

ENGINEER'S REPORT

PETITION REQUEST # 18-113647 RWE

FOR THE VACATION AND ABANDONEMENT OF A PORTION OF
COUNTY ROAD RIGHT-OF-WAY IDENTIFIED AS
SHORTS SCHOOL ROAD

INTRODUCTION

Chapter 36.87 Revised Code of Washington (RCW) gives county legislative authorities broad authority to vacate and abandon land that was acquired for county road purposes. Chapter 13.100 Snohomish County Code (SCC) contains the County's regulations that implement the provisions of Chapter 36.87 RCW. The County's legislative authority's use of this broad authority must be made under the advice and supervision of the County Engineer.

SCC 13.100.010, provides that road or right-of-way (ROW) vacation and abandonment procedures may be initiated either in response to Council request, initiated independently by the Engineer on his/her own initiative, or in response to a frontage owner's petition. The present petition to vacate relates to the southerly terminus of Shorts School Road comprising that portion of the road located entirely upon the land of petitioners' Paul and Maria Lund.

FACTS/BACKGROUND

1. On March 18, 2018, petitioners, Paul and Maria Lund, submitted an application to the Department of Public Works (DPW) proposing to: (1) Vacate by operation of law, under the non-user statute (RCW 36.87.090), that portion of unopened county road ROW of Shorts School Road, located in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 5, Township 27 North, Range 6 East, as originally established under the 1894 freeholders' petition; (2) Vacate that portion of Shorts School Road (formerly Sinclair Road), as opened and established under the 1907 Petition located in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 5, Township 27 North, Range 6 East as located upon the ground pursuant to the 1908 survey. (See Exhibit 1, Petition, Assessors Map and Aerial Map)
2. The ROW in question was originally established in 1894 by a freeholders' petition to establish a public county road 30 feet in width, running south from the river bank on the north boundary of Section 5, Township 27 North, Range 6 East, and ending at George

Greenwood's fence or thereabouts, filed with the Superior Court of the State of Washington for Snohomish County on February 28, 1894, commonly known as Charley Sinclair Road #2186 (Rd #151) and declared established in open court on April 7, 1894, by Judge John C. Denney. (See Exhibit 2, Order of Establishment)

3. In March 1907, a petition to change the course of Sinclair Road was submitted by freeholder's petition to establish a relocated county road, 30 feet wide and approximately $\frac{1}{4}$ mile in length by Caleb Cook, et.al., to the Board of County Commissioners for what was known as a change in the Sinclair Road. The road, per the Surveyor's report and map, began at a point on the George Saunders road on the south boundary of Section 32, Township 28 North, Range 6 East, and ended at a point in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 5, Township 27 North, Range 6 East. It was declared a county road on July 15, 1907. (See Exhibit 3, Petition and Map)
4. On record in the Department of Public Works (DPW) is a second map showing a change in a portion of Sinclair Road as actually constructed upon the ground, 30 feet wide, and was surveyed in July 1908. (See Exhibit 4, Map)
5. On February 26, 1912, a petition to vacate the original 1894 alignment of Sinclair Road, as superseded by the 1907 Petition, was submitted to the Commissioners of Snohomish County by Mrs. E. O. Williams and John A. Williams, but for whatever reason only referenced that portion of the 1894 alignment located in Lot 5, in the NW $\frac{1}{4}$ of Section 5, Township 27 North, Range 6 East, and omitted that portion of the original 1894 alignment extending further south onto Section 5, Township 27 North, Range 6 East, comprising what is now the Lund property. (See Exhibit 5, Petition)
6. On March 25, 1912, by motion, the following described road was vacated, known as the Sinclair or Williams Road. (See Exhibit 6)

All roads in lots 4 and 5 of Section 5, Township 27 North Range 6 East excepting the road hereinafter described:

Commencing at the $\frac{1}{4}$ section corner between Sections 5 and 6 said Township and Range, thence N 0°33' E along the Section line 923.1 feet to the fractional section corner between said Sections 5 and 6, thence N 69°39' E 359.8 feet to the true place of beginning: thence 30 feet in width lying 15 feet on either side of a center line running N 31° 05' E 319.7 feet, thence N 18°42' E 334.9 feet, thence N 7° 12' E 477.2 feet, thence N 13°48' W 207.8 feet, thence N 18° 48' W 180 feet to the north boundary of the said Section.

