

July 8, 2020

**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-2724**
Proposed ordinance no. **2020-0174**
Adjacent parcel no. **1422039052**

LAWRENCE AND SUZIE KUZNETZ

Road Vacation Petition

Location: a portion of SW Luana Beach Road (aka Skalberg Road and
County Road No. 834), Muary Island

Applicants: **Lawrence and Suzie Kuznetz**

[REDACTED]
Spokane, WA 99205

Telephone: [REDACTED]

Email: [REDACTED]

King County: Department of Local Services
represented by **Leslie Drake**
35030 SE Douglas Street, Suite 210
Snoqualmie, WA 98065
Telephone: (206) 684-1481
Email: leslie.drake@kingcounty.gov

SUMMARY OF RECOMMENDATION:

Department's Recommendation:
Examiner's Decision:

Approve vacation and waive compensation
Approve vacation and waive compensation

FINDINGS AND CONCLUSIONS:

Overview

1. Lawrence and Suzie Kuznetz petition the County to vacate an approximately 2,157 square foot area of public right-of-way along SW Luana Beach Road (aka Skalberg Road and County Road No. 834) on Muary Island. The Department of Local Services, Road Services Division (Roads), urges vacation and a waiver of all compensation. We conducted the public hearing on behalf of the Council. After hearing witness testimony, studying the exhibits entered into evidence, and considering the parties' arguments and the relevant law, **we recommend that the Council approve the vacation and waive compensation.**

Background

2. Except as provided herein, we adopt and incorporate the facts set forth in Roads' report and in proposed ordinance no. 2020-0174. That report, a map showing the general vacation area, and a land survey showing this with more precision, are in the hearing record and will be attached to the copies of our recommendation submitted to Council. Exs. D1 at 001-05, D12 at 005, D2 at 004.
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 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 how should this number be adjusted to capture avoided County costs?

Is Vacation Warranted?

4. 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 ("*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 subject right-of-way segment is basically a triangular segment on the outside of a curve in the public road. Ex. D1 at 017. Looking at the aerial map, it appeared that the vacation area extended to near the edge of the pavement. Ex. D12 at 005. That raised a yellow flag for us, potentially creating a chokepoint or limiting flexibility for future roadway repairs or improvements. However, aerial photos are imprecise. The Kuznetzes hired a professional land surveyor who determined that the triangle the Kuznetzes are seeking to vacate comes no closer than 24 feet from the edge of the current pavement. Ex. D2 at 004.

6. Roads noted at hearing that 24 feet is more than they often have to work with, and is sufficient here. Roads' Maintenance, its Traffic Engineering, and its Survey Unit each examined the situation and concluded that sufficient right-of-way would remain after the vacation; none expressed concerns or objections. Ex. D1 at 029, 035, 038. An adjacent neighbor testified at hearing that he supported the vacation.
7. We find that the vacation area is useless to the county road system and that the public will benefit from its vacation (see below). We conclude that vacation is warranted, although Council retains the ultimate discretion on whether to vacate or not.

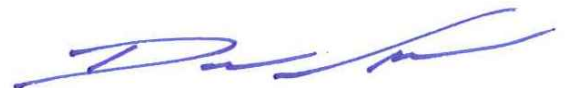
What Compensation is Due?

8. Compensation is often a complex and contested item, as analyzed at length in many of our past recommendations. Here, in contrast, it is straightforward. Applying Performance, Strategy, and Budget's model, we start with increased land value from adding the vacation area to private property. The assessor opined that the triangle would add \$3,000 to the value of the Kuznetz property. Ex. D9. Because SW Luana Beach Road is an actual public road, the savings in avoided management and maintenance costs (\$11,596), not to mention a small avoided liability risk (\$153) and some added expected taxes (\$59), collectively dwarf the \$3,000 enhancement to the Kuznetz property. A full waiver of compensation is warranted.

RECOMMENDATION:

APPROVE proposed ordinance no. 2020-0174 to vacate the subject road right-of-way and waive the compensation requirement.

DATED July 8, 2020.



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 *August 3, 2020*, 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 JUNE 23, 2020, HEARING ON THE ROAD VACATION
PETITION OF LAWRENCE AND SUZIE KUZNETZ, DEPARTMENT OF
TRANSPORTATION FILE NO. V-2724**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Drake Leslie, Lawrence Kuznetz, Suzie Kuznetz, and Scuderi Shelley.

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

- Exhibit no. D1. Roads Services report to the Hearing Examiner, sent June 9, 2020
- Exhibit no. D2. Letter from Clerk of the Council to KCDOT transmitting petition, dated September 7, 2018
- Exhibit no. D3. Vacation area map
- Exhibit no. D4. Letter from KCDOT to Petitioner acknowledging receipt of petition and explaining road vacation process, dated September 19, 2018
- Exhibit no. D5. KC Development conditions for parcel
- Exhibit no. D6. KC Department of Assessments Real Property page
- Exhibit no. D7. Letter from KCDOT to Petitioner recommending approval, proposing compensation waiver, dated October 26, 2018
- Exhibit no. D8. Aerial photograph
- Exhibit no. D9. Valuation of road vacation
- Exhibit no. D10. Valuation of road right of way
- Exhibit no. D11. Letter from KCDOT to Petitioner conveying the County Road Engineer report, dated November 20, 2019
- Exhibit no. D12. County Road Engineer Report, dated November 19, 2019
- Exhibit no. D13. Letter from KCDOT to Petitioner
- Exhibit no. D14. Ordinance of V-2724, dated January 24, 2020
- Exhibit no. D15. Fiscal Note of 2019-2020
- Exhibit no. D16. Declaration of posting
- Exhibit no. D17. Notice of Hearing

DS/jf

July 8, 2020

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CERTIFICATE OF SERVICE

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LAWRENCE AND SUZIE KUZNETZ

Road Vacation Petition

I, Jessica Oscoy, 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.

DATED July 8, 2020.



Jessica Oscoy
Legislative Secretary

Blossey, Linda
Metropolitan King County Council

Brater, Rick
Department of Local Services

Carr, Trevor
Department of Natural Resources and Parks

Carrasquero, Jose
Department of Local Services

Cassidy, Jon
Department of Local Services

CenturyLink
Hardcopy

Claussen, Kimberly
Department of Local Services

Comcast Cable
Hardcopy

Drake, Leslie
Department of Local Services

Eichelsdoerfer, Robert
Department of Local Services

Ishimaru, Jim
Department of Local Services

Jackson, Robert
Department of Natural Resources and Parks

Kosai-Eng, JoAnn
Department of Local Services

Kulish, Michael
Facilities Management Division

Kuznetz, Lawrence/Suzie
Hardcopy

Ledbetter, Tony
Department of Local Services
Hardcopy

McDonald, Andrew
Department of Natural Resources and Parks

Miles, Dawn
Department of Local Services

Minichillo, Tom
Department of Local Services

Murray, Mike
Hardcopy

Nunnenkamp, Robert
Department of Natural Resources and Parks

Pedroza, Melani
Metropolitan King County Council

Puget Sound Energy
Hardcopy

Scuderi, Shelley

Thomas, Jon

Todd, Scott
Department of Natural Resources and Parks

Torkelson, Cindy
Department of Local Services

Vashon Island Fire and Rescue
Hardcopy

Wave Broadband