

Via Email

City of Snoqualmie
City Council
38624 SE River Street
Snoqualmie, WA 98065

April 7, 2025

Re: Additional Materials: **Petition for Vacation of Right of Way, Tax Parcel Number 7849200064**

Dear City Clerk:

We thank you for the opportunity to present our case at the upcoming hearing. As you have already been informed, NWBF's position is that we have title to the relevant area we are requesting a vacation of already. This memo clarifies and supplements our position. We presume that the materials we have already provided will be part of the package given to City Council ahead of the hearing, including the Petition, exhibits thereto, and supplemental materials provided to the City Clerk.

Park Street. No further rights or vacation is necessary regarding Park Street. Since our Petition to the City, we received additional information confirming that King County considers the 1919 survey of Park Street to be the official survey. *See Att. Hearing Exh. A* (with links). Hence, the 1997 survey is wrong, the actual location of Park Street is further south, and the home does not encroach on Park Street. *See Petition Att. C*. The surveyor from 1997 could not find a legal description for Park Street, and so it is noted on the survey that they relied on the mapping from the King County Assessor's office. *See Petition Att. B* ("No information could be recovered for the curve data of Park Avenue going through lots 1 and 2 in block 4; the curve data was developed from the record information as shown on tax assessor's . . ."). As we know, the King County Assessor's mapping is not always perfect, which is why surveyors prefer to rely on legal descriptions and other data. However, the King County Roads Services Division maintains maps for public roads, and that is where the 1919 survey on the actual location of Park Street we found comes from. *See Att. Hearing Exh. A*. This survey was attached to our Petition as Attachment C.

As you can see, when compared with the 1997 survey, the actual location of the road is further south, which avoids orphaning a portion of the subject parcel south of Park Street. *Compare Petition Att. B and C*. It also aligns with the actual location of Park Street, south of improvements maintained by the owners of parcels on the north side. *See Att. Hearing Exh. D*. We've contacted the King County Assessor's office so they can update their mapping based on this survey. As a result of this discovery, we no longer require the City Council to formalize a vacation of Park Street in this area. However, as already noted, we have been unable to locate any record of dedication for Park Street to King County or to the City. While the relevant period of adverse possession by the public has certainly run, that would only apply to the area that has actually been used. As part of this process, NWBF is happy to execute a formal dedication for Park Street as

shown on the 1919 survey to perfect the City's records. We agree to the City Council making this a condition of the vacation approval for Schusman Avenue.

Schusman Avenue. The City Council has authority to vest title to this area in the petitioner, regardless of any arguments we may make, and given the century-plus history, we believe that doing so is right and just. Doing so is also in the public interest because it sets a precedent that, in lieu of litigating the lawfulness of decades old structures, the City is willing to honor its tradition and history. The only public purpose necessary to approve this petition is that, honor and tradition. NWBF is also offering to formalize the dedication of Park Street, including areas that are yet unused by the City, and hence, there are additional public benefits being offered.

Pursuant to Chapter 35.79 RCW, the City Council has authority to vacate public rights of way. *See London v. City of Seattle*, 93 Wn.2d 657, 661, 611 P.2d 781 (1980) ("A city may vacate a public street and extinguish the public easement therein by following the procedures set forth in RCW 35.79."). NWBF has demonstrated compliance with sufficiency of the Petition under RCW 35.79.010 in its prior submittals. Vacation of a street must be based on some element of public use. *London*, 93 Wn.2d at 661 (citation omitted). "The legislative body is the proper entity to weigh public benefit." *Id.* There is a presumption that such an ordinance is enacted for a public purpose. *Id.* Here, the public benefit or use is met by, (1) the need to recognize the injustice of requiring demolition of a 100+ year-old structure, (2) the avoidance of costly litigation, and (3) obtaining the dedication of Park Street as a condition of approval, should additional improvements or expansion of the same be required in the future.

With regard to compensation, the City Council's authority to require compensation is permissive. *Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267, 282, 937 P.2d 1082 (1997). NWBF is offering to pay the value of the vacated right of way as a condition of approval, even though NWBF's position is that it already owns the relevant area. However, should the City Council believe that it is just and proper, the City Council does not have to require this compensation. Additionally, given the offer of dedicating additional Park Street right of way that the City has no record title to, this can be deemed appropriate compensation.

