



City of Tacoma  
Hearing Examiner

October 25, 2017

Kinne F. Hawes, Attorney at Law  
Vanderberg Johnson & Gandara, LLP  
1606 Ridge View Ave NE J404  
Issaquah, WA 98029-7699  
(First Class & Electronic Mail Delivery)

Ronda Cornforth, Sr. Real Estate Specialist  
City of Tacoma, Real Property Services  
747 Market Street Room 737  
Tacoma, WA 98402-3701  
(Interoffice & Electronic Mail Delivery)

**Re: HEX 2017-028 (Vacation Petition No. 124.1381) - Petitioner: Lakermayer 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 September 28, 2017.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1) – HEX Report and Recommendation

Cc: Transmitted First Class Mail Delivery  
Lackermayer Holdings, LLC, PO Box 110516, Tacoma WA 98411-0516

Transmitted via Electronic Mail Delivery  
Pierce County Assessor-Treasurer (Darci Brandvold)  
CenturyLink (Victoria Comer)  
Puget Sound Energy (Marilynn Danby)  
Clerk's Office, City of Tacoma (Nicole Emery)  
Legal (Steve Victor)  
Tacoma Public Utilities, Real Estate Services (Gregory Muller)  
Tacoma Water, Water Distribution (Jesse Angel)  
Tacoma Power/HFC Eng/T&D (Greg Netcher)  
Tacoma Fire Department (Chris Seaman, P.E.)  
Public Works/LID, City of Tacoma (Sue Simpson)  
PDSD (Jana Magoon/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:** Lackermayer Holdings, LLC<sup>1</sup>

**FILE NO:** HEX 2017-028 (124.1381)

**SUMMARY OF REQUEST:**

To vacate the remaining segment of South 45<sup>th</sup> Street right-of-way lying westerly of South Adams Street.

**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, Real Property Services Division (“RPS”), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on September 28, 2017.

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<sup>1</sup> The City’s Preliminary Report, received in the Office of the Hearing Examiner on September 18, 2017, listed the Petitioner as Lackermayer Holdings, LLC and Lackermayer Family, LLC jointly. At the hearing, testimony was presented that all real property adjacent to the proposed vacation area had been conveyed to Lackermayer Holdings, LLC making it the sole owner of adjacent real property and the sole petitioner going forward. *Cornforth Testimony, Hawes Testimony.*

**ORIGINAL**

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

**FINDINGS:**

1. The Petitioner, Lackermayer Holdings, LLC, a Washington limited liability company (“Lackermayer” or “Petitioner”), has petitioned for the vacation of the remaining segment of South 45<sup>th</sup> Street right-of-way lying to the west of South Adams Street. The area proposed for vacation is more particularly described as follows:

All that portion of South 45<sup>th</sup> Street, lying between and abutting Blocks 3 and 6 of Amended Map of a part of Latshaws Addition and Manning Addition to Tacoma, Washington, according to the Plat thereof filed for record in Volume 4 of Plats at Page 56, records of Pierce County, Washington, being an Amendment of that certain Plat entitled Map of Latshaws, Manning and Hays Addition to Tacoma, Washington, as per plat recorded in Volume 4 of Plats at Page 28, records of Pierce County, Washington, lying Westerly of the Westerly margin of South Adams Street.

All situate in the City of Tacoma, County of Pierce, State of Washington; within the Southeast Quarter of the Southeast Quarter of Section 13, Township 20 North, Range 02 East of the Willamette Meridian.

*Cornforth Testimony; Exs. 1 through 3.* The vacation petition is now advanced by Petitioner, as the sole owner of real property abutting the right-of-way area proposed for vacation. *Cornforth Testimony, Hawes Testimony; fn. 1 above.*

2. The City of Tacoma acquired the right-of-way proposed for vacation by dedication within the original Plat filing of Latshaws, Manning and Hays Additions to Tacoma, Washington on December 5, 1889 in Volume 4 of Plats at Page 28, and subsequent Amended Map of a part of Latshaws Addition and Manning Addition to Tacoma, Washington filed on January 24, 1890, of record in Volume 4, at Page 56, records of Pierce County, Washington. *Cornforth Testimony; Exs. 4 and 5.*

3. This segment of right-of-way dead ends into the Petitioner’s real property (Tax Parcel Nos. 5160000090 and 5160000160) as the result of previous vacation actions vacating other portions of South 45<sup>th</sup> Street to the west. The proposed vacation area has asphalt surface with curbs, gutter and sidewalks constructed only at the radius point of the intersection with South Adams Street. *Cornforth Testimony; Ex. 1.*

4. The Petitioner intends to include this segment of right-of-way into a combination of the abutting parcels in order to accommodate its tenant’s plans for redevelopment of the entire area. *Cornforth Testimony, Hawes Testimony, Boe Testimony; Ex. 1.* Lackermayer currently leases the abutting properties to Tool-Gauge and Machine Works, Inc., a Washington corporation (the “Tenant”). The Tenant has conducted business in Tacoma at this location for over fifty (50) years. *Hawes Testimony, Boe Testimony.* Lackermayer and the Tenant intend to redevelop the abutting property in a way that allows the Tenant to keep its operations in Tacoma, while addressing existing street pattern,

and other configuration issues that make shipping and receiving and other logistics difficult. *Hawes Testimony, Boe Testimony.*

5. The vacation request has been reviewed by a number of governmental agencies, City departments/divisions, and utility providers. None of the entities consulted opposed the proposed vacation. *Cornforth Testimony; Exs. 7 through 12.*

