



City of Tacoma
Hearing Examiner

September 11, 2015

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William T. Lynn, Attorney at Law
Gordon Thomas Honeywell
P.O. Box 1157
Tacoma, WA 98402-1157
(blynn@gth-law.com)

Troy Stevens, Senior Real Estate Specialist
City of Tacoma, Real Property Services
747 Market Street Room 737
Tacoma, WA 98402
(Inter-office Mail Delivery)
(tstevens@cityoftacoma.org)

Re: File No. HEX2015-009 (Street Vacation Petition File No. 124.1354)
Petitioner: Waterview Point, LLC

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 July 16 and August 20, 2015.

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 September 11, 2015 at Tacoma, WA.

September 11, 2015

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HEX 2015-009 (124.1354 – Waterview Point, LLC)

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Pierce County Assessor-Treasurer

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Aaron Cantrell, Comcast, 410 Valley Ave. NW, STE 12 (Bldg C), Puyallup WA 98371

Trent Wohlfeil, 4606 N. Waterview Street, Tacoma, WA 98407-5115

Gordon Wohlfeil, 4712 Old Stump Drive NW, Gig Harbor, WA 98332-8851

Eva Kovacevic, 8850 NW Copeland, Portland, OR 97229-6433

Joel Snodgrass, 4652 N. Waterview St., Tacoma, WA 98407-5115

Rich Dehlinger, 4620 N. Verde, Tacoma, WA 98407-5113

Sam Duchin, 4309 N. Cheyenne, Tacoma, WA 98407

Mark Holcomb, Attorney at Law, Morton McGoldrick, P.S., P.O. Box 1533, Tacoma, WA 98401-1533

Eric Russell, 4605 N. Verde, Tacoma, WA 98407-5112

Transmitted via Electronic Mail Delivery

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

Legal (Jeff Capell)

Tacoma Power (Rick Van Allen)

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

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Jesse Angel)

Public Works Engineering/RPS, City of Tacoma (Sue Simpson)

Public Works Engineering, City of Tacoma (Jennifer Kammerzell)

Public Works Engineering, City of Tacoma (Brennan Kidd, P.E.)

Environmental Services Department (CUW), City of Tacoma (Merita Trohimovich-Pollard)

Environmental Services Department (CUW), City of Tacoma (Rod Rossi)

Environmental Services Department (TMB), City of Tacoma (Bonnie McLeod)

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: Waterview Point, LLC

FILE NO.: HEX 2015-009 (124.1354)

SUMMARY OF REQUEST:

Real Property Services has received a petition from Waterview Point, LLC to vacate portions of several street and alley right-of-way segments in the area generally lying between N. Waterview Street and N. Stevens Street. The area requested for vacation totals approximately 95,060 square feet of undeveloped and sloped area that would be used in creating residential building lots.

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 convened a public hearing on the vacation request on July 16, 2015. At the outset of the proceedings, the Hearing Examiner granted a requested continuance from the Petitioner's counsel due to a family emergency. Testimony was taken at the July 16, 2015, hearing only from those in attendance who could not participate on the rescheduled hearing date of August 20, 2015. Real Property Services took the further step of giving additional public notice for the August 20, 2015, continuation of the hearing.

ORIGINAL

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. Waterview Point, LLC has petitioned the City to vacate portions of N. Waterview Street, North 45th Street, North 46th Street, Morrison Street, N. Mason Avenue, Herriott Street, and the alleyway located between North 45th Street and N. Cheyenne Street, to provide the Petitioner with more flexibility in creating residential building sites in the area. The property to be vacated is more particularly described below:

WATERVIEW STREET

A STRIP OF LAND LYING WITHIN THE SOUTH HALF OF SECTION 24, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, CITY OF TACOMA, PIERCE COUNTY, WASHINGTON, AND MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

THE SOUTHWESTERLY 40 FEET OF WATERVIEW STREET LYING SOUTHERLY OF THE NORTHWESTERLY LINE OF LOT 2, BLOCK 4, MASONS SHORELINE ADDITION AS RECORDED IN VOLUME 1 OF PLATS AT PAGE 108, RECORDS OF PIERCE COUNTY, WASHINGTON, EXTENDED NORTHEASTERLY AND LYING NORTHERLY OF THE CENTER LINE OF MORRISON STREET.

