



City of Tacoma
Hearing Examiner

April 28, 2014

H.G. Holdings, LLC
ATTN: Chris Hamilton
6035 South Adams Street
Tacoma, WA 98409
(rainchris08@yahoo.com)

Troy Stevens, Senior Real Estate Specialist
City of Tacoma, Real Property Services
747 Market Street Room 737
(tstevens@cityoftacoma.org)

Re: File No. HEX 2014-007 (Vacation Petition No. 124.1340)
Petitioner: H.G. Holdings, LLC

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 April 24, 2014.

Sincerely,

Louisa Legg, Legal Assistant

Enclosure (1) – HEX Report and Recommendation

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

Transmitted First Class Mail Delivery

CenturyLink, Attn: Leslie Ferguson, 2510 84th Street S. STE 18, Lakewood, WA 98499
Qwest Coporation d/b/a CenturyLink QC, R. Jeff Lawrey, Manager R-o-W, Western WA,
1208 NE 64th Street Room 401, Seattle WA 98115

Transmitted via E-mail Delivery

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

Tacoma Power (Rick Van Allen)

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

Tacoma Water (Jesse Angel)

Tacoma Public Utilities Real Property (Dylan Harrison)

Solid Waste Management, City of Tacoma (Rick Coyne)

Public Works Engineering, 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 (Lihuang Wung)

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: H.G. Holdings, LLC

FILE NO: HEX 2014-007 (124.1340)

SUMMARY OF REQUEST:

The Petitioner, H.G. Holdings, LLC (hereinafter "H.G. Holdings"), is requesting to vacate a portion of the South Adams Street right-of-way northerly of vacated South 62nd Street for use in connection with its business.

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 April 24, 2014.

ORIGINAL

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The Petitioner, H.G. Holdings, LLC (hereinafter "H.G. Holdings"), is requesting to vacate a portion of the South Adams Street right-of-way northerly of vacated South 62nd Street. *Ex 1; Ex. 3.* The area sought to be vacated is more particularly described below:

The Easterly 11 feet of South Adams Street adjacent and abutting Lots 1 to 4, inclusive, Block 6, Cowan's Addition to Tacoma, According to the Plat thereof, recorded in Volume of 5 of Plats, Page 57, Records of Pierce County.

Situate in the Southeast Quarter of the Southeast Quarter of Section 24, Township 20 North, Range 2 East of the W.M., within the City of Tacoma, County of Pierce, State of Washington.

2. The vacation petition has been joined by all owners of property abutting the right-of-way proposed to be vacated. *Stevens Testimony.*

3. The Petitioner H.G. Holdings has been using a portion of the proposed vacation area for a retaining wall and parking area under Street Occupancy Permit (SOP) No. 141. *Ex. 4.* The SOP was obtained by a predecessor in interest to H.G. Holdings to accommodate installation of a retaining wall and parking lot extension. H.G. Holdings would like to obtain title to the property currently being used pursuant to the SOP together with a small additional strip in alignment with the SOP area. *Hamilton Testimony.*

4. South Adams Street at the location in question is 80 feet wide with asphaltic top course. It has curb and gutter and sidewalks located along the easterly side of the street. The H.G. Holdings property is zoned heavy industrial and is located across the street from Metro Parks' South End Recreation and Adventure (SERA) Campus, which is zoned light industrial. South Adams Street from South 56th Street to South 66th Street has a very gentle slope downward, and several of the property owners along the street have installed retaining walls and other erosion, slope, and site stability and leveling measures. *Ex. 1.*

5. The proposed street vacation is part of the plat of Cowan's Addition to Tacoma, Washington which was filed in Book 5 of Plats, Page 57, records of Pierce County, Washington, on August 2, 1890. Street Occupancy Permit No. 141 was obtained by Wright Roofing, Inc. for a portion of the area to be vacated on March 24, 2003, under Pierce County recording number 200303240963. Wright Roofing obtained the permit to install a retaining wall and to extend their parking lot. *Ex. 1; Ex. 4.*

6. No members of the public appeared at the hearing to oppose approval of H.G. Holdings' petition to vacate a portion of the South Adams Street right-of-way north of vacated South 62nd Street.

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

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7. The public would benefit from the proposed street vacation because it would return property to the tax rolls, would allow the property owner to own the area it currently occupies via a street occupancy permit, and would facilitate economic development. *Stevens Testimony; Ex. 1.*

8. The vacation of this alley will not adversely affect the street pattern or traffic circulation in the area or in the wider community because the right-of-way being vacated is not being used for vehicular travel and is not planned for such use in the future. *Stevens Testimony.*

9. 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. *Stevens Testimony.*

10. No abutting property or nearby property would become landlocked or have its access substantially impaired as a result of the vacation of the subject street vacation. *Stevens Testimony; Ex. 3.*

11. The portion of street 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. *Stevens Testimony.*

12. The proposed street vacation 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, such as easements for utilities. *Stevens Testimony; Exs. 5-8.*

13. The Petitioner H.G. Holdings concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Hamilton Testimony.*

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 (SEPA)*.

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. All property owners of record adjacent to the proposed vacation were notified of the April 24, 2014, hearing at least 30 days prior to the hearing, as required by *Tacoma Municipal Code (TMC) 9.22.060* and all required posting of notices for the hearing have been accomplished. *Ex. 1; Stevens Testimony.*

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

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

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CONCLUSIONS:

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).*
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. The petitioner must demonstrate by a preponderance of the evidence that its vacation request conforms to the foregoing criteria. *See TMC 1.23.070.*
5. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested street 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 experience benefits from the requested vacation by returning unused property to the tax rolls and supporting economic development. The requested street vacation would not impair traffic circulation, landlock any abutting owner, or adversely affect the public need.
6. Accordingly, the requested street rights vacation should be approved subject to the following conditions:

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

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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. Tacoma Power

A public easement shall be reserved for overhead and underground facilities in the proposed vacated area for Tacoma Power.

3. CenturyLink

An easement shall be reserved for CenturyLink's existing facilities or the Petitioner shall pay CenturyLink for relocation costs.

4. Public Works/L.I.D.

The collection in-lieu of assessment for sanitary sewer will be \$1,260.91.

5. Tacoma Water

An easement shall be reserved to allow the existing water meter to stay in place. The easement will be over the proposed vacated area adjacent to Lots 3 and 4 (the southerly 50 feet of the vacated area).

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.

**FINDINGS OF FACT,
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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.

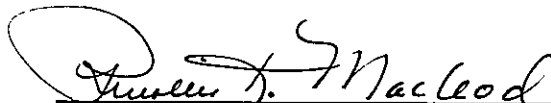
7. Accordingly, the vacation petition should be granted, subject to conditions set forth in Conclusion 6 above.

8. Any finding hereinbefore stated which may be deemed to be a conclusion herein is hereby adopted as such.

RECOMMENDATION:

The vacation request is hereby recommended for approval, subject to conditions contained in Conclusion 6.

DATED this 28th day of April, 2014.



PHYLLIS K. MACLEOD, Hearing Examiner

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

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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,
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