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Subject: [EXTERNAL] Ordinance 967 presents a perfect example of when it's appropriate to condemn private property for public use. Agenda item 8(a).
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Attachments: [PastedGraphic-14.png](#)

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Councilmembers,

I hope that a voluntary sale can be negotiated, so that the public's unofficial beach access that it has enjoyed for decades can become official. We have an opportunity to secure safe beach access for everyone, forever, by extending Saltwater Park to the bulkhead.

If a voluntary sale is not achievable, then using eminent domain to acquire the beach property is appropriate and necessary to preserve, and make official, the public's right to access and use the beach property.

The new owner wants to stop the public from using the beach property. "This is a sandy lot that is not buildable and is used by everyone in the neighborhood. **I am trying to close it off** with lots of opposition." (emphasis added) (Source: a Nov. 16, 2021 Real Property Petition to the King County Board of Appeals, filed by the new owner (obtained pursuant to a public records request).)

The threat to our future use is real. Action must be taken to preserve the public's decades-long use of the beach property.

The beach property presents a perfect example of when it is appropriate to condemn private property for public use.

Acquiring the beach property confers a tremendous public benefit, while retaining the owner's ability to use and enjoy his empty, unbuildable, sandy/rocky beach property. No one is suggesting using eminent domain to acquire the owner's beach house property. We are only talking about employing eminent domain, if necessary, to acquire the adjacent, empty, unbuildable, sandy/rocky beach property that the King County assessor values at \$107,000.

I.

Cities and other governmental entities have the power to acquire property for public use using the power of eminent domain. This power is embodied in our Federal and State constitutions, and in our State law:

"Every city and town ... within the State of Washington, is hereby authorized and empowered to ... condemn land or property, either within or without the limits of such city for public parks, [and] for any other public use after just compensation having been first made or paid into court for the owner in the manner prescribed by this chapter." RCW 8.12.030 (as last amended in 1915).

There is zero doubt that the City has the power to acquire the beach property by condemnation if necessary, to extend Saltwater Park to the bulkhead, thereby preserving the public's unofficial decades-long use of the beach property. Additionally, safety concerns make it necessary for the

City to condemn the beach property, to keep it accessible to the public via the south end of 27th Ave NW. Preserving a safe access path to the beach protects the public's safety, for without a safe access path, families (especially those living near the beach) will resort to crossing the railroad tracks illegally and dangerously to get to the beach. The City can't let that happen.

II.

The 2.6 acre beach property is vacant, unbuildable, sandy/rocky waterfront, mostly tidelands. It has no economic use or other productive use. The assessor's office values it at \$107,000.

The beach-going public openly uses and enjoys the beach property daily. The owner wants to close it off. But how can the owner stop families from going onto the beach property as they walk north from Saltwater Park? The Shoreline Management Act prohibits installing a fence that would run perpendicular from the railroad tracks to the water, at the property's southern boundary that it shares with Saltwater Park. And how can the owner stop families from walking south down 27th Ave NW, entirely within BNSF's right-of-way, and stepping onto the eastern edge of the beach that is within BNSF's right-of-way? The owner cannot install a fence on BNSF's property to block the way. While installing fences doesn't seem doable, the owner could, I suppose, employ a security force to try to restrict people from entering the beach property. Just imagine the conflicts with the public that would arise if a security force was deployed to restrict entry.

Opponents of Ordinance 967 paint a picture of tremendous loss and hardship for the beach property owner should the owner be forced to sell the vacant, unbuildable, sandy/rocky beach property. On the contrary, there will be virtually no loss—virtually no practical impact on the owner's current or future use of the property.

This is a unique situation where, if the City is forced to condemn the property to acquire it, the owner can nonetheless continue to use and enjoy the property, just like he does now. It will be open to the public, including him. Condemnation, however, could result in one theoretical deprivation. It would deprive the owner of any possibility of restricting the public from entering the beach property. While closing off the beach property by fencing may not be doable (see above), deploying a permanent security force to try to restrict people from entering the beach property is theoretically possible. This possibility would appropriately be extinguished if the City acquires the beach property. (Note: The reason that the City needs to acquire the beach property is to ensure that public access will never be restricted, whether by fences, or security forces, or by any other means.) One positive result of condemnation for the owner is that the owner would be relieved of having to pay about \$1,400 in property taxes every year.