ALLEY BLOCKS 10 AND 4 MASON'S SHORELINE ADDITION

A STRIP OF LAND LYING WITHIN THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 21 NORTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, CITY OF TACOMA, PIERCE COUNTY, WASHINGTON, AND MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE ALLEY AS SHOWN ON THE PLAT OF MASON'S SHORELINE ADDITION TO TACOMA, RECORDED IN VOLUME 1 OF PLATS AT PAGE 108, IN PIERCE COUNTY, WASHINGTON.

BEGINNING AT THE MOST EASTERLY CORNER OF LOT 1, BLOCK 10 OF SAID MASON'S SHORELINE ADDITION; THENCE NORTH 49°56'44" WEST, ALONG THE NORTHEASTERLY LINE OF SAID BLOCK, 60.00 FEET TO THE MOST NORTHERLY CORNER OF LOT 2 OF SAID BLOCK 10; THENCE NORTH 40°03'16" EAST, 20.00 FEET TO THE MOST WESTERLY CORNER OF LOT 2 OF BLOCK 4 OF SAID MASON'S SHORELINE ADDITION; THENCE SOUTH 49°56'44" EAST, ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK, 60.00 FEET TO THE MOST SOUTHERLY CORNER OF SAID BLOCK 4; THENCE SOUTH 40°03'16" WEST, TO THE POINT OF BEGINNING.

SHERIDAN STREET

A STRIP OF LAND LYING WITHIN THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 21 NORTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, CITY OF TACOMA, PIERCE COUNTY, WASHINGTON, AND MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

THAT PORTION OF SHERIDAN STREET (HERRIOT STREET) AS SHOWN ON THE PLAT OF MASON'S SHORELINE ADDITION TO TACOMA, RECORDED IN VOLUME 1 OF PLATS AT PAGE 108, IN PIERCE COUNTY, WASHINGTON, AS MODIFIED BY CITY OF TACOMA DEED NUMBER 366.

BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 1, BLOCK 10 OF SAID MASON'S SHORELINE ADDITION; THENCE NORTH 40°03'16" EAST, ALONG THE SOUTHEASTERLY LINE OF BLOCKS 10 AND 4 OF SAID ADDITION 220.00 FEET TO THE MOST EASTERLY CORNER OF SAID BLOCK 4; THENCE SOUTH 49°56'44" EAST, 80.00 FEET TO THE MOST NORTHERLY CORNER OF BLOCK 3 OF SAID MASON'S SHORELINE ADDITION; THENCE SOUTH 40°03'16" WEST, ALONG THE NORTHWESTERLY LINE THEREOF 172.70 FEET TO THE SOUTH LINE OF SAID MASON'S SHORELINE ADDITION; THENCE NORTH 89°46'23" WEST, ALONG THE SOUTH LINE THEREOF, 73.87 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF NORTH 48TH STREET; THENCE NORTH 49°56'44" WEST, ALONG THE EAST LINE THEREOF 23.27 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOT 1, BLOCK 4 AND THE POINT OF BEGINNING.

EXCEPT THOSE PORTIONS VACATED BY ORDINANCE 19939.

ALLEY BLOCK 1 HILLS ADDITION

A STRIP OF LAND LYING WITHIN THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 21 NORTH, RANGE 2 EAST FO THE WILLAMETTE MERIDIAN, CITY OF TACOMA, PIERCE COUNTY, WASHINGTON, AND MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE ALLEY AS SHOWN ON THE PLAT OF HILL'S ADDITION, RECORDED IN VOLUME 1 OF PLATS AT PAGE 19, IN PIERCE COUNTY, WASHINGTON, LYING WESTERLY OF THE WEST RIGHT-OF-WAY LINE OF MASON AVENUE AND EAST OF THE FOLLOWING DESCRIBED LINE:
COMMENCING AT THE SOUTHEAST CORNER OF LOT 1 OF SAID BLOCK 1, SAID CORNER ALSO BEING A POINT ON THE NORTH LINE OF THE
AFOREMENTIONED ALLEY; THENCE NORTH 89°35'28" WEST, ALONG SAID NORTH LINE, 118.45 FEET TO THE POINT OF BEGINNING;
THENCE SOUTH 28°05'13" EAST, 17.95 FEET; THENCE SOUTH 27°35'41" EAST,

