



City of Tacoma  
Hearing Examiner

May 27, 2015

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City of Tacoma, Real Property Services  
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(Inter-office and Electronic Mail Delivery)

Re: File No. HEX 2015-008 (Street Vacation Petition No.124.1351)  
Petitioner: Narrows Marina, 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 May 14, 2015.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1) – HEX Report and Recommendation

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HEX 2014-008 (124.1351 Narrows Marina, LLC)

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Warren Page, 8818 19<sup>th</sup> Street West, University Place, WA 98466-1803

Colin Ehli, 1924 88<sup>th</sup> Avenue West, University Place, WA 98466-8548

Darci Kelts and Christopher Sturman, 8814 19<sup>th</sup> Street West, University Place, WA 98466-1803

Murray Peterman, 8721 19<sup>th</sup> Street West, University Place, WA 98466-1826

Murray Peterman, 8721 South 19<sup>th</sup> Street, University Place, WA 98466-1826

Bruce Kiewall, 8932 19<sup>th</sup> Street West, University Place, WA 98466-1804

Qwest Corporation d/b/a Century Link QC, ATTN: R. Jeff Lawrey, Manager R-o-W,

Western WA, 1208 NE 64th Street, Room 401, Seattle, WA 98115

Puget Sound Energy, ATTN: Marilyn M. Danby SR/WA, Sr. Real Estate Rep., 3130 S. 38<sup>th</sup> St.,

Tacoma, WA 98409

Transmitted via E-mail Delivery

Planning and Development Services Department, City of Tacoma (Ian Munce)

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

Tacoma Power (Rick Van Allen)

Tacoma Power, T&D (Delores Stegeman)

Tacoma Power Click! (Tenzin Gyaltzen)

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

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Tony Lindgren)

Public Works Engineering/L.I.D., 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**

**TACOMA CITY COUNCIL**

**HEX FILE NO.:** HEX 2015-008 (124.1351)

**PETITIONER:** Narrows Marina, LLC

**SUMMARY OF REQUEST:**

Real Property Services has received a petition from Narrows Marina, LLC seeking to vacate the north 24 feet of the 19<sup>th</sup> Street West right-of-way, lying westerly of the Burlington Northern Santa Fe Railroad right-of-way and the terminus of City of Tacoma right-of-way, to Narrows Marina for future improvements to pedestrian access ways and boat launch parking.

**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 petition on May 14, 2015. After the hearing, the Hearing Examiner conducted a site visit, also on May 14, 2015.

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

- 1 -  
**ORIGINAL**

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

**FINDINGS OF FACT:**

1. Narrows Marina, LLC is requesting vacation of a portion of right-of-way on 19<sup>th</sup> Street West, more particularly described as follows:

The Northerly 24 feet of the following:

Beginning at the intersection of the northerly margin of 19<sup>th</sup> Street West and the westerly margin of the Burlington Northern Santa Fe railroad right of way, within the Southwest Quarter of the Southeast Quarter of Section 04, Township 20 North, Range 02 East of the W.M.; thence North 88°07'14" West a distance of 356.38 feet, more or less, to the West meander line of the W.B. Wilton D.C.; thence South 30°21'36" East, along said meander line, a distance of 35.47 feet, more or less to the centerline of 19<sup>th</sup> Street West and the city limit line of the City of Tacoma; thence South 88°05'55" East, along the 19<sup>th</sup> Street West centerline, a distance of 320.59 feet, more or less, to the westerly margin of said railroad right of way; thence North 31°08'16" East, along the westerly margin of said railroad right of way, a distance of 34.53 feet, more or less, to the Point of Beginning.

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

2. The Petitioner Narrows Marina, LLC is developing an enhanced access to the marina and boat launch area at the subject property. The project is part of a larger planning effort taking place between the site owners, the City of University Place and the City of Tacoma. *Munce Testimony*. Currently the 19<sup>th</sup> Street West right-of-way is 60 feet wide. The right-of-way-way is improved with asphalt, but has no curbs, sidewalks, or gutters. The asphalt extends into the parking area without separation. The proposed street vacation would accommodate a proposed two-way roadway with 14-foot lanes and a raised sidewalk on the south side. The plan is intended to create a more welcoming, better functioning, and safer environment for pedestrians and vehicles entering the site. *Ex. 14; Cornforth Testimony; Adams Testimony*.

3. The City acquired the right-of-way proposed to be vacated within Dedication Deed, by and between Pierce County and the City of Tacoma, referenced as City of Tacoma Deed No. 1225, filed of record on December 23, 1921, and recorded under Auditor's File Number 616759 at Volume 450 at page 424, records of Pierce County, Washington. *Ex.3*.