When opponents try to equate this beach property condemnation to a taking of someone's house, we know better. The beach property is of little practical value to anyone but the public. It is property that has no economic use or other productive use.

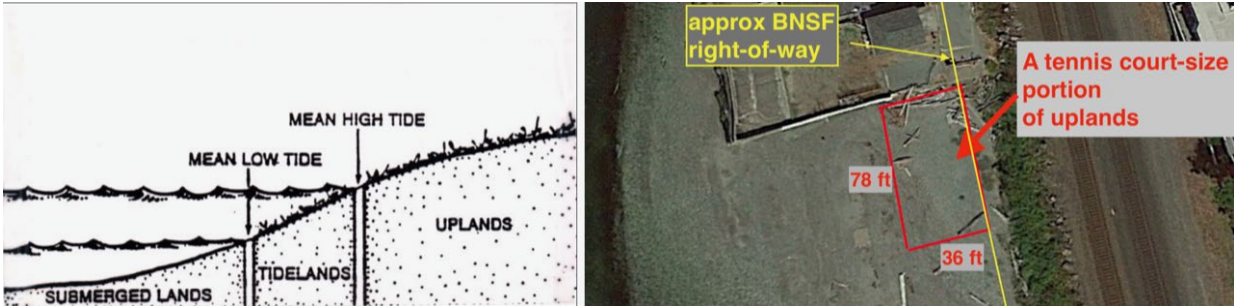
III.

A tennis court-size portion of uplands.

What if the owner does not even own the most valuable portion of the beach property—the uplands? The owner's little-to-no loss incurred by condemnation would shrink even further.

What does the owner of the beach property really own? The deed conveys "second class tidelands" to the owner. Evidence that I've recently gathered establishes that the beach property consists of uplands, in addition to tidelands. (The assessor's webpage says the property consists of

“Uplands with Tidelands.” In March, I asked the assessor’s office if they could correct the entry to say “Tidelands,” to conform to what the deed says. I was advised that the property has uplands, so no changes were made.) Without a survey, we won’t know exactly where the dividing line is, but I have gathered ample evidence recently to show that the line is far enough westward so that a tennis court-size portion of uplands would fit easily into the northeast corner of the beach property, without encroaching on the owner’s tidelands (see image below).



If the beach property owner does not own the tennis court-size portion of uplands, then families can walk down the road and on this portion of uplands without encroaching on the owner’s tidelands.

If the beach property owner does not own the tennis court-size portion of uplands (and the additional uplands located between the railroad right-of-way and the tidelands), then a condemnation proceeding deprives the owner of even less than originally thought.

Given that the deed conveys title to the tidelands only, the obvious question is who owns the uplands? I suppose it is possible that the beach property owner of record has some unrecorded document proving that he owns the uplands, but that seems unlikely. One would think that such a document would have been filed with King County as an official property record. Or maybe the beach property owner of record can argue that since he and prior owners paid taxes, he should be deemed the owner. There’s a State law about this (RCW 7.28.080), but it’s doubtful that it applies.

Maybe BNSF owns the beach property’s uplands, or someone else? Under Ordinance 967, it doesn’t matter who owns the uplands. The City will be acquiring all ownership interests in the total beach property (Tax Parcel 7278100905), as described and depicted in the Ordinance. The City, or a court if condemnation proceedings are needed, will eventually sort out who owns the uplands, and ensure that all property interests are transferred to the City.

IV.

I really hope that the City and the beach property owner can negotiate a voluntary sale, rather than the City having to resort to eminent domain. Many factors suggest that a voluntary sale should be achievable.

One suggestion: In negotiations, perhaps the owner could seek certain commitments from the City that would address some of the concerns raised by others living on 27th Ave NW (for example, no parking except for residents of 27th Ave NW). In condemnation proceedings, I doubt that this opportunity would be available.

Thank you.

Tom McCormick

"Safe beach access for everyone, forever."