



City of Tacoma  
Hearing Examiner

August 16, 2016

FIRST CLASS & ELECTRONIC MAIL DELIVERY

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Interoffice Mail Delivery)

**Re: HEX2016-015 (Vacation Petition No. 124.1366)**  
**Petitioner: Skookum Holdings, 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 August 4, 2016.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1) – Findings, Conclusions, 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 August 16, 2016, at Tacoma, WA.

Louisa Legg



August 16, 2016

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Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

Transmitted via Electronic Mail Delivery

WSDOT (Lisa Shaw/Steve Palmen)

Comcast Communications (Aaron Cantrel)

Qwest Corp. d/b/a CenturyLink (Franklin Bolden)

Puget Sound Energy (Marilynn Danby)

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

Legal (Jeff Capell)

Tacoma Power/T&D (Vince Mounivong; Rich Barrutia; Rick VanAllen)

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

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Jesse Angel & Stuart Vaughan, P.E.)

Public Works, City of Tacoma (Sue Simpson)

Public Works Traffic Engineering, City of Tacoma (Jennifer Kammerzell)

Public Works, RPS TPU Acquisition Disp, City of Tacoma (Gregory Muller)

Environmental Services Department, Science & Engineering, City of Tacoma (Merita Trohimovich)

Environmental Services Department, Site Development, 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 (Elliott Barnett)

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:** Skookum Holdings, LLC

**FILE NO.:** HEX 2016-015 (124.1366)

**SUMMARY OF REQUEST:**

Real Property Services has received a petition to vacate a portion of the alley between East 25<sup>th</sup> Street and Puyallup Avenue, lying between "A" Street and State Route 705 (SR-705), for a private driveway.

**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 August 4, 2016.



FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. Skookum Holdings, LLC (Skookum) has petitioned the City to vacate a portion of the alley between East 25<sup>th</sup> Street and Puyallup Avenue, lying between “A” Street and SR-705, for a private driveway. The property to be vacated is more particularly described below:

That portion of the Northeast quarter of the Northwest quarter of Section 09, Township 20 North, Range 03 East, W.M., more particularly described as follows:

The alley abutting Lots 5 & 6, inclusive, Block 7515 and Block 7416, Tacoma Land Company’s First Addition to Tacoma W.T., according to the plat filed July 7, 1884, records of Pierce County Auditor;  
EXCEPT that portion for SR-705.

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

2. The Petitioner Skookum owns the property adjacent to the alley being proposed for vacation. The adjacent property is improved with a large commercial structure. Skookum would like to combine the vacated property with existing property to facilitate better vehicle parking and circulation at the adjacent building. *Shaw Testimony.*

3. The City of Tacoma acquired the right-of-way proposed to be vacated within the plat of Tacoma Land Company’s First Addition to Tacoma, W.T., according to the plat filed July 7, 1884, records of the Pierce County Auditor. *Ex. 1; Stevens Testimony.*

In 1979, SR-705 was established and the subject alley segment was acquired by map filing by the Washington State Department of Transportation (WSDOT). A portion of the alley right-of-way between Blocks 7515 and 7416 and lying westerly of the subject site and SR-705, was vacated on April 14, 1992, under Pierce County recording number 9204270460. *Exs. 1 and 3a.*

WSDOT released any interest it had in the subject alley right-of-way segment to the City of Tacoma via Quit Claim Deed in 2013, under Pierce County recording number 201306120842. *Ex. 4.* On May 9, 2016, WSDOT confirmed it has no interest in this portion of right of way. *Exs. 1 and 5; Stevens Testimony.*

4. The property proposed for vacation is a 20-foot wide unimproved alley right-of-way that gradually slopes downward in a northerly direction. The property has minimal vegetation. On the easterly edge, the alley abuts a concrete sidewalk and parking area located under SR-705. *Ex. 1; Stevens Testimony*

5. The alley segment is not used for general traffic circulation in the area. The alley vacation would not negatively impact traffic patterns now, or in the future. *Ex. 1; Stevens Testimony.*





