



City of Tacoma  
Hearing Examiner

March 22, 2016

FIRST CLASS AND ELECTRONIC MAIL DELIVERY

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**Re: File No. HEX 2015-051 (Vacation Petition No. 124.1359)**  
**Petitioner: Mark Wagner**

To the Parties,

In regard to the above referenced matter, please find enclosed a copy of the Tacoma Hearing Examiner's (HEX) Report and Recommendation to the Tacoma City Council as a result of public hearing proceedings conducted on March 10, 2016.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1) – HEX Report and Recommendation

cc: See *Transmittal List (page 2)*

**CERTIFICATION**

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

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

DATED March 22, 2016, at Tacoma, WA.

March 22, 2016

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HEX 2015-051 (124.1359 – Mark Wagner)

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

Transmitted via Electronic Mail Delivery

Aaron Cantrel, Comcast

Marilynn Danby, Sr. Real Estate Rep., Puget Sound Energy

Jack Ryan, CenturyLink, Network Real Estate

City Clerk's Office, City of Tacoma (Nicole Emery)

Legal (Jeff Capell)

Tacoma Power, Click! Network – HFC Engineering (Vince Mounivong)

Tacoma Power, T&D Electrical Services (Rick Van Allen)

Tacoma Power, (Thad Glassy)

Tacoma Power, Real Estate (Greg Muller)

Tacoma Fire Department (Chris Seaman, P.E.)

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Jesse Angel)

Tacoma Water, Water Supply (Stuart Vaughan, P.E.)

Public Works/Real Property Services, City of Tacoma (Sue Simpson)

Public Works/Environmental Services, Science & Engineering, City of Tacoma (Rod Rossi)

Public Works/Engineering Division, City of Tacoma (Jennifer Kammerzell)

Planning and Development Services Department, City of Tacoma (Lisa Spadoni)

Planning and Development Services Department, City of Tacoma (Jana Magoon)

Planning and Development Services Department, City of Tacoma (Lihuang Wung)

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** Mark Wagner

**FILE NO.:** HEX 2015-051 (124.1359)

**SUMMARY OF REQUEST:**

The City has received a petition to vacate the south 130 feet of East K Street, lying north of East 26<sup>th</sup> Street to consolidate parcels for parking and future development.

**RECOMMENDATION OF THE HEARING EXAMINER:**

The request is hereby recommended for approval, subject to conditions.

**PUBLIC HEARING:**

After reviewing the report of the Department of Public Works (DPW), Real Property Services Division and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on March 10, 2016. After the hearing on March 15, 2016, the Hearing Examiner conducted a site visit to view the area.

**ORIGINAL**

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:**

### **FINDINGS OF FACT:**

1. Mark Wagner has petitioned the City to vacate the south 130 feet of East K Street, lying north of East 26<sup>th</sup> Street. The area to be vacated is more particularly described below:

A portion of the Northwest quarter of the Northwest quarter of Section 10, Township 20 North, Range 03 East, W.M., more particularly described as follows:

That portion of East K Street abutting Lot 12, Block 7633; and abutting Lot 1, Block 7635, The Tacoma Land Company's First Addition to Tacoma, W.T., according to the Plat thereof as recorded July 7, 1884, records of Pierce County Auditor;

Situate in the City of Tacoma, County of Pierce, State of Washington.

*Ex. 1.*

2. The Petitioner Mark Wagner plans on developing the property in the future. He is exploring the idea of constructing work/live space for artists. Currently, he would use the vacated property for parking, ingress and egress. Owning the public alley area would allow him to exclude people from the area who have frequently left garbage on his property and the adjacent public property. *Ex. 1; Wagner Testimony.*

3. The area proposed to be vacated is an 80-foot wide unimproved street right-of-way containing trees, brush, blackberry vines, and other vegetation. The east half of the street slopes gently downward toward the Sound Transit right-of-way. The west half of the street slopes more steeply as it approaches East L Street, reaching approximately a 100 percent grade at East L Street. *Ex. 1; Stevens Testimony; Wagner Testimony.*

4. The City of Tacoma acquired the right-of-way proposed to be vacated within the plat of The Tacoma Land Company's First Addition to Tacoma, July 7, 1884. *Ex. 1; Ex. 3; Stevens Testimony.*