As Council is aware, NWBF has made the case that title to the respective area is already vested in NWBF, LLC by way of the Ballinger Code, and specifically, what is referred to as the non-user statute. While proving a negative is always difficult, particularly when so far removed in time, we believe we have ample evidence that the area in question was not opened as a public right of way during the relevant period.

First and foremost, the City permitted a building to be constructed over the right of way in 1938. *See Att. Hearing Exh. B. and B.1.* This is itself evidence that the City did not believe the Schusman Avenue right of way belonged to the City at that time. It took over 80 years for someone at the City to claim otherwise.

The Non-User Statute, originally passed by the state legislature in 1890, and now codified at RCW 36.87.090, provides:

Any county road, or part thereof, which remains unopen for public use for a period of five years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time...

The Code was later amended in 1909 to exclude platted rights of way, but the Courts determined this could not be applied retroactively to areas that had already been vested in abutting property owners. *See Leonard v. Pierce Cnty.*, 116 Wn. App. 60, 65, 65 P.3d 28 (2003). Although the Non-User Statute only operates to vacate county roads, roads within city limits may still be eligible for the statutory vacation if the land was annexed to a city after the relevant 5-year period of non-use. Here, Schusman Avenue was dedicated by plat in 1890, and since the Town of Snoqualmie was not incorporated until 1903, the relevant area automatically vested in NWBF's predecessors by 1895.

About 130 years have passed since Schusman Avenue would have been vacated by the non-user statute. And while courts have consistently held that the burden of demonstrating that a street remained unopened for the statutory period (during the requisite timeframe) rests on the proponent of the claim, NWBF has such proof, in addition to the City allowing a building to be constructed on the parcel in 1938. *See Brokaw v. Town of Stanwood*, 79 Wash. 322, 325–26, 140 P. 358 (1914); *John Robinett Pension Plan & Tr. v. City of Snohomish*, 76214-1-I, 2018 WL 418907, at *3 (Wash. Ct. App. Jan. 16, 2018).

We have scoured the available records and found a photo of the relevant building from 1940. *See Att. Hearing Exh B*. This photo clearly shows the building that today is the existing single-family home on the property. *Att. Hearing Exh. B.1*. There are trees immediately behind the building. Our consulting arborist avers that these trees are at least 40-60 years old, and hence, they germinated between 1880 and 1900. *See Att. Hearing Exh C*. Given this, there is a preponderance of evidence to support the argument that there was not a public right of way through this property, along the platted Schusman Avenue, between 1889 and 1895, since these trees would have interfered with such a road, which means that the area automatically vacated to the property owner. Undoubtedly, this is why the City allowed the property owner to build the structure in 1938. While not dispositive, there is also no evidence to the contrary, no evidence to suggest that the relevant area was cleared and used for public travel before the construction of the home in 1938.

We respectfully request the City Council approve the vacation of Schusman Avenue, abutting the relevant parcel as describe in the Petition. We welcome a condition requiring the dedication of Park Street as a part of this vacation.

Sincerely,



Dean Williams

Direct Tel: (425) 467-9967

Email: williams@jmmklaw.com

Reviewed and Approved by:

/s/Stephen DeShazo

Stephen DeShazo

In-House Counsel

City of Snoqualmie

April 7, 2025

P a g e | 4

steve.deshazo@isolahomes.com

7525 SE 24th St., Ste. 487

Mercer Island, WA 98040

Hearing Exhibit A

From: [Bill Moffet](#)
To: [Dean Williams](#)
Subject: Fw: Information from the King County Roads Map and Record Center
Date: Thursday, April 3, 2025 2:50:12 PM
Attachments: [image002.png](#)

----- Forwarded Message -----

From: Jones, Jess (She/Her) <jjones@kingcounty.gov>
To: b.moffet <b.moffet@yahoo.com>
Sent: Thursday, April 3, 2025 at 02:36:33 PM PDT
Subject: Information from the King County Roads Map and Record Center

Hello Bill,

Thank you for your calls inquiring on any available records related to Park Ave in Snoqualmie. I have searched the [King County Road Services' Map Vault](#) and pasted the relevant results below. (You'll see the survey you located is listed last.) You can click to download a PDF version of the records.