0.26 FEET TO THE SOUTH LINE OF SAID ALLEY AND THE TERMINUS OF THIS DESCRIBED LINE.

NORTH MASON AVENUE

A STRIP OF LAND LYING WITHIN THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, CITY OF TACOMA, PIERCE COUNTY, WASHINGTON, AND MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

THAT PORTION OF MASON AVENUE AS SHOWN ON THE PLAT OF HILL'S ADDITION, RECORDED IN VOLUME 1 OF PLATS AT PAGE 19, IN PIERCE COUNTY, WASHINGTON, LYING SOUTHERLY OF THE SOUTH RIGHT-OF-WAY LINE OF NORTH 46TH STREET AND NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF BLOCK 4, HILL'S ADDITION; THENCE SOUTH ALONG THE EASTERLY LINE OF SAID BLOCK 4, BEING THE WESTERLY LINE OF MASON AVENUE 73.87 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°56'51" EAST, 40.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF MASON AVENUE AND THE TERMINUS OF THIS DESCRIBED LINE.

MORRISON STREET

A STRIP OF LAND LYING WITHIN THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, CITY OF TACOMA, PIERCE COUNTY, WASHINGTON, AND MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

THAT PORTION OF MORRISON STREET AS SHOWN ON THE PLAT OF MASON'S WATER FRONT ADDITION TO TACOMA, WASHINGTON, ACCORDING TO THE PLAT RECORDED IN BOOK 1 OF PLATS AT PAGE 98, IN PIERCE COUNTY, WASHINGTON, LYING EASTERLY OF THE EAST RIGHT-OF-WAY LINE OF MASON AVENUE AND WESTERLY OF THE MOST WESTERLY 40.00 FEET OF WATERVIEW STREET, RIGHT-OF-WAY LINE.

EXCEPT THAT PORTION VACATED PER CITY OF TACOMA ORDINANCE NUMBER 15259.

NORTH 46TH STREET

A STRIP OF LAND LYING WITHIN THE EAST HALF OF THE SOUTHWEST

QUARTER AND A PORTION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, CITY OF TACOMA, PIERCE COUNTY, WASHINGTON, AND MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

THAT PORTION OF NORTH 45TH STREET (WATER STREET AND FIRST STREET) AS SHOWN ON THE PLAT OF HILL'S ADDITION RECORDED IN VOLUME 1 OF PLATS AT PAGE 19, IN PIERCE COUNTY, WASHINGTON, AND WOODRUFF'S SECOND ADDITION TO TACOMA, PIERCE COUNTY, WASHINGTON, RECORDED IN VOLUME 3 OF PLATS AT PAGE 61 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF BLOCK 1 OF SAID HILL'S ADDITION; THENCE NORTH 89°44'25" WEST, ALONG THE NORTH LINE OF SAID BLOCK 1, A DISTANCE OF 193.09 FEET TO A POINT ON A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 455.00 FEET, AND TO WHICH POINT A RADIAL BEARS SOUTH 50°53'19" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07°03'11" , AN ARC LENGTH OF 56.01 FEET; THENCE NORTH 46°09'51" WEST, 56.57 FEET TO THE SOUTH LINE OF BLOCK 7 OF SAID WOODRUFF'S SECOND ADDITION; THENCE SOUTH 89°44'25" EAST, ALONG THE SOUTH LINE OF BLOCKS 7 AND 8, 320.61 FEET TO THE SOUTHEAST CORNER OF BLOCK 8 OF SAID WOODRUFF'S SECOND ADDITION; THENCE SOUTH 38°57'28" EAST, A DISTANCE OF 51.08 FEET TO THE CENTER LINE OF SAID NORTH 46TH STREET; THENCE SOUTH 89°29'30" WEST, ALONG SAID CENTER LINE, A DISTANCE OF 40.78 FEET TO THE EAST RIGHT-OF-WAY LINE OF NORTH MASON AVENUE; THENCE SOUTH 00°03'09" WEST, ALONG SAID RIGHT-OF-WAY 40.00 FEET; THENCE NORTH 89°44'25" WEST, 40.00 FEET TO THE POINT OF BEGINNING.