5. The City of Tacoma, Traffic Engineering, has expressed concern over the petition for vacation and does not support approval unless a solution can be implemented to retain access to the remaining alley for abutting owners. Traffic Engineering has indicated one of the following approaches could resolve the issue: The Petitioner and his adjacent property owners agree to a) reserve a public access easement; or b) remove a 20-foot wide alley from the proposed vacated area; or c) a letter is signed and supplied to the City by the abutting property owners stipulating that they support the vacation and the restricted access. If one of the proposed solutions is not implemented the proposed street vacation would adversely affect future public access to the alley. Likewise, unless one of the identified approaches is taken, the vacation would involve property needed for future public use and would substantially impair access of abutting owners to the alley. *Ex. 1; Stevens Testimony.*

6. The public would benefit from the proposed right-of-way vacation because it would add the property to the tax rolls and would allow clean-up of the site. *Ex. 1; Stevens Testimony; Wagner Testimony.*

7. A portion of the proposed vacated area is needed for future public use unless the Petitioner and his adjacent property owners agree on a solution to the access problem listed above in Finding 5. *Ex. 1; Stevens Testimony.*

8. The abutting property owners to the adjacent alley will have their access substantially impaired, unless the Petitioner and the adjacent property owners agree to one a solution to the access problem outlined above in Finding 5. *Ex. 1; Stevens Testimony.*

9. The portion of alley right-of-way proposed for vacation does not abut a body of water and, thus, the provisions of RCW 35.79.035 are not implicated. *Ex. 1; Stevens Testimony.*

10. No members of the public submitted negative written comments or appeared at the public hearing to oppose the project.

11. The proposed alley vacation has been reviewed by various City departments and outside quasi-governmental agencies. The reviewing entities have no objection to the project; however, some base their position on the inclusion of conditions preserving the right to utility easements and installations in the area. *Exs.4, 5, 7-16; Stevens Testimony.* City of Tacoma, Traffic Engineering, bases its position regarding the vacation on the Petitioner's willingness to resolve the alley access issue for adjoining owners that Engineering has identified. The Petitioner has agreed to a proposed solution that involves executing an easement to adjacent owners over a width of 20 feet of the vacated area that would allow them access to the nearby alley right-of-way. *Wagner Testimony; Ex. 17; Ex. 18.*

12. Petitioner Mark Wagner concurs in the conditions recommended by the commenting agencies and agrees to comply with the same including execution of the above described easement agreement. *Wagner Testimony; Ex. 17.*

13. Pursuant to WAC 197-11-800(2)(h), the vacation of streets or roads is exempt from the threshold determination and Environmental Impact Statement requirements of RCW 43.21.C, the *State Environmental Policy Act.*

14. The DPW Preliminary Report, as entered into this record as Exhibit 1, accurately describes the proposed project, general and specific facts about the site and area, and applicable codes. The report is incorporated herein by reference as though fully set forth.

15. A Public Hearing Notice for the March 10, 2016, hearing, was posted at the property on January 27, 2016, at least 30 days prior to the hearing, as required by Tacoma Municipal Code (TMC) 9.22.060. The Public Notice was also published in the Tacoma Daily Index and mailed to all parties of record within 500 feet of the vacation request. All required postings of notices for the hearing have been accomplished. *Ex. 1; Stevens Testimony.*

16. Any conclusion hereinafter stated which may be deemed to be properly considered a finding herein is hereby adopted as such.

**CONCLUSIONS OF LAW:**

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding. *See TMC 1.23.050.A.5 and TMC 9.22.*

2. Proceedings that involve consideration of petitions for the vacation of public rights-of-way are quasi-judicial in nature. *State v. City of Spokane, 70 Wn.2d 207, 442 P.2d 790 (1967).* The petitioner must demonstrate, by a preponderance of the evidence that its vacation request conforms to the applicable criteria. *See TMC 1.23.070.*

3. Petitions for the vacation of public right-of-way are reviewed for consistency with the following criteria:

1. The vacation will provide a public benefit, and/or will be for public purpose.
2. That the right-of-way vacation shall not adversely affect the street pattern or circulation of the immediate area or the community as a whole.
3. That the public need shall not be adversely affected.
4. That the right-of-way is not contemplated or needed for future public use.
5. That no abutting owner becomes landlocked or his access will not be substantially impaired; i.e., there must be an alternative mode of ingress and egress, even if less convenient.
6. That the vacation of right-of-way shall not be in violation of *RCW 35.79.035.*