6. Petitioner concurs with the conditions recommended herein below; although it was testified that the City's requested easement reservations may become unnecessary at some point in the redevelopment process due to reconfiguration and possible relocation of utilities. *Hawes Testimony, Boe Testimony.*

7. The street segment proposed for vacation would not affect the public's right to travel on the remaining segment of South 45<sup>th</sup> Street that moves through South Adams Street in an eastward direction through Washington Street connecting up with South Tacoma Way. *Cornforth Testimony, Hawes Testimony; Ex. 1.* The general public is not served in any meaningful way by this dead end road segment. *Cornforth Testimony, Hawes Testimony; Ex. 1.*

8. No abutting property or nearby property would become landlocked or have its access substantially impaired as a result of the proposed street vacation. *Cornforth Testimony; Ex. 1.*

9. The subject street segment neither abuts, nor is proximate to a body of water and, thus, the provisions of RCW 35.79.035 are not implicated. *Cornforth Testimony, Hawes Testimony; Ex. 1.*

10. Pursuant to *WAC 197-11-800(2)(i)*, 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)*.

11. RPS' Preliminary Report, as entered into the record as Exhibit 1, accurately describes the proposed vacation, general and specific facts about the site and area, and applicable codes. The report is incorporated herein by reference as though fully set forth.

12. On August 17, 2017, a Public Notice Memo for the September 28, 2017, hearing was placed into the glass display case in the Tacoma Municipal Building outside the Finance Department, and posted on two yellow public notice signs, on an A-Board frame, at the southeasterly corner of South 45<sup>th</sup> Street and South Adams Street, at least 30 days prior to the hearing, as required by Tacoma Municipal Code (TMC) 9.22.060. In addition, the Public Notice Memo was advertised on the City of Tacoma web site and in the Tacoma Daily Index, as well as on Municipal Television Channel 12. Lastly, the Public Notice was mailed to all parties of record within 1,000 feet of the vacation request. *Cornforth Testimony; Ex. 1.*

13. No members of the public appeared at the hearing to testify regarding the proposed street vacation and no written opposition to the proposed vacation was filed in this case.

14. Any finding above stated which may be deemed to be properly considered a conclusion is hereby adopted as such.

**CONCLUSIONS:**

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding. *See TMC 1.23.050.A.5 and 9.22.*

2. The Hearing Examiner's role in street vacation proceedings is quasi-judicial in nature, leading to a legislative determination by the City Council when enacted by ordinance. *State ex rel. Myhre v. City of Spokane*, 70 Wn.2d 207, 218, 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 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 land-locked or 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 criteria for the vacation of street right-of-way, provided the conditions recommended herein below are imposed. The proposed vacation will facilitate economic development, while returning the vacated area to the property tax rolls. Granting the petition also serves to reduce the City's roadway maintenance obligation and expenditures. No adverse effects to the street pattern or circulation in the area or community will occur because the petitioned-for

segment is a small dead-end that serves little public purpose, if any. As such, the public has no anticipated need for use of the right-of-way. No potential for landlocking an abutting owner exists, and the provisions of RCW 35.79.035 governing areas close to bodies of water do not apply to this location.

6. Accordingly, the requested street 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 right-of-way areas. *TMC 9.22.010.*

2. TACOMA POWER

A City of Tacoma easement shall be retained over the Southerly 18 feet and the westerly 18 feet of the subject vacation area for existing electrical infrastructure for the benefit of Tacoma Power.

3. CLICK! NETWORK

This same City easement, over the southerly 18 feet and the westerly 18 feet of the subject vacation area shall be subject to use by the Click! Network for its facilities/infrastructure.

4. TACOMA FIRE

An additional City of Tacoma easement, 20-feet in width, to be used for emergency vehicle ingress/egress, shall be retained centered on South 45<sup>th</sup> Street.

5. PUBLIC WORKS/LID

The City's Public Works Department, LID section provided an advisory comment for the Petitioner that there currently is an in-lieu of assessment for sanitary sewer in the amount of \$1,382.27, which can be voluntarily paid at the time the vacation compensation is paid to the City, or can be paid with permitting fees at the time the property is redeveloped.

**B. THIRD PARTY COMMENTS FOR THE RECORD:**

1. PUGET SOUND ENERGY

Puget Sound Energy (PSE) reported having no objection to the petitioned-for vacation; provided its existing infrastructure is protected by an independent easement. PSE will pursue obtaining this easement from the Petitioner on its own. RPS has offered to hold any such agreed-upon easement for the Petitioner and PSE to be recorded in proper sequence with the vacation ordinance.

2. CENTURY LINK

Century Link has no objection to the petitioned-for vacation; provided its existing infrastructure is protected by an independent easement. As with PSE above, Century Link will pursue obtaining this easement from the Petitioner on its own, and RPS has offered to hold any such agreed-upon easement for the Petitioner and Century Link to be recorded in proper sequence with the vacation ordinance.

**C. 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) in such development plans, proposals, or conditions of approval imposed shall potentially be subject to the review of the Hearing Examiner and may require further and additional hearings.
2. The approval recommended 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 recommendation herein made, and is a continuing requirement of any resulting approvals. By accepting any resulting approvals, the Petitioner represents that the development and activities facilitated by the vacation will comply with such laws, regulations, and ordinances. If, during the term of any 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 the conditions set forth in Conclusion 6 above.

8. Any above stated conclusion which may be deemed to be properly considered a finding is hereby adopted as such.

**RECOMMENDATION:**

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

**DATED** this 25<sup>th</sup> day of October, 2017.

  
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**JEFF H. CAPELL, 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 issued 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 that 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.