Please note that these records are maintained by the King County Road Services Division's Map and Record Center as the office of record for the King County Road Engineer pursuant to RCW 36.80.

Showing result 1-9 of 9

Results per page 10 25 50

Project/map name ↑	Map number	Roads	Map year	Survey number	S-T-R
MAP OF THE TOWN OF SNOQUALMIE IN 1929	31-54	BRUCE ST RAILROAD BLVD MAPLE AVE FIR ST CEDAR ST KING ST RIVER ST SILVA ST OLMSTEAD ST DOONE ST FALLS AVE PARK AVE NEWTON ST ALPHA ST EUCLID AVE BETTA ST GAMMA ST DELTA ST	1929	n/a	
OFFICIAL ROUTE OF STATE HIGHWAY THROUGH SNOQUALMIE	31-54	MAPLE AVE KING ST RIVER ST SILVA ST OLMSTEAD ST PARK ST NEWTON ST FIR ST FALLS AVE GAMMA ST DOONE ST DELTA ST BETTA ST BRUCE ST ALPHA ST	1929	n/a	30 24 8 31 24 8 32 24 8
PLAT OF THE MAPLES ON THE SNOQUALMIE	22-3	ORCHARD DR MEADOW DR PARK DR MAPLE DR RIVER DR	1949	n/a	9 23 8 10 23 8 16 23 8

REPLAT OF THOSE RESERVES IN THE PLAT OF SNOQUALMIE FALLS	25-79B	NEWTON ST PARK ST PARK AVE FALLS AVE EUCLID AVE ALPHA ST	1907	n/a	
UNKNOWN SURVEY OF ROADS NEAR SNOQUALMIE RIVER AND TOKUL CREEK	10-32	CEDAR ST NORTH BEND RD HEMLOCK ST FIR ST 1 ST 2 ST 3 ST 4 ST 5 ST 6 ST MAIN ST RD NO 301 RD NO 99 RD NO 61 RD NO 122 RD NO 950 RD NO 909 CHAS THRESHER RD PARK AVE H RIEF RD STOREY RD GUSTIN NORMAN BRIDGE RD NORMAN BRIDGE RD SIDNEY ST BENDIGO ST BENEGO ST BALLARAT ST SNOQUALMIE NORTH BEND RD REDDING RD PARK ST ALPHA ST BETTA ST GAMMA ST DELTA ST FALLS AVE RAILROAD BLVD MAPLE BLVD NEWTON ST RIVER ST KING ST DOONE ST OLMSTEAD ST SILVA ST BRUCE ST MAPLE ST PINE ST WC WEEKS RD RE NYE RD AJ FOSTER RD WT GARDNER RD JA LEACH RD DG REINIG RD	1949	n/a	19 24 8 20 24 8 30 24 8 29 24 8 31 24 8 32 24 8 33 24 8 28 24 8 34 24 8 5 23 8 4 23 8 3 23 8 9 23 8 10 23 8 15 23 8 11 23 8 14 23 8 22 23 8 23 23 8 27 23 8 26 23 8 34 23 8 3 22 8
SNOQUALMIE RD SURVEY 1525	9-24	RIVER ST SNOQUALMIE RD RAILROAD BLVD PARK ST NEWTON ST KING ST FALLS AVE EUCLID AVE	1919	1525	31 24 8

Thank you again for contacting us with this question. Please do let us know if there is anything else we can do to assist you now or in the future.