NORTH 45TH STREET

A STRIP OF LAND LYING WITHIN THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, CITY OF TACOMA, PIERCE COUNTY, WASHINGTON, AND MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

THAT PORTION OF NORTH 45TH STREET (FIRST STREET), AS SHOWN ON THE PLAT OF HILL'S ADDITION, RECORDED IN VOLUME 1 OF PLATS AT PAGE 19, IN PIERCE COUNTY, WASHINGTON, LYING WESTERLY OF THE WEST RIGHT-OF-WAY LINE OF NORTH MASON STREET AND EAST OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 1 OF SAID HILL'S ADDITION; THENCE NORTH 89°26'32" WEST, ALONG THE SOUTH LINE OF SAID BLOCK 1, A DISTANCE OF 70.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°03'09" WEST, 80.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID NORTH 45TH STREET AND THE TERMINUS OF THIS DESCRIBED LINE.

RETAINING AND RESERVING THEREIN AN EASEMENT TO THE CITY OF TACOMA FOR 10 FEET OF THE PROPOSED VACATION AREA, PARALLEL WITH WATERVIEW STREET, FOR POWER POLES, ANCHORS, GUY WIRES, OVERHEAD AND UNDERGROUND POWER AND DATA WIRES, DATA ENCLOSURES AND VAULTS, POWER AND DATA CONDUIT, AND TRANSFORMERS.

RETAINING AND RESERVING THEREIN AN EASEMENT TO THE CITY OF TACOMA FOR A WATER MAIN AND WATER SERVICE WITHIN THE RIGHT-OF-WAY OF WATERVIEW STREET. THE DEVELOPER SHALL RETAIN AN EASEMENT COVER EXISTING TACOMA WATER SERVICE AND METERS FOR OVER THE AREA SOUTHWESTERLY OF THE MONUMENT LINE OF WATERVIEW STREET, TO A DISTANCE OF 40 FEET FROM THE MONUMENT LINE OF WATER STREET.

RETAINING AND RESERVING THEREIN AN EASEMENT TO THE CITY OF TACOMA FOR A 20-FOOT STORM AND SANITARY SEWER EASEMENT CENTERED ON THE NORTH HERRIOT STREET RIGHT-OF-WAY FROM NORTH WATERVIEW STREET, WEST OF THE NORTHERN PROPERTY LINE OF TAX PARCEL 45000-0011 TO THE EAST LINE OF NORTH 43TH STREET.

NO PERMANENT STRUCTURES SHALL BE ERECTED WITHIN THE PUBLIC EASEMENT AREA UNLESS SPECIFICALLY APPROVED IN WRITING BY THE CITY OF TACOMA DIRECTOR OF PUBLIC WORKS. PERMANENT STRUCTURES SHALL MEAN ANY CONCRETE FOUNDATION, CONCRETE SLAB, WALL, ROCKERY, BUILDING, DECK, OVERHANGING STRUCTURES, FILL MATERIAL,

