



City of Tacoma  
Hearing Examiner

March 10, 2015

FIRST CLASS & ELECTRONIC MAIL DELIVERY

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Re: File No. HEX 2014-046 (Street Vacation Petition No. 124.1347)  
Petitioner: University of Washington Tacoma

To the Parties,

Please find enclosed a copy of the Tacoma Hearing Examiner's Report and Recommendation to the Tacoma City Council concerning the above referenced matter as the result of a public hearing held before the Hearing Examiner on January 15, 2015.

Sincerely,

Louisa Legg  
Legal Assistant

Enclosure (1) – HEX Report and Recommendation  
Attachment (1) Transmittal List

Cc: See Transmittal List

**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 10, 2015, at Tacoma, WA.

**TRANSMITTAL LIST**  
**HEX2014-046 (124.1347)**

**Petitioner University of Washington Tacoma**

Transmitted via Inter-office Mail Delivery  
Pierce County Assessor-Treasurer's Office

Transmitted First Class Mail Delivery

Qwest d/b/a CenturyLink QC, Attn: R. Jeff Lawrey, Manager, R-o-W, Western WA,  
1208 NE 64<sup>th</sup> St., Rm. 401, Seattle, WA 98115  
Pierce Transit, ATTN: Ben Han, Planner II, 3701 - 96<sup>th</sup> St. SW, PO Box 99070,  
Tacoma, WA 98499-0070

Transmitted via E-mail Delivery

Clerk's Office, City of Tacoma (Nicole Emery)  
Tacoma Fire Department (Chris Seaman)  
Tacoma Public Utilities Real Property (Dylan Harrison)  
Solid Waste Management, City of Tacoma (Richard [Rick] Coyne)  
Public Works, City of Tacoma (Sue Simpson)  
Public Works, Traffic Engineering Division, City of Tacoma (Jennifer Kammerzell)  
Environmental Services, Science & Engineering, City of Tacoma (Merita Trohimovich)  
Planning and Development Services Department, City of Tacoma (Lisa Spadoni/Jana Magoon)  
Planning and Development Services Department, City of Tacoma (Lihuang Wung)  
Click! City of Tacoma (Chris Mantle)  
Tacoma Public Utilities, Facilities Management, RPS (Gloria Fletcher)  
Tacoma Public Utilities, Tacoma Power, Transmission & Distribution  
New Services Engineering (John Martinson)  
Tacoma Public Utilities, Tacoma Water, Water Distribution Engineering (Tony Lindgren)  
Tacoma Public Utilities, Tacoma Water, Water Distribution Engineering (Jesse Angel)

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE**

**TACOMA CITY COUNCIL**

**HEX FILE NO.:** HEX 2014-046 (124.1347)

**PETITIONER:** University of Washington Tacoma

**SUMMARY OF REQUEST:**

Real Property Services has received a petition from the University of Washington Tacoma to vacate portions of Jefferson Avenue south of S. 17<sup>th</sup> Street, for pedestrian and bicycle improvements, landscaping, traffic management, parking and vehicle access to the University of Washington Tacoma.

**RECOMMENDATION OF THE HEARING EXAMINER:**

The requested vacation petition is recommended for approval, subject to the conditions contained herein and the project is recommended for waiver of compensation under TMC 9.22.010.

**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 January 15, 2015. At the conclusion of the proceedings the evidentiary record was held open for an additional week for submission of supplemental comments clarifying Click!'s specific easement requirements in the subject area proposed for vacation. At the parties' request the record was further held open for discussions regarding the terms of reserved easements associated with the vacation. The discussions were concluded on or around February 20, 2015, and the record was closed.