*TMC 9.22.070.*

4. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested street right-of-way vacation conforms to the TMC's criteria for the vacation of street rights-of-way, provided the conditions recommended herein are imposed. The public would benefit from the street vacation because it will help facilitate clean-up of the area now, and development of the property in the future.<sup>1</sup> The street vacation will allow for beneficial use of unneeded

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<sup>1</sup> The term "public benefit" as used in the street vacation context is construed broadly and may include the enrichment of the local economy, the facilitating of the providing of goods and services to the community, and increasing property tax revenues. *Banchemo v. City Council of Seattle, 2 Wn. App. 519, 524, 468 P.2d 724 (1970).*

City right-of-way and will return the property to the tax rolls. The requested street vacation does not involve right-of-way that is being used for traffic circulation at this time. The right-of-way is overgrown and has attracted illegal dumping. There is no evidence the right-of-way will be needed for future public use so long as a condition is included requiring the Petitioner to grant an easement across the vacated property to adjacent owners to allow access to a nearby alley. The Petitioner has agreed to grant such an easement. The proposed vacation would not landlock any abutting owner and the provisions of RCW 35.79.035, relating to street vacations near water bodies, are not applicable.

5. Accordingly, the requested street right-of-way vacation should be approved subject to the following conditions:

**A. SPECIAL CONDITIONS:**

1. PAYMENT OF FEES

The Petitioner shall compensate the City in an amount equal to the full appraised value of the area vacated. One-half of the revenue received shall be devoted to the acquisition, improvement and maintenance of public open space land and one-half may be devoted to transportation projects and/or management and maintenance of other City owned lands and unimproved rights-of-way. *TMC 9.22.010.*

2. CITY EASEMENT RESERVATIONS

Reservation of a 20-foot wide utility easement over a portion of the vacate area for the City of Tacoma for maintenance, repair, construction, and replacement of existing and future above ground and underground utilities.

3. PUBLIC WORKS/TRAFFIC

The proposed vacation of the East K Street poses a traffic engineering/public access concern regarding the alley between East 25<sup>th</sup> and East 26<sup>th</sup> Streets because the proposal will only vacate East K Street and not include the alley.

It is understood and anticipated the vacated area will not remain unobstructed and open for public travel. It means the vacation will eliminate access to the alley and the circulation /parcel access because of the bridge on East L Street. If this vacation is finalized, access to the alley and to the rear yards of the properties facing East 26<sup>th</sup> Street will be eliminated. Unless the entire length of the alley is vacated or abutting property owners support the restricted access, a minimum 20 feet vehicle/public access way will be required in the proposed vacation area.

Alternatively, the vacated portion of East K Street could be reduced by 20 feet to create a public right-of-way to allow the public to travel to/from the alley.

Note: The Petitioner has provided the following response:

“After speaking with you this morning, I went to the right-of-way vacation site. You are right, access to the alley where it abuts L Street is pretty much in accessible; however, for all practical purposes that alley is of no use to the three parcels to the east of mine due to the entire alley being on a steep slope. Regardless, I do understand the City not wanting to create a landlocked alley.

One of the problems with leaving a 20-foot public right-of-way down the center of my proposed vacation is that it would still allow unrestricted access to the public. One of my reasons for eliminating the right-of-way is to prevent the problems that have persisted for years: unauthorized ‘camping,’ and the huge piles of garage that have accumulated from time to time on and adjacent to the right-of-way.

I would like to outline the solution that we talked about. I think this proposal will satisfy everyone as well as being practical without having to be ‘creative.’

I would grant (or the City would reserve) to all the properties abutting the alley, an easement to the alley somewhere down the center of the proposed vacation. I understand that there is a sewer main running approximately down the centerline of the right-of-way (or slightly to the east of the centerline), I will be required to reserve to the City an easement for maintenance of the sewer line. I have no objections to the grant of a 20-foot wide easement to all parties affected by this vacation.