RECREATIONAL SPORTS COURTS, CARPORTS, PORTABLE SHEDS, PRIVATE UTILITIES, FENCES, OR OTHER SITE IMPROVEMENT THAT WILL UNREASONABLY INTERFERE WITH THE NEED TO ACCESS OR CONSTRUCT SANITARY OR STORM SEWER UTILITIES IN SAID EASEMENTS. PERMANENT STRUCTURES SHALL NOT MEAN IMPROVEMENTS SUCH AS NORMAL LANDSCAPING, ASPHALT PAVING, GRAVEL, OR OTHER SIMILAR SITE IMPROVEMENTS THAT DO NOT PREVENT THE ACCESS OF MEN, MATERIALS, AND MACHINERY ACROSS, ALONG, AND WITHIN THE SAID EASEMENT AREA. LAND RESTORATION BY THE CITY WITHIN THE SAID EASEMENT AREA DUE TO THE CONSTRUCTION, OPERATION, INSPECTION, REPLACEMENT, REPAIR, OR MAINTENANCE OF SANITARY OR STORM SEWER UTILITIES WILL BE STRICTLY LIMITED TO GRASS SEED, GRASS SOD, AND/OR ASPHALT REPLACEMENT UNLESS OTHERWISE DETERMINED BY THE CITY OF TACOMA. WATERVIEW POINTE LEGAL DESCRIPTION OF VACATION.

2. The Petitioner plans to combine the vacated rights-of-way into adjoining property for the purpose of consolidating ownerships and giving Waterview Point, LLC greater flexibility in splitting the property into residential lots using segregations and boundary line adjustments. *Ex. 1.*

3. The areas proposed for vacation are located within a steeply sloped hillside generally lying between N. Waterview Street and N. Stevens Street. The area contains slopes that are greater than 40 percent. The proposed portions of right-of-way to be vacated vary in width: N. Waterview Street is 120 feet wide, but only 40 feet will be vacated, North 45th Street and North 46th Street are 80 feet wide, N. Mason Avenue is 40 feet wide, and Herriott Street is 50 feet or 80 feet wide depending on the location. The hillside contains natural vegetation including trees that help to provide slope stability. The Petitioner is seeking to vacate approximately 95,060 square feet of undeveloped right-of-way contained within four plats. *Exs. 2 and 3.*

4. The City of Tacoma acquired the rights-of way-proposed to be vacated within the following plats:

MASON'S WATER FRONT ADDITION TO TACOMA, recorded in Volume 1 of plats at Page 98, on June 21, 1886, in Pierce County, Washington;

MASON'S SHORELINE ADDITION TO TACOMA, recorded in Volume 1 of plats at page 108, on August 8, 1887, in Pierce County, Washington.;

HILL'S ADDITION TO THE CITY OF TACOMA, recorded in Volume 1 of plats at page 19, December 1, 1873 in Pierce County, Washington;

WOODRUFF'S SECOND ADDITION TO TACOMA, recorded in Volume 3 of Plats at Page 61, August 2, 1889, in Pierce County, Washington;

In addition, the City acquired a 40-foot strip for N. Waterview Street right-of-way in the above referenced plats under City Deed Number 366, dated June 23, 1910, and recorded under Deed Record 358, page 395. *Ex. 8.*

5. When the City's staff report on this project was prepared it was thought that Ordinance No. 15259, vacating a portion of Morrison Street easterly of North 46th Street, was repealed by Ordinance No. 15629 on May 28, 1956. *Ex. 12.* Since that time, and upon detailed review of Boundary Line Adjustment No. 40000032853, recorded under Pierce County recording number 200410275004, the City has concluded that the original street vacation under Ordinance No. 15259 stands as to the south half of Morrison Street and the alley to the southeast. *Ex. 11.* The north half of Morrison Street was not vacated and is incorporated into the present street vacation petition. *Ex. 1; Stevens Testimony.*

6. A previous hearing regarding a similar request to vacate property in this area was held before the Hearing Examiner on February 15, 2007. The project involved a proposed plat of the property in the area for residential development. *Ex. 9.* The Petitioner in that proceeding was James McGranahan who was a principal of Waterview Point, LLC. The Hearing Examiner recommended approval of the proposal, but the street vacation was not completed due to the economic downturn in 2008. As part of the 2007 petition, the Petitioner proposed to donate land to the City for public open space. The value of the donated land was to be set off against the market value otherwise due to the City

for the vacated property. Since then, the Director of Environmental Services has decided the proposed donation to public open space is not in the best interest of the City and has declined the offer for the property. *Ex. 10; Stevens Testimony.*

7. Vacating the proposed segments of right-of-way will not adversely affect the street pattern or traffic circulation in the area or in the wider community. No streets are present on the hillside and no street development that would form part of the traffic circulation in the area is planned by the City. *Stevens Testimony; Ex. 1.*