As set forth above, the 1912 Road Vacation failed to vacate that portion of the original 1894 alignment of Sinclair Road extending South over and upon Section 5, Township 27 North, Range 6 East, comprising what is now the Lund property.

7. An open public roadway is shown or noted on various records located in the DPW, including road book entry for 1912 Williams vacation petition, 1936 Index map of Snohomish County prepared by Department of Highways, bridge surveys and maintenance cards, and aerial photographs as early as 1947.
8. On September 12, 1957, John A. and Elizabeth D. Duncan recorded an Easement to go with the land over and across that property now comprising the Lund property and utilizing, in part, a portion of Shorts School Road, located thereon, granting a perpetual right of ingress and egress over and across said property, to Snohomish County for flood control purposes. The ingress and egress route is in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 5, Township 27 North, Range 6 East. (See Exhibit 7, Easement AF #1256324 and map)
9. County records indicate that a roadway was opened, improved and maintained over and across portions of Section 5, Township 27 North, Range 6 East, comprising what is now the Lund property, pursuant to the 1907 Petition, in the alignment as surveyed in 1908 (Exhibit 3), including maintenance of two small bridges. However, the bridges were subsequently removed or abandoned when the ground was filled. As currently exists, that portion of the southern terminus of Shorts School Road (formerly Sinclair Road) as established under the 1907 Petition located upon Section 5, Township 27 North, Range 6 East, comprising what is now the Lund property, serves solely to provide access to the Lund property and no other public use or benefit.
10. A request for review of historical documents, survey data, documents and summary by the Petitioner's Surveyor, Harmen & Associates, was submitted to DPW Survey Department. (See Exhibit 8)
11. Based on data and records reviewed, it is the Survey Department's opinion, the County has a 30 foot wide strip of ROW from the intersection of the Nevers Road at the northern boundary of Section 5, south to the southern end of Shorts School Road, as established in the 1907 Petition, and located as shown in the 1908 survey. In this regard, the relocated alignment, set forth in the 1907 Petition, headed in a southerly direction from the north line of Section 5, and terminates somewhere in the SW $\frac{1}{4}$ of Section 5, Township 27 North, Range 6 East, is 30 feet in width. In 1908, the roadway, as actually constructed by the County, fixed the location of the 30-foot-wide southerly portion of the road west of the alignment, set forth in the 1907 Petition, which alignment as actually constructed on the ground, is presumed to control. (See Exhibit 9)
12. This roadway alignment, as shown on the 1908 survey (Exhibit 4) has been, and is currently, maintained southerly from Nevers Road to a gate located approximately at the

north line of the NW¼ of the SW¼ of Section 5, Township 27 North, Range 6 East. The extended portion of the current Shorts School Road petitioned to be vacated, lies south from this point and is not currently County maintained.

