



City of Tacoma
Hearing Examiner

May 13, 2015

FIRST CLASS & ELECTRONIC MAIL DELIVERY

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Re: File No. HEX 2014-013 (Vacation Petition No. 124.1342) Petitioner: CFW, LLC

To the Parties,

In regard to the above referenced matter please find enclosed a copy of the Tacoma Hearing Examiner's Report and Recommendation to the Tacoma City Council as the result of a public hearing held on April 9, 2015.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) – HEX Report and Recommendation

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

DATED May 13, 2015, at Tacoma, WA.

L. Legg

May 13, 2015

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HEX 2014-013 (124.1342 CFW, LLC)

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

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Tony Balmelli, Balmelli Engineering (tonybalmelli@comcast.net)

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

Tacoma Power (Rick Van Allen)

Tacoma Fire Department (Ryan Erickson, P.E.)

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

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water (Jesse Angel)

Tacoma Water (Gloria Fletcher)

Public Works Engineering/L.I.D., City of Tacoma (Sue Simpson)

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

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 (Charla Kinlow)

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

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE

TACOMA CITY COUNCIL

HEX FILE NO.: 2014-013 (124.1342)

PETITIONER: CFW, LLC

SUMMARY OF REQUEST:

Real Property Services received a petition for street vacation from Carol Magelssen and Ryan Williams of CFW, LLC to vacate the easterly 35 feet of East "L" Street right-of-way lying between East 52nd and East 54th Street. The vacated portion of East "L" Street would be incorporated into the preliminary plat of Heritage Gardens, a proposed residential subdivision adjacent to East "L" Street. Subsequent to the receipt of this petition, CFW, LLC purchased the property interests of Ms. Magelssen and now owns a full 100% of adjoining interest in said East "L" Street right-of-way.

RECOMMENDATION OF THE HEARING EXAMINER:

The requested vacation petition is recommended for approval, subject to the conditions contained herein.

PUBLIC HEARING:

After reviewing the report of the Department of Public Works, Real Property Services Division, examining available information on file with the application, and visiting the subject site and the surrounding area, the Hearing Examiner conducted a public hearing on the matter on April 9, 2015. The evidentiary record was reopened by the Hearing Examiner on April 15, 2015, to allow for supplementary information from the parties on specific topics. Responsive material was received on May 4, 2015, and the record was then closed.

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

ORIGINAL

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

FINDINGS OF FACT:

1. CFW, LLC (CFW) is requesting vacation of the easterly 35 feet of East "L" Street right-of-way lying between East 52nd and East 54th Street, more particularly described as follows:

All that portion of East "L" Street lying between East 52nd Street and East 54th Streets described as follows:

The Easterly 35 feet of East "L" Street lying between South right of way margin of East 52nd and the North right of way margin of East 54th Streets, within the Southeast Quarter of the Northwest Quarter of Section 22, Township 20 North, Range 3 East, W.M., within the City of Tacoma, County of Pierce, State of Washington.

The petition has been joined by all owners of property abutting the rights-of-way proposed for vacation. *Cornforth Testimony.*

2. CFW is in the process of developing a 5.27 acre parcel of property adjacent to East "L" Street as a 38-lot residential subdivision. A number of the residences will front on East "L" Street. The East "L" Street right-of-way in this location is approximately 90 feet wide.¹ *Real Property Services' Preliminary Report, p.3.*² The anticipated width of pavement on East "L" Street at full build-out will be much less. *Ex. 2.* The 35 feet proposed for vacation will not be needed to serve the traveling and circulation needs of vehicles in the area. The added property will facilitate design of the residential subdivision. *Cornforth Testimony.*

3. The City acquired the right-of-way subject to vacation by Quit Claim Deed dated January 22, 1970, and recorded January 27, 1970, under Auditor's File Number 2330542, referenced as City Deed #3815; by Special County Treasurer's Deed dated and recorded November 19, 1971, under Auditor's File Number 2420973, referenced as City Deed #4166 and the remaining westerly 38 feet of East "L" Street was acquired by both the original Plat filing of Tisdale & Hauke's Addition to Tacoma and again by plat filing of Replat of Tisdale & Hauke's Addition to Tacoma on May 10, 1884, and September 30, 1889, respectively, all records of Pierce County, Washington. *Real Property Services' Preliminary Report, p. 2.* A previously undisclosed 5-foot strip of land lying in the center of East "L" Street right-of-way has apparently never been conveyed to the City of Tacoma. The Petitioner CFW has agreed to execute a deed to the City of Tacoma conveying any interest it may hold in the 5-foot strip to the City. The street vacation would then encompass the easterly 35 feet of the resulting 95-foot right-of-way. *See Ex. 9.*

¹ The right-of-way will be 95 feet wide after inclusion of a 5-foot strip of property lying in the center of the right-of-way that may have been excluded from the historic right-of-way dedications to the City of Tacoma. *See Ex. 9.*

² City of Tacoma, Real Property Services, has prepared a Preliminary Report for the East "L" Street vacation, which is incorporated herein by this reference as an accurate description of the project.

4. The vacation of this street will not adversely affect the street pattern or traffic circulation in the area or in the wider community because the portion of right-of-way being vacated is not being used for vehicular travel and will not be needed for such use in the future. *Cornforth Testimony*
5. The proposed vacation would benefit the public by returning unneeded public property to the tax rolls and by supporting positive economic development. *Cornforth Testimony*.
6. The public need would not be adversely affected by the vacation. No public use of the right-of-way being vacated is anticipated in the future. *Cornforth Testimony*.
7. No abutting property would become landlocked or have its access substantially impaired as a result of the requested street vacation. The anticipated street improvements accompanying the residential subdivision will actually enhance access in the area. *Cornforth Testimony*.
8. As the right-of-way in question does not abut, nor is it proximate to a body of water, the provisions of RCW 35.79.035 are not implicated. *Cornforth Testimony*.
9. The street vacation petition has been reviewed by a number of governmental agencies and utility providers. None of the reviewers object to the vacation petition. Two departments shared advisory comments giving notice of potential requirements for further development in the area. *Cornforth Testimony; Exs. 7, 8*.
10. The Petitioner CFW concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Burns Statement*.
11. No witnesses appeared at the hearing opposing Petitioner CFW's street vacation petition.
12. 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 (SEPA).
13. Notices of the hearing date were mailed to all property owners of record within 300 feet of the proposed vacation at least 30 days prior to the hearing, as required by *Tacoma Municipal Code (TMC) 9.22.060*. Additional public notice was given through posted signs, the City of Tacoma's website, and publication in the Tacoma Daily Index. *Cornforth Testimony*.
14. Any conclusion of law which is deemed to be properly considered a finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction in the matter pursuant to *TMC 1.23.050.A.5* and *TMC 9.22.070*.

2. Proceedings involving the 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). Accordingly, testimony in this matter was taken under oath.

3. Petitions for the vacation of public rights-of-way must be reviewed for consistency with the following criteria:

1. The vacation will provide a public benefit, and/or will be for a 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. The Petitioner CFW bears the burden of proof to establish that its petition for vacation is consistent with the foregoing criteria. *TMC 1.23.070.A*.

5. Findings entered herein, based on substantial evidence, support a conclusion that CFW's vacation petition satisfies the legal standards for approval of vacation of rights-of-way. The requested street vacation will not adversely affect the current, or future, street pattern or circulation in the area or community. The public has no anticipated need for use of this portion of the street right-of-way. The proposed vacation presents no potential for landlocking an abutting owner and the provisions of RCW 35.79.035 governing areas close to bodies of water do not apply.

6. Accordingly, the requested street vacation should be approved provided the following conditions are imposed:

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

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. PUBLIC WORKS – CONVEYANCE OF INTEREST

The Petitioner CFW, LLC is required to convey any interest it may hold in the 5-foot undisclosed area within the right-of-way of East “L” Street in the form reflected in Right of Way Deed No. 7282. (*Ex. 9.*)

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. TACOMA WATER

Based on the review of the preliminary plat of Heritage Gardens, Tacoma Water will require installation of a main extension within the remaining East "L" Street between East 52nd and East 54th Streets for future water services.

2. PUBLIC WORKS/L.I.D.

The area to be vacated has not been assessed for sanitary sewer. Upon development of the lots, and their proposed sewer connections, public works will determine if a connection charge in lieu of assessment is applicable.

7. The Hearing Examiner recommends that the street right-of-way vacation petition submitted by CFW, LLC be granted, subject to the conditions set forth above.

8. Any finding of fact, which is deemed to be properly considered a conclusion of law is hereby adopted as such.

RECOMMENDATION:

The requested vacation petition is recommended for approval, subject to the conditions set forth above.

DATED this 13th day of May, 2015.



PHYLLIS K. MACLEOD, Hearing Examiner

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

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ORIGINAL

NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION:

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.

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