



City of Tacoma
Hearing Examiner

October 23, 2013

Kell McAboy, AICP
Port of Tacoma
PO Box 1837
Tacoma, WA 98401-1837

Rich Price, Real Estate Specialist
Conor McCarthy, Assistant Division Manager
Real Property Services, City of Tacoma
747 Market Street Room 737
Tacoma, WA 98402

Re: **HEX No. 2013-035 (Vacation Petition No. 124.1108)**

Petitioners: City of Tacoma and Port of Tacoma

To the Parties,

Enclosed please find a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council as the result of a public hearing held on September 26, 2013.

CERTIFICATION

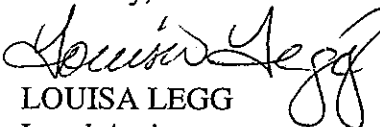
On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED October 23, 2013, at Tacoma, WA.

Louisa Legg

Sincerely,


LOUISA LEGG
Legal Assistant

Enclosure

cc: City Clerk, City of Tacoma
Legal Department, Civil Division, City of Tacoma
Environmental Services Department, City of Tacoma (Env. Svcs. Eng./Merita Trohimovich-Pollard)
Environmental Services Department, City of Tacoma (Env. Svcs. Eng./Steve Standley)
Environmental Services Department, City of Tacoma (Env. Svcs. Eng./Olivia Mathison)
Environmental Services Department, City of Tacoma (Solid Waste Mgmt./R. Coyne)
Planning and Development Services Department, City of Tacoma (BLUS/Lisa Spadoni)
Planning and Development Services Department, City of Tacoma (BLUS/Jana Magoon)
Planning and Development Services Department, City of Tacoma (Lihuang Wung)
Department of Public Works, City of Tacoma (Construction/LID/Sue Simpson)
Department of Public Works, City of Tacoma (Engineering/Joshua Diekmann)
Tacoma Fire Department, City of Tacoma (James Duggan)
Tacoma Rail, City of Tacoma (Dale King)
Tacoma Power, City of Tacoma (Dolores Stegeman)
Tacoma Water, City of Tacoma (Tony Lindgren)
Pierce County Assessor-Treasurer
Comcast, ATTN: Aaron Cantrel, 410 Valley Ave. NW, STE 12 (Bldg C),
Puyallup WA 98371
Century Link, ATTN: R. Jeff Lawrey, R-o-W Manager-WW, 1208 NE 64th Street, Rm.401,
Seattle WA 98115-6722

ORIGINAL

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE

TACOMA CITY COUNCIL

HEX FILE NO.: 2013-035 (124.1108)

PETITIONERS: City of Tacoma and Port of Tacoma

SUMMARY OF REQUEST:

The City of Tacoma ("City") requested a second public hearing for the City-initiated petition to vacate that portion of Milwaukee Way between East 11th Street and Lincoln Avenue to the Port of Tacoma ("Port"). The City agreed to vacate this section of Milwaukee Way to the Port as one of the terms of an Interlocal Agreement with the Port approved by the City Council in 1994.¹ The Hearing Examiner's Office conducted the first public hearing regarding the street vacation on January 18, 2000, and issued a Report to the City Council on January 21, 2000. The matter was not the subject of final action by the City Council in 2000 and the street vacation has not been finalized since that time.

Due to the passage of a substantial period of time since the first hearing, and changes to road infrastructure and traffic conditions in the Port that occurred during the intervening years, the City requested a second public hearing to address emergency response and traffic concerns associated with the renewed street vacation request.