A 20-foot wide private access easement would be granted to:

Parcel #2076350010, site address 1101 East 26<sup>th</sup> Street (my parcel);  
Parcel #2076350031, site address 1109 East 26<sup>th</sup> Street;  
Parcel #2076350040, site address 1111 East 26<sup>th</sup> Street;  
Parcel #2076350050, site address 1121 East 26<sup>th</sup> Street;  
Parcel #2075340020, site address 1001 East 26<sup>th</sup> Street (CPSRTA – Sound Transit); and  
Parcel #2075360012, site address XXXX East 26<sup>th</sup> Street (CPSRTA – Sound Transit).”

As a condition of the right-of-way vacation, the Petitioner will grant an easement as described in this paragraph to the identified property owners.



**B. USUAL CONDITIONS:**

1. THE RECOMMENDATION SET FORTH HEREIN IS BASED UPON REPRESENTATIONS MADE AND EXHIBITS, INCLUDING DEVELOPMENT PLANS AND PROPOSALS, SUBMITTED AT THE HEARING CONDUCTED BY THE HEARING EXAMINER. ANY SUBSTANTIAL CHANGE(S) OR DEVIATION(S) IN SUCH DEVELOPMENT PLANS, PROPOSALS, OR CONDITIONS OF APPROVAL IMPOSED SHALL BE SUBJECT TO THE APPROVAL OF THE HEARING EXAMINER AND MAY REQUIRE FURTHER AND ADDITIONAL HEARINGS.
2. THE AUTHORIZATION GRANTED HEREIN IS SUBJECT TO ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, REGULATIONS, AND ORDINANCES. COMPLIANCE WITH SUCH LAWS, REGULATIONS, AND ORDINANCES IS A CONDITION PRECEDENT TO THE APPROVALS GRANTED AND IS A CONTINUING REQUIREMENT OF SUCH APPROVALS. BY ACCEPTING THIS/THESE APPROVALS, THE PETITIONER REPRESENTS THAT THE DEVELOPMENT AND ACTIVITIES ALLOWED WILL COMPLY WITH SUCH LAWS, REGULATIONS, AND ORDINANCES. IF, DURING THE TERM OF THE APPROVAL GRANTED, THE DEVELOPMENT AND ACTIVITIES PERMITTED DO NOT COMPLY WITH SUCH LAWS, REGULATIONS, OR ORDINANCES, THE PETITIONER AGREES TO PROMPTLY BRING SUCH DEVELOPMENT OR ACTIVITIES INTO COMPLIANCE.

**C. ADVISORY COMMENT:**

1. REAL PROPERTY SERVICES(RPS)/IN LIEU

RPS has no objection; however, an in-lieu of assessment of \$1,602.07 is due at this time or at time of development. If the Petitioner chooses to wait, the amount due may increase.

6. Based upon the facts and the governing law, the vacation petition should be granted, subject to conditions set forth in Conclusion 5 above.

7. Any finding of fact hereinbefore stated which may be deemed to be properly considered a conclusion of law herein is hereby adopted as such.

**RECOMMENDATION:**

The vacation request is hereby recommended for approval, subject to the conditions contained in Conclusion 5.

**DATED** this 22<sup>nd</sup> day of March, 2016.



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**PHYLLIS K. MACLEOD, Hearing Examiner**

## NOTICE

### **RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION**

#### **RECONSIDERATION:**

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the office of the Hearing Examiner requesting reconsideration of a decision/recommendation entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

#### **APPEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:**

Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved person or entity having standing under the ordinance governing such application and feeling that the recommendation of the Examiner is based on errors of procedure, fact or law shall have the right to appeal the recommendation of the Examiner by filing written notice of appeal with the City Clerk, stating the reasons the Examiner's recommendation was in error.

**Appeals shall be reviewed and acted upon by the City Council in accordance with *TMC 1.70*.**

#### **GENERAL PROCEDURES FOR APPEAL:**

The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing all of these procedures here, you should be aware of the following items which are essential to your appeal. Any answers to questions on the proper procedure for appeal may be found in the City Code sections heretofore cited:

1. The written request for review shall also state where the Examiner's findings or conclusions were in error.
2. Any person who desires a copy of the electronic recording must pay the cost of reproducing the tapes. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.

Notice - No Fee (7/11/00)

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**