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

**ORIGINAL**

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

**FINDINGS OF FACT:**

1. University of Washington Tacoma (UW Tacoma) is petitioning for vacation of a portion Jefferson Avenue south of S. 17<sup>th</sup> Street, more particularly described as follows:

A portion of the Northwest quarter of the Southwest quarter of Section 04, Township 20 North, Range 03 East, W.M. more particularly described as follows:

That portion of Jefferson Avenue lying southerly of the South right of way margin of South 17<sup>th</sup> Street and easterly of the southerly extension of the West line of Block 1705, Map of New Tacoma, Washington Territory, according to the Plat thereof as recorded February 3, 1875, records of Pierce County Auditor;

Said southerly extension terminates at the West line of Block 1806 of said Plat;

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

2. The Petitioner UW Tacoma proposes acquiring the vacated portions of Jefferson Avenue south of S. 17<sup>th</sup> Street, for pedestrian and bicycle improvements, landscaping, traffic management, parking and vehicle access to the University of Washington campus and adjacent buildings. *Ex. 1; Stevens Testimony.*

3. The City of Tacoma acquired the right-of-way proposed to be vacated within the plat of Map of New Tacoma, filed for record February 3, 1875, in Pierce County, Washington. In 2008, the City granted a Street Occupancy Permit (SOP) to the University of Washington under SOP 276 for communication conduits and a vault in the area. *Ex. 1; Ex. 11; Stevens Testimony.*

4. Jefferson Avenue, south of S. 17<sup>th</sup> Street is 80 feet wide and slopes down toward the Sound Transit Link Light Rail tracks and Pacific Avenue. It has sidewalk, curb, and gutter on both sides and is a completely built street. The vacated area is approximately 310 feet long on the easterly side of the right of way and is 70 feet long along Block 1705, or the westerly side of Jefferson Avenue. *Ex. 1; Stevens Testimony.*

5. The S. 17<sup>th</sup> Street Realignment Project will make that portion of Jefferson Avenue being vacated unnecessary for future road connectivity, therefore, vacation of the street will not adversely affect the street pattern or traffic circulation in the area or in the wider community. *Ex. 1; Stevens Testimony.*

6. 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 and would accommodate pedestrian friendly improvements that would be available to the public. UW Tacoma anticipates the area would contain a greenspace for the foreseeable future that would be maintained at the expense of UW Tacoma rather than the City. *Ex. 1; Stevens Testimony; Clark Testimony.*

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

8. 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. *Ex. 1; Stevens Testimony.*

9. No abutting property would become landlocked or have its access substantially impaired as a result of the requested vacation. *Ex. 1; Stevens Testimony.*

10. 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. *Ex. 1; Stevens Testimony.*

11. 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. 1, 3 through 10; 16; 18; Stevens Testimony.*

12. The Petitioner UW Tacoma is agreeable to granting the easements proposed by the City and utility providers. *Clark Testimony; Ex. 18.*

13. The Petitioner UW Tacoma seeks waiver of the appraised value charge for the right-of-way sought to be vacated under the terms of TMC 9.22.010. In support of the requested waiver, UW Tacoma cites its role in funding the considerable expense of the S. 17<sup>th</sup> Street Realignment Project. The Realignment Project improves traffic safety in the neighborhood and saves the City money by allowing utility departments to make infrastructure upgrade improvements without incurring the attendant costs to replace roadway surfaces. UW Tacoma also points to the benefits to the public generated by its role as a catalyst for economic development in the downtown area. In addition, UW Tacoma will be taking responsibility for the cost of maintaining the vacated area, which would otherwise be borne by the City. The Petitioner points out that in prior street vacation proceedings the City waived compensation based on the public benefits provided by the project. (Vacation Petition No. 124.1216).<sup>1</sup> *Clark*

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<sup>1</sup> TMC 9.22.010 provides in pertinent part: "...the City Council shall require the petitioners to compensate the City in an amount which equals one-half of the appraised value of the area vacated; provided that if the street or alley has been a public right-of-way for 25 years or more, the City shall be compensated in an amount equal to the full appraised value of the area vacated; provided that when the vacation is initiated by the City or the City Council deems it to be in the best interest of the City...all or any portion of such compensation may be waived. (Emphasis added.)

*Testimony.* The City, however, does not support a waiver of compensation in this case and is requesting payment of the appraised value of the property.

14. No witnesses appeared at the hearing opposing UW Tacoma's vacation petition.

15. 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).