6. The proposed vacation has been reviewed by a number of governmental agencies and utility providers. None object to the alley vacation, although CenturyLink bases its position on Skookum negotiating an easement with CenturyLink to protect its facilities in the area to be vacated. *Ex. 6.* A condition reflecting this easement requirement is recommended as part of the vacation approval. The Petitioner Skookum agrees to the proposed condition. *Shaw Testimony.*

7. Provided easements are retained or granted for existing utilities that would be impacted by the alley vacation, the public need would not be adversely affected by the proposed vacation. The alley segment at issue is not contemplated or needed for future public use as a transportation route. *Ex. 1; Stevens Testimony.*

8. Vacation of the alley segment would provide a public benefit by returning unused property to the tax rolls and allowing a better parking and circulation pattern for the adjacent business. *Ex. 1; Stevens Testimony.*

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

10. The alley right-of-way proposed for vacation does not abut, nor is it proximate to a body of water. The provisions of RCW 35.79.035 are therefore not implicated. *Ex. 1; Stevens Testimony.*

11. No members of the public appeared at the hearing opposing the alley vacation.

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.*

13. 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.

14. A Public Hearing Notice for the August 4, 2016, hearing was posted 124 feet east of the southeast corner of "A" Street and Puyallup Avenue and 160 feet east of the northeast corner of "A" Street and East 25<sup>th</sup> Street on June 17 and 22, 2016, 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 400 feet of the vacation request. All required postings of notices for the hearing have been accomplished. *Ex. 1; Stevens Testimony.*

15. 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.*

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



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. Petitions to vacate public right-of-way are reviewed under the TMC 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. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested vacation of that portion of the alley between East 25<sup>th</sup> Street and Puyallup Avenue, lying between "A" Street and SR-705 conforms to the TMC's criteria for the vacation of alley rights-of-way, provided the conditions recommended herein are imposed. The property is not being used for general traffic circulation and vacation of the alley segment will not adversely affect future public needs so long as the provisions protecting utility uses are addressed by negotiation of an easement. The alley segment proposed for vacation is not being used for any productive purpose and after the vacation it would be returned to the tax rolls and would facilitate parking at a nearby business.

5. The City is requesting the Petitioner be required to pay the full market value of the alley in question. The provisions of TMC 9.22.010 state:

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...

*TMC 9.22.010.* In this case, the property was originally in City ownership from 1884 to 1979. In 1979 WSDOT took the alley segment as part of the construction of SR-705. The WSDOT returned any interest it held in the subject alley right-of-way segment to the City of Tacoma by Quit Claim Deed in 2013. The subject alley segment has historically been in City ownership for well over 25 years. Certain rights were taken by WSDOT for a period of time related to construction of the nearby state highway. The underlying rights have now been restored. Under the circumstances, the provisions for payment of the full appraised value of the property under TMC 9.22.010 have been met.

6. Accordingly, the requested right-of-way vacation, covering the identified segment of property between East 25<sup>th</sup> Street and Puyallup Avenue, lying between “A” Street and SR-705, 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. CENTURY LINK QC

Has no objection to the requested vacation; however, Qwest Corporation dba CenturyLink QC currently has existing aerial facilities in the vacate area and must retain all rights associated with said facilities. The Petitioner shall contact Qwest Corporation dba CenturyLink QC to negotiate an easement. The City of Tacoma, Real Property Services, shall hold the easement in escrow until after the vacation is complete and recorded.

**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

At time of building or site development, a barrier or adequate separation from adjacent WSDOT ROW and the pedestrian path to the east will be required for vehicular activity (parking/circulation).

2. NO OBJECTION

No objection or additional comment was received from Tacoma Fire; Comcast; Puget Sound Energy; ES – Site Development; Tacoma Power, Transmission; Tacoma Power, New Services; Tacoma Water, Supply; Tacoma Water, Distribution; PDS, Long Range Planning; Click! Network; RPS/LID.

7. Based upon the facts and the governing law, the vacation petition should be granted, subject to conditions set forth in Conclusion 6 above.

8. 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 vacation requested is hereby recommended for approval, subject to the conditions contained in Conclusion 6.

**DATED** this 16<sup>th</sup> day of August, 2016.



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**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**