Regards,

Jess Jones ([she/her](#))

Assistant Public Records Officer

& Records Management Project Manager

desk: 206-477-7635

jjones@kingcounty.gov



King County

Department of Local Services

Road Services Division

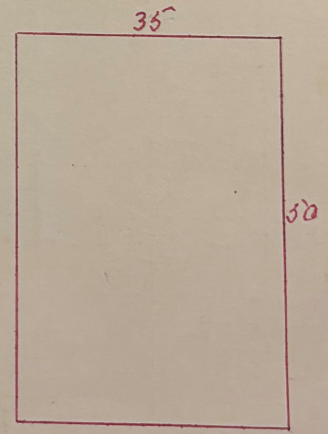
725177

6 BUILDING
Furnace Shop
1 Sty
9-18-67
Carter.

(N)
 CASCADE SHEET METAL WORKS
 MONITE FURNACES
 AUTOKLAR STOKERS
 CASCADE SHEET METAL WORKS
 B-4
 L-1
 32-24-8
 F33777
 S 13
 4-10-40
 SNOQUALMIE FALLS
 ADD.

1750	
IMPROVEMENT VALUE	
MAIN BUILDING	\$ 1540
OTHER BUILDINGS	\$ -
TOTAL	\$ 1540
ASSESSED VALUE 50%	\$ 770
DATE 1-1-40	1940
LAND INFORMATION	
1. SIZE	X
2. STREET...ROAD	
3. SIDEWALK	
4. LANDSCAPING	
5. TREND	VALUE \$
6. USE	
7. DISTRICT	

FLOOR PLAN *sc 1" = 20'*



REMARKS

Hearing Exhibit B.1

EXTERIOR

Corrugated Iron

CONSTRUCTION Frame - Single - Med

MISCELLANEOUS 5 Outlets

7 CONDITION: EXTERIOR Good INTERI

8 MAIN SUPPORT COLUMN 6 x 6 FOOT

9 FIRST FLOOR JOIST 2x8 18

10 Finished BUILDING

11 GROSS INCOME \$ EXPENSE \$

12 DEPRECIATION: COND. 0 % OBSLSE.

YEAR BUILT 1938

REMO

EFFECTIVE AGE 0

YEARS

DIMENSIONS 35 x 50 x Squ



SNOQUALMIE CITY COUNCIL
Hearing: April 14, 2025 at 6PM
With Oral Argument

Hearing Exhibit C

BEFORE THE COUNCIL OF THE CITY OF SNOQUALMIE
IN AND FOR THE COUNTY OF KING

NWBF, LLC, dba Northwest Builders Finance
and fka Isola Financial, LLC

Appellant,

v.

CITY OF SNOQUALMIE

Respondent

Resolution NO. 1710

DECLARATION OF ROBERT LAYTON IN
SUPPORT OF APPELLANT'S MOTION TO
VACATE RIGHT OF WAY ABUTTING TPN
784200064

I, Robert Layton, declare:

1. I am a ISA Certified Arborist (#PN-2714A), a registered member of the American Society of Consulting Arborists (ASCA), Registered Consulting Arborist #670, and owner of Layton Tree Consulting LLC which I have operated since 2019. I am an expert in tree inventory, tree risk assessment and tree protection services as a part of my consulting arborist services. I graduated with a degree in Forestry in 1988 from Paul Smiths College and ASCA's Tree Academy in 2013. I am over age 18 and am competent to be a witness. I am making this declaration based on facts within my own personal knowledge.

2. I have reviewed a picture taken of the Property in 1940 (**Exhibit A**).

DECLARATION OF BOB LAYTON
ISO NWBF PETITION TO VACATE ROW

3. Based on the image in Exhibit A, I have identified two of the trees located behind the structure on the Property, between the house and the river. From the shape, structure, branches, location visible in the image, it is my professional opinion that the two trees labeled “1” and “2” in Exhibit A are Bigleaf Maples, *Acer macrophyllum* (the “Maples”). A third tree (labeled “3”) also looks like a Big Leaf Maple but I can’t be sure about that one.

4. Furthermore, based on the size of the Maples and the growth rate of bigleaf maples in western Washington, the Maples labeled “1” and “2” appear to be between 40 and 60 years old at the time the picture was taken (evidently April 10th, 1940). Based on the date of the picture and size and age of the Maples, it is my opinion that the trees had been in place on or near the Property since 1880-1900.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 5th day of April, 2025, in Snohomish, Washington.

Signed by:

 B8DFCD43E491407...

Robert Layton
 bob@laytontreeconsulting.com
 Layton Tree Consulting, LLC

EXHIBIT A





The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

Date: 4/7/2025

Notes:



King County