In November 1994, a ballot measure passed incorporating and forming the City of University Place. The common corporate boundary between the City of Tacoma and the City of University Place was set as the centerline of 19<sup>th</sup> Street West. This created a situation where the boundaries of both cities were separated by half of a right-of-way. Pursuant to statutory authorization in RCW 35.13.330, both Cities entered into an Agreement dated June 15, 1998, whereby the City of Tacoma would assume jurisdiction of the entire right-of-way of 19<sup>th</sup> Street

West and effectively adjust its corporate boundaries to the south line of the 19<sup>th</sup> Street West right-of-way. *Ex. 5; Cornforth Testimony.* The City of Tacoma adopted the agreement by Resolution Number 34014. *Ex. 6; Cornforth Testimony.*

4. The vacation of the requested portion of 19<sup>th</sup> Street West will not adversely affect the street pattern or traffic circulation in the area or in the wider community. *Cornforth Testimony.* The project is designed to more effectively and safely channel traffic accessing the Narrows Marina site and adjacent areas. The requested vacation, per se, will not increase traffic or modify the typical route of traffic in the area. *Adams Testimony.*

5. The evidence indicated the public would benefit from the proposed vacation to the extent that it would permit the unneeded right-of-way to be returned to the public tax rolls and would enhance safe pedestrian and vehicular access to the site. *Cornforth Testimony; Adams Testimony.* Narrows Marina, LLC indicated that existing parking on the site would not be reduced by the proposal. *Adams Testimony.*

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

7. There is no evidence the portion of right-of-way being proposed for vacation would be needed for an additional or different public use in the future. The City of Tacoma and the City of University Place have engaged in long-term discussions involving a master plan for the general area and believe that the street, as proposed in this vacation request, will fully serve anticipated users. *Munce Testimony.* 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 street vacation. A special easement extension benefitting condominium and apartment residents to the north, whose access is across a 15-foot private road, would be required as a condition of the street vacation to assure continued lawful access. *Cornforth Testimony; Ex 11.*

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 rights in the vacated area for utility purposes. *Exs. 7 through 10.*

11. The Petitioner Narrows Marina, LLC concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Adams Testimony.*

12. Several witnesses appeared at the hearing opposing Narrows Marina, LLC's street vacation petition. Other nearby residents who did not attend the hearing signed a petition

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

opposing the street vacation. *Ex. 15.* Many of the residents had serious concerns about future development on the site and the prospect for increased traffic in the area. People in the neighborhood like to walk in this vicinity and find the roadway leading down the hill to the railroad tracks difficult to navigate safely because it lacks sidewalks or substantial shoulders to accommodate pedestrians. People appreciate the lifestyle provided by the area and do not want to see it diminished by more people and more traffic. Other residents and owners of upland property are concerned that the Narrows Marina property will be developed with multi-story condominiums that would impact the views from existing residences. They consider the street vacation as one step in a future development project of unknown proportions. *Page, Ehli, Kelts, Sturman, Ekelson, Peterman, Kiewall, and Marshall 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.

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. 12.*

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 Narrows Marina, 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 Narrows Marina, 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 enhance the safety and function of pedestrian and vehicular access. 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 and by execution of an easement protecting existing access for nearby condominium and apartment users.

The concerns raised by neighboring residents are understandable and legitimate. They relate, however, primarily to the impacts of future development on the site, rather than to the effects of the proposed street vacation. The street vacation will not increase traffic, harm traffic flow, or reduce parking. Instead it is designed to enhance the vehicular circulation and pedestrian safety along the involved portion of 19<sup>th</sup> Street West. While the street vacation does not solve all the issues on 19<sup>th</sup> Street West as it approaches the site, the project improves the street as it crosses the Narrows Marina property. Concerns relating to future development can only be substantively addressed when such development is planned or proposed. Likewise, use of the monies being paid as part of this street vacation is an issue that falls within the purview of the Department of Public Works. Neighbors are encouraged to approach the Department of Public Works through the offered contact at Real Property Services to request that any monies from the street vacation be spent on local street improvements; however, such expenditures fall within the Department of Public Works' discretion. Overall, the issues raised by the neighbors fail to overcome the Petitioner's showing that the project complies with the standards for obtaining a street vacation contained in the Tacoma Municipal Code. *TMC 9.22.070.*

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.*<sup>1</sup>

2. PUBLIC WORKS REAL PROPERTY SERVICES

An easement extension shall be granted, to residents to the north whose accesses are derived by a 15-foot private road easement, for continued accesses over, along, and across this vacated area in order to continue lawful access to remaining City of Tacoma right-of-ways. The easement shall be executed and recorded, by the City of Tacoma, concurrently with the vacation ordinance.

3. CITY OF TACOMA

A general Utility Easement shall be reserved for the benefit of all City of Tacoma utility infrastructure over the entirety of the requested vacation area.

4. CENTURY LINK

CenturyLink has no objection; however, a separate easement shall be executed and recorded concurrently with the vacation ordinance and not as a reservation therein.

5. PUGET SOUND ENERGY

Puget Sound Energy has no objection; however, a separate easement shall be executed and recorded concurrently with the vacation ordinance and not as a reservation therein.

**B. USUAL CONDITIONS:**

1. THE RECOMMENDATION SET FORTH HEREIN IS BASED UPON REPRESENTATIONS MADE AND EXHIBITS, INCLUDING

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<sup>1</sup> Residents in the area are interested in the money being used to improve the pedestrian access on 19<sup>th</sup> Street West as it approaches the Burlington Northern Santa Fe Railroad tracks from the east. The Real Property Services Division has agreed to provide information as to how this can be requested from the City's Public Works Department.



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.

7. Accordingly, the Hearing Examiner recommends that the street vacation petition submitted by Narrows Marina, LLC be granted, subject to the conditions set forth above.

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 conditions set forth above.

**DATED** this 27<sup>th</sup> day of May, 2015.

  
**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,  
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