FINDINGS

1. Shorts School Road has been and is currently maintained with public funds south from Nevers Road, to a gate at the north property line of tax parcel number 27060500300200, owned by the Lund's, in that alignment as shown in that 1908 Survey (Exhibit 4). That portion of the ROW lying south of the gate, at the north property line of tax parcel number 27060500300200 owned by the Lund's, was at one time used and maintained by the public, but has been abandoned and gated years ago, and serves no other purpose than for access to the Petitioners' own property. Therefore, DPW has determined the subject ROW petitioned to be vacated, comprising that portion of the roadway as actually constructed and located upon the ground, pursuant to the 1908 survey, located south of that gate at the north property line of tax parcel number 27060500300200, owned by the Lund's, is not necessary or needed for current or future road purposes, and the vacation and abandonment of the proposed ROW will benefit the public. The vacated portion becomes appendage to the petitioner's property and taxes will be amended to reflect the value added by the vacation.
2. As to all such earlier alignments of Shorts School Road, extending over and upon Section 5, Township 27 North, Range 6 east, comprising what is now the Lund property, as set forth in that original 1894 freeholder's Petition, and/or the original alignment set forth in the 1907 Petition to relocate Sinclair Road, DPW has determined that any such earlier alignments of the road have never been opened or maintained for public use and, thus, should be declared vacated by operation of law pursuant to RCW 36.87.090.
3. Pursuant to SCC 13.100.080, compensation is required to be paid for the value of the property to be vacated under Section 1 above comprising the road ROW as opened, improved and formerly maintained at public expense as located under the 1908 survey. DPW has determined that the classification of said ROW is as a Class C ROW pursuant to SCC13.100.040 (7)(c) in which the County has an easement interest and public expenditures were made. DPW has appraised the subject ROW and it is estimated to be **\$10,348.00**. Per SCC 13.100.080 (2)(b). Compensation is fifty percent (50%) of the appraised value which is **\$ 5,174.00** and is in accordance with SCC 13.100.085. That portion of Short School Road petitioned to be vacated serves only the Lund properties and is no longer being County maintained.

4. That portion of Sinclair Road established under the 1894 freeholder's Petition, as it pertains to Section 5, Township 27 North, Range 6 East, comprising what is now the Lund property, falls under the non-user statute and would have been automatically vacated by operation of law under RCW 36.87.090. The compensation would be zero percent (0%).
5. That portion of Sinclair Road relocated under the 1907 Petition (Cook Road establishment), to the extent the original alignment set forth in said petition differs from the actual alignment as constructed on the ground, and depicted in the 1908 survey, is a Class D ROW in which the county has an easement but with no public expenditures having been made pursuant to SCC 13.100.040(7)(d). Wherefore, the compensation for vacating said unimproved right of way would be zero percent (0%) pursuant to SCC 13.100.080(2)(c).
6. That portion of the road proposed to be vacated does not abut a body of saltwater or freshwater.
7. Inquiries to local utilities revealed that there are three existing utilities within the proposed ROW vacation. RCW 36.87.140 and SCC 13.100.100 allow the County to retain easement in respect to the vacated ROW for the construction, repair, and maintenance of utilities and services. It is recommended that an easement be retained for all the utilities within that portion of Shorts School Road for the construction, repair and maintenance of public utilities and services.

RECOMMENDATIONS

1. Based on the above findings the public will benefit by the vacation and abandonment of that portion of Shorts School Road petitioned to be vacated and the road ROW should be vacated and abandoned.
2. DPW recommends that Vacation Petition Request # 18 113647 RWE for the vacation of a portion of Shorts School Road described on Exhibit A and depicted on Exhibit B to the accompanying Ordinance is in the best interest of the general public and should be granted based on the following conditions.

CONDITIONS

1. An easement for utilities shall be granted by the petitioners over the vacated portion of Shorts School Road for the construction, repair and maintenance of the public utilities and services as per RCW 36.87.140 and SCC 13.100.100 and shall be recorded in the Auditor’s Office.
2. Vacation of the ROW shall not be deemed to impair or invalidate any existing easements over and across the Lund property including, without limitation, that easement dated September 12, 1957, granted to Snohomish County for right of ingress and egress to maintain or construct flood control works. (Exhibit 6, Easement AF # 1256324)
3. Compensation of the ROW at 50% of the appraised value equaling \$5,174.00 shall be paid by the petitioners, Paul and Maria Lund, along with all other costs incurred by the County in processing the petition as per SCC13.100.070 and SCC 13.100.080.

Approved by:

Douglas W. McCormick P.E.
Deputy Director/County Engineer

Date _____

Prepared by:

Maria Acuario

Maria Acuario
ROW Investigator III

Date 6/3/2021