16. All property owners of record within 500 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. Ex. 1; Stevens Testimony.*<sup>2</sup>

17. 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.

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<sup>2</sup> Mr. Stevens testified he purposely gave notice of hearing to owners and occupants of property lying within 500 feet of the subject street area proposed for vacation to sufficiently meet and exceed the minimum distance requirement of 300 feet set forth in *TMC 9.22.060*.

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 UW Tacoma bears the burden of proof to establish that its petition for vacation is consistent with the foregoing criteria. *TMC 1.23.070.A.*

5. The evidence in the matter supports a conclusion that Petitioner UW Tacoma's vacation petition satisfies the legal standards for approval of vacation of rights-of-way in TMC 9.22.070, provided the conditions recommended herein are imposed. The public would experience benefits from the requested vacation by returning unused property to the tax rolls, by expanding public greenspace in the area and by transferring responsibility for maintenance to UW Tacoma. The vacation will not adversely affect traffic circulation and the property will not be needed for such purposes in the future due to the S. 17<sup>th</sup> Street Realignment Project. 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. The UW Tacoma request for waiver of the appraised value charge is based on the public benefit provided by the project. The benefits are demonstrable and significant. The waiver is also consistent with holdings in prior street vacation proceedings involving UW Tacoma. The request for wavier appears reasonable under the facts and circumstances and should be granted.

7. Accordingly, the Hearing Examiner recommends that the street vacation petition submitted by UW Tacoma be granted, subject to the conditions set forth below.

**A. SPECIAL CONDITIONS:**

1. Reservation of sidewalk, street light, and utility easement by City of Tacoma for public access and City ownership and maintenance over the existing sidewalk and street lights fronting 1711 Jefferson Avenue. (*Ex. 3.*)
2. Reservation of a utility easement over the entire vacation area for the City of Tacoma for maintenance, repair, construction, modification, and replacement of existing and future facilities.
  - a) The vacation area contains a 24-inch water main and appurtenances which will need to remain in service, unobstructed, and accessible at all times.

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



b) The easement shall include unlimited access to the easement area with 24 hour notice to Grantor; prior notice is not required in the event of an emergency.

c) To avoid conflicts with existing facilities and access, Tacoma Water retains review and approval rights for any improvements proposed within the 10 feet on either side of the 24-inch water main.

d) Any Grantor-directed relocation or adjustment of existing Tacoma Water infrastructure within the easement area must be completed by Tacoma Water at the Grantor's sole cost and expense.

e) Damage to any Tacoma Water facilities within the easement area by the Grantor, its agents, tenants, employees, assignees, or invitees shall be repaired by Tacoma Water at the Grantor's sole cost and expense; provided, third-party utilities are not deemed to be Grantor's agents, tenants, employees, assignees, or invitees.

f) No permanent structures shall be placed within the easement area without Tacoma Water approval; provided, that if approval is given, Grantor shall be responsible for all costs and expenses of utility relocation made necessary by Grantor's improvements.

g) No grading will be allowed within the 10 feet on either side of the 24-inch water main or future Tacoma Water facilities without the prior consent of Tacoma Water. If approval is given, no removal of material over Tacoma Water infrastructure will be allowed which will result in a depth of cover of less than 3 feet. No filling over Tacoma Water infrastructure will be allowed which will result in a depth of cover greater than 5 feet.

3. Qwest Corporation d/b/a CenturyLink QC (CenturyLink) and its successors request a fully executed easement covering existing facilities in the vacate area will be held by the City in escrow prior to final reading of the ordinance and recorded subsequently to the ordinance; provided, an easement expansion to cover future required facilities subject to petitioner's right to reasonably restrict the location of future CenturyLink facilities as needed to coordinate CenturyLink facilities with other utilities in the vacate area, and provided further that such future easement rights shall not be construed or applied in a manner that unreasonably restricts petitioner's use of the vacate area. (Ex. 7.)



**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.

8. 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 the conditions contained herein and the project is recommended for waiver of compensation under TMC 9.22.010.

DATED this 10<sup>th</sup> day of March, 2015.

  
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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.

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