8. The public would benefit from the proposed right-of-way vacations because they would return unneeded right-of-way property to a useful purpose and would add the vacated properties to the tax rolls. *Stevens Testimony; Ex. 1.*

9. There is no evidence the segments of right-of-way proposed for vacation would be needed for an additional or different public use in the future. *Stevens Testimony; Ex. 1.*

10. No abutting property or nearby property would become landlocked or have its access substantially impaired as a result of the proposed vacation of the subject segments of right-of-way. *Stevens Testimony; Ex. 1; Ex. 22.*

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

12. Prior to the hearing, Real Property Services received telephone inquiries from several neighbors regarding the proposal. Information was shared with callers and none of them submitted a written comment or other formal opposition to the project. One neighbor testified at hearing about possible access impairment, but upon further investigation, the precise locations proposed for vacation did not impact access to the citizen's parcel. *Kovacevic Testimony; Stevens Testimony.* Another neighbor living uphill from the properties in question expressed a concern over the City facilitating development that could de-stabilize the slope. *Duchin Testimony.* Other neighbors based their lack of objection to the project on the developers' commitment to address hillside stability issues. *Holcom/Russell Testimony.* One owner expressed support for the vacations and saw advantages to having some additional homes in the vicinity. *Snodgrass Testimony.* The City pointed out that the street vacation does not approve any development plan for the property and that any development proposal would be subject to applicable standards and review, including regulations governing steep areas. *Stevens Testimony.*

13. The segments proposed for right-of-way vacation have 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. *Stevens Testimony; Exs. 13 through 21.*

14. 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.*

15. 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.

16. A Public Hearing Notice for the July 16, 2015, hearing was posted at the property on June 10, 2015, 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 300 feet of the vacation request. All required postings of notices for the hearing have been accomplished. The continuation of the July 16, 2015, proceedings to August 20, 2015, was announced during the open hearing on July 16, 2015. The City also gave additional written notice of the August 20, 2015, continuation of the hearing. *Stevens Testimony; Ex. 1.*

17. Any conclusion hereinafter stated which may be deemed to be properly considered a finding of fact 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. The Petitioner asserts that the doctrines of claim preclusion (*res judicata*) and issue preclusion (*collateral estoppel*) prevent the Hearing Examiner from substantively considering whether the proposed street vacation meets the governing standards for approval contained in TMC 9.22.070. Waterview Point, LLC contends that the Hearing Examiner's 2007 Recommendation and the City Council's action on first reading constitute a final judgment on the merits of the proposed vacation that cannot be "relitigated." The City filed a response disagreeing with the Petitioner's contention regarding issue and claim preclusion.

4. The four-part test for applying issue preclusion set forth by the Petitioner requires:

- (1) identical issues;
- (2) a final judgment on the merits;
- (3) privity; and
- (4) no injustice will arise for the party against whom it is applied.

Willapa Grays Harbor Oyster Growers Ass'n v. Moby Dick Corp., 115 Wn. App. 417, 423, 62 P.3d 912 (2003). In this case, the Hearing Examiner's 2007 Recommendation is not a final judgment on the merits. It is a recommendation to the City Council. Final action is taken by the City Council. As to the

2007 petition for street vacation, final action was never taken because the Petitioner failed to accomplish the conditions necessary to obtain final approval of the street vacation. As a result, the City Council did not take final action on the 2007 street vacation petition.

5. A final judgment on the merits is a necessary prerequisite to applying either issue or claim preclusion. Moreover, the issues in the current street vacation may not be identical to the issues under the prior application due to changes in the anticipated form of development. Accordingly, neither issue preclusion nor claim preclusion bar substantive consideration of the petition for street vacation.

6. 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.

7. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested street and alley right-of-way vacations conform to the TMC's criteria for the vacation of street rights-of-way, provided the conditions recommended herein are imposed. The public would experience benefits from the requested vacations by returning unused property to a productive use. The overall project will enhance economic development and will return the properties to the tax rolls.¹ The neighbors' concerns over slope stability will be addressed by the City as part of the development review process once a specific proposal is submitted for approval. The requested vacations do not involve rights-of-way that are being used for traffic circulation and the property is not needed for

¹ 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).

future public use. The requested right-of-way vacations would not landlock any abutting property and the provisions of RCW 35.79.035 are not applicable.² So long as provisions for utility easements are included as required conditions, the proposed street and alley vacations would not adversely affect the public's needs. The evidence presented at the hearing demonstrated that the proposed right-of-way vacations meet the criteria for approval contained in TMC 9.22.070.

8. Accordingly, the requested right-of-way vacations, covering the identified segments of property between N. Stevens Street and N. Waterview Street, 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.³ 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

A utility easement shall be reserved over the entire vacate area for the City of Tacoma for maintenance, repair, construction, and replacement of existing and future above ground and underground utilities.

- a. The vacation area will contain Tacoma Power infrastructure in the northeast 10 feet parallel with N. Waterview Street; and
- b. The vacation area southwesterly of the monument line of N. Waterview Street, will contain a water main and water service and meters to a distance of 40 feet from the monument line of N. Waterview Street.

3. ENVIRONMENTAL SERVICES

Site Development has no objection; however, the Petitioner shall submit a separate request or legal agreement showing access for parcel 556000-0050 (4652 N. Waterview Street); and, a Restrictive Covenant agreement

² The recommended conditions insure that all property would retain access after the street vacations are completed.

³ The 2007 Petition for street vacation proposed a donation of land to the City for open space and a commensurate reduction in the amount otherwise due as payment for the street vacation. The City has indicated it is not willing to accept such a donation and the monetary offset is no longer a relevant part of the street vacation proposal.

is required for parcel 556500-0270 (4415 N. Mason Avenue) providing access through parcels 556500-0260 (4407 Forest Street) and 556500-0250 (4403 Forest St.).

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 COMMENTS:

1. PUBLIC WORKS/TRAFFIC ENGINEERING

Traffic has reviewed the request for the vacation of right-of-way near N. Stevens, N. Waterview, and Herriott Streets. Based on the critical area designations in this area and provided that several of the requested areas are as unimproved ROW, Traffic Engineering has no objection. Currently, there are no any plans to improve those rights-of-way for transportation purposes. Development or platting of the abutting properties may require off-site improvements to provide adequate and appropriate access.

2. PLANNING AND DEVELOPMENT SERVICES (PDS)

PDS has no objection to the street vacations. At this time, a development proposal has not, and is not, being presented with the vacation. When the Petitioner is ready to submit a development proposal, PDS will review and comment on the proposal at that time.

3. TACOMA FIRE

Tacoma Fire has no objection to the proposed request; however, Tacoma Fire stipulates future development shall comply with the adopted Fire Code at the time of building permit application. Compliance will include, but will not be limited to, items such as adequate side access and proximity to fire hydrants. Future development may require new fire hydrants and a water main extension.

4. PUBLIC WORKS/CONSTRUCTIONS/LID

The proposed areas to be vacated have not been assessed for sanitary sewer. A development plan would be required to determine whether or not an assessment in lieu would be due.

5. COMCAST COMMUNICATIONS

Comcast has aerial system attached to Tacoma Public Utility (TPU) poles along N. Waterview Street. Comcast's easement shall be protected by the Cable Act and the Master Pole Attachment Agreement with TPU. (Note: No additional easement will need to be reserved to protect Comcast's infrastructure.)

6. PUBLIC COMMENT

Shortly after notice was posted and sent via U.S. Mail on June 10 and 11, 2015, Real Property Services (RPS) received approximately eight (8) calls from residents in the neighborhood. No one voiced opposition to the vacation. Most of the residents were curious about the area to be vacated and requested a map. Trees and slope stability were also a concern.

9. Based upon the facts and the governing law, the vacation petition should be granted, subject to conditions set forth in Conclusion 8 above.

10. 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 vacations requested are hereby recommended for approval, subject to the conditions contained in Conclusion 8.

DATED this 11th day of September, 2015.



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**