noting posting date of March 29, 2019
- Exhibit no. 40 Affidavit of publication noting publication dates of April 18 and 25, 2019

DS/vsm

May 15, 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

CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services, Roads file no. **V-2692**
Proposed ordinance no. **2018-0406**
Adjacent parcel no. **2225079025**

GOOD GROUND AND GIRL SCOUTS OF WESTERN WASHINGTON
Road Vacation Petition

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND RECOMMENDATION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.
- placed via County INTEROFFICE MAIL to County staff to addresses on record.

DATED May 15, 2019.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator