



City of Tacoma
Hearing Examiner

July 23, 2014

Wesco Management LLC
ATTN: Rick Haux
8996 Miramar Road #300
San Diego, CA 92126

Dustin Lawrence, Senior Planner
City of Tacoma, Planning & Development Svcs. Dept.
747 Market Street Room 345
Tacoma, WA 98402-3767 (Inter-office Mail Delivery)

Ronda Cornforth, Senior Real Estate Specialist
City of Tacoma, Real Property Services
747 Market Street, Room 737
Tacoma, WA 98402

Re: HEX 2014-011 (REZ2014-40000221995; MLU2014-40000221957;
MLU2014-40000221958); HEX 2014-012 (Street Vacation Petition No. 124.1341)

To the Parties,

Enclosed please find a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council on Street Vacation; Recommendation on Rezone and Decisions on Variances as the result of a hearing held on July 10, 2014.

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 July 23, 2014, at Tacoma, WA.

Louisa Legg

Enclosure (1)

Sincerely,

LOUISA LEGG

Legal Assistant

Cc: Charles Jackson, Architect, Jackson/Cole Assoc., 1560 Via Del Corvo, San Marcos, CA 92078

City Clerk, City of Tacoma

Legal Department, Civil Division, City of Tacoma

Stephen Murakami, Director, Tacoma Public Schools, 3223 South Union Avenue, Tacoma, WA 98409

Jana Magoon, City of Tacoma Planning & Development Services Department

Dan Sulley, P.E. City of Tacoma, Planning & Development Services Department

Ben Han, Pierce Transit, 3701 96th St. SW, PO Box 99070, Lakewood, WA 98499-0070

Brennan Kid, P.E., PTOE, City of Tacoma, Public Works Department, Engineering Division

Jesse Angel, Utility Services Specialist, Tacoma Water

Lihuang Wung, City of Tacoma, Planning & Development Services Department

Rick Coyne, City of Tacoma Public Works Department, Solid Waste Management

Sue Simpson, City of Tacoma, Public Works Department, Construction/LID

Daniel Reed, Sr. Engineer, Tacoma Power

Brad D. Harp, Tacoma-Pierce County Health Department, Environmental Health Division

Chris Seaman, Sr. Engineer, Tacoma Fire Department, Prevention Division

Jason Miller, Environmental Specialist, City of Tacoma, Environmental Services Eng. Division

WA State Dept. of Ecology, Southwest Regional Office, PO Box 47775, Olympia, WA 98504-7775

Pierce County Assessor-Treasurer, 2401 S. 35th Street, Room 142, Tacoma, WA 98409

747 Market Street, Room 720 | Tacoma, Washington 98402-3768 | (253) 591-5195 | FAX (253) 591-2003

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE

TACOMA CITY COUNCIL

HEX FILE NO.: 2014-012 (124.1341)

PETITIONER: Wesco Management, LLC

SUMMARY OF REQUEST:

Real Property Services has received a petition from Wesco Management, LLC seeking to vacate a portion of South 49th Street right-of-way lying between South Wilkeson Street and Interstate 5 for use as fire access and parking in support of a furniture store being developed on the adjacent property.

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 and examining available information on file with the application, the Hearing Examiner conducted a public hearing on the application on July 10, 2014.¹

¹ The Hearing Examiner also conducted a site visit on July 16, 2014.

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

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ORIGINAL

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. Wesco Management, LLC is requesting vacation of a portion of right-of-way on South 49th Street, more particularly described as follows:

All that portion of South 49th Street lying between South Wilkeson Street and I-5 described as follows:

Beginning at the Southeast corner of Lot 16, Block 22 Acme Addition to Tacoma, according to the Plat thereof recorded in Book 8 of Plats, Page 110, records of Pierce County, Washington; thence North 87°26'32" West, along the South line of said Block 22, a distance of 365.29 feet; thence South 03°03'10" East a distance of 60.29 feet, more or less, to the north line of Block 23 of said Acme Addition; thence South 87°26'32" East, along the North line of said Block 23, a distance of 269.39 feet; thence North 02°33'28" East a distance of 47.50 feet; thence South 87°26'32" East a distance of 90.00 feet; thence North 02°33'28" East a distance of 12.50 feet to the True Point of Beginning.

All situate in the Northwest Quarter of the Northwest Quarter of Section 20, Township 20 North, Range 03 East, W.M., within the City of Tacoma, County of Pierce, State of Washington.

2. The Petitioner Wesco Management, LLC is developing the adjacent parcel of property at 4810 South Wilkeson Street with a "Mor Furniture for Less" retail store with associated parking and amenities. The proposed project property slopes from South Wilkeson Street westerly toward the Interstate 5 freeway. The furniture store improvements will include a large commercial structure and tiered parking on the sloped site. The store site is directly north of the South 49th Street right-of-way in question. The area to the south of this segment of South 49th Street is owned by the Tacoma School District and contains the Angelo Giaudrone Middle School. The area proposed for vacation would be used for gated fire access, parking, utilities easements, and construction and maintenance of a retaining wall. *Ex. 1; Cornforth Testimony.*

3. The City acquired the right-of-way for South 49th Street by plat filing of Acme's Addition to Tacoma Washington on November 2, 1907, as filed in Book 8 of Plats, at page 110, records of Pierce County, Washington. *Ex. 4.* When the Interstate 5 freeway was constructed in 1957, South 49th Street became a dead-end street in this location and the unoccupied right-of-way became a common site for unauthorized dumping. As a result, the City of Tacoma has physically blocked access to this portion of the South 49th Street roadway to discourage such illicit use. *Ex. 1.*

4. The portion of South 49th Street right of way proposed for vacation is not being used for vehicles and, therefore, vacation of the street will not adversely affect the street pattern or traffic circulation in the area or in the wider community. *Cornforth Testimony.*

5. The public would benefit from the proposed vacation to the extent that it would permit the unused right-of-way to be returned to the public tax rolls. In addition, the development would eliminate the opportunity to use vacant land for illegal dumping or other undesirable activities. *Cornforth Testimony; Jackson Testimony.*

6. The vacation petition submitted represents a 100 percent joinder by owners of property abutting the site. *Cornforth Testimony.*

7. There is no evidence the right-of-way would be needed for an additional or different public use in the future. As long as easements are provided for existing utilities in the vacated right-of-way, public need would not be adversely affected by the vacation. *Cornforth Testimony.*

8. No abutting property would become landlocked or have its access substantially impaired as a result of the requested alley vacation. *Cornforth Testimony; Ex 3.*

9. 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.*

10. 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, however, some based their position on the inclusion of conditions protecting certain rights in the vacated area. *Exs. 6 through 10.*

11. The Petitioner Wesco Management, LLC concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Jackson Testimony.*

12. No witnesses appeared at the hearing opposing Wesco's vacation petition. A representative of the Tacoma Public School District, owner of the adjacent property, appeared and testified that the District supports the requested street vacation. *Murakami Testimony.*

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 (SEPA).

14. All property owners of record within 300 feet of the proposed vacation were notified of the hearing date at least 30 days prior to the hearing, as required by *Tacoma Municipal Code (TMC) 9.22.060.* *Cornforth Testimony; Ex. 1.*

15. 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 Wesco Management, LLC 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 Petitioner Wesco Management, LLC's vacation petition satisfies the legal standards for approval of vacation of rights-of-way, provided the conditions recommended herein are imposed. The public would experience benefits from the requested vacation by returning unused property to the tax rolls. The improvements that will be placed on the property will support economic development and prevent illegal dumping on the right-of-way. The overall project will make productive use of an area that is no longer part of the active street system. The public interest in the property will be protected by the execution of easements for utilities that are recommended as required conditions of the street vacation.

6. Accordingly, the requested 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. ENVIRONMENTAL SERVICES

An easement for the existing storm and sanitary mains shall be reserved across the vacated property.

3. TACOMA FIRE

The Petitioner shall relocate the existing fire hydrant, at its own expense and in coordination with Tacoma Water, to a location near South 49th Street termination.

4. TACOMA WATER

The Petitioner shall enter into an easement agreement with Tacoma Water regarding use of the vacated area by the utility that will be executed and recorded concurrently with the vacation Ordinance and not as a reservation therein.

5. PUBLIC WORKS/LOCAL IMPROVEMENT DISTRICT (LID)

The Public Works - LID section provided notice, as an advisory comment only, that the collection in-lieu of assessment for sanitary sewer, as of May 15, 214 is \$1,896.21.

6. PUGET SOUND ENERGY

The Petitioner shall execute and record an easement agreement with Puget Sound Energy, which will be recorded concurrently with the vacation Ordinance.

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.

6. Accordingly, the Hearing Examiner recommends that the street vacation petition submitted by Wesco Management, LLC be granted, subject to the conditions set forth above.

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

RECOMMENDATION:

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

DATED this 23rd day of July, 2014.


PHYLLIS K. MACLEOD, Hearing Examiner

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

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.

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