RECOMMENDATION OF THE HEARING EXAMINER:

The requested vacation petition is recommended for approval subject to conditions. The vacation is recommended for approval without the Port's payment of further monetary compensation or fees to the City, pursuant to the Interlocal Agreement dated November 1, 1994, and Tacoma Municipal Code (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 September 26, 2013. The record was held open

¹ See, Ex. 3; Ordinance 25591.

for supplementation on two issues. Information supplementing the record was submitted by the City and the Port on October 18, 2013, and the record was then closed.²

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. The City of Tacoma and the Port are jointly requesting vacation of that portion of Milwaukee Way between East 11th Street and Lincoln Avenue particularly described as follows:

Milwaukee Way lying between the southerly line of the 100 foot East 11th Street right of way and the northerly line of the 160 foot Lincoln Avenue right of way, located within the South half of Section 34, Township 21 North, Range 03 East and the Northwest Quarter of Section 3, Township 20 North, Range 3 East of the Willamette Meridian.

The requested vacation will fulfill the obligations set forth in an Interlocal Agreement executed between the City and the Port in 1994 in connection with planning and construction of Highway 509. As part of the 1994 Agreement, the City agreed to vacate the above-described portion of Milwaukee Way to the Port, without charge, upon certain conditions. The Agreement further provided that the Port would fund substantial capital improvements to Tacoma Fire Department facilities in the Port area. The contemplated construction has been completed and all other conditions precedent to completion of the street vacation have been met. The Port and the City are now seeking to finalize the street vacation. *Price Testimony; McCarthy Testimony; Exs. 1, 3.*

2. Milwaukee Way is an oil mat street with gravel shoulders and is currently listed as a heavy haul route corridor. The designation as a heavy haul route corridor will need to be removed as a result of this street vacation process. The roadway had a pavement condition rating of 79 in 2007. The right-of-way width varies along the length of Milwaukee Way and it does not contain the curb, gutter or sidewalks that would be included in a fully improved street section. *Ex. 1.* Tacoma Rail owns the property to the east of Milwaukee Way and is currently leasing the area to the Port for use in container shipping.³ In the short term, the Port intends to continue using Milwaukee Way to transport containers between locations at the Port. In the long term, the Port may utilize some of the vacated area in expanding or redeveloping the cargo terminal. *Price Testimony; McAboy Testimony.*

3. A segment of Milwaukee Way is currently being used for public traffic circulation in the vicinity of Lincoln Avenue and Milwaukee Way. The City's Traffic Division contends that the circulation element in this location is important and should be preserved for public use after the street vacation by execution of a public access easement or by another suitable

² See, *Exs. 21 and 22.*

³ Tacoma Rail would obtain a property interest in the vacated roadway by operation of law. The Port, the City, and Tacoma Rail are separately resolving any issues related to the Port obtaining any such interest from Tacoma Rail.

alternative providing similar public access. *Diekmann Testimony*. The Port is in agreement with the proposal to execute a public access easement over the portion of Milwaukee Way being used for traffic circulation in connection with the "Lincoln Loop" area. *McAboy Testimony*.

4. The Tacoma Fire Chief testified expressing a concern that the vacation would eliminate important access for emergency response or evacuation unless arrangements to maintain emergency approaches are included as a condition of the street vacation. *Duggan Testimony*. The Port has expressed its willingness to comply with conditions requiring reservation of emergency access across the vacated portion of Milwaukee Way. *McAboy Testimony*.

5. The vacation of this portion of Milwaukee Way will not adversely affect the street pattern or traffic circulation in the area or in the wider community if conditions are included: (1) requiring a public access easement in the area of Milwaukee Way and Lincoln Avenue across the existing route or a suitable alternative route and (2) requiring retained access for emergency response and evacuation across vacated Milwaukee Way or a comparable alternate access.

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

7. There is no evidence the right-of-way would be needed for an additional or different public use in the future. If easements are provided for existing utilities in the vacated right-of-way and access is maintained for traffic circulation and emergency response and evacuation, public need would not be adversely affected by the vacation. *Price Testimony; Diekmann Testimony*.

8. No abutting property would become landlocked or have its access substantially impaired as a result of the requested street vacation. *Price Testimony; Ex. 1, Attached Map*.

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. *Ex. 18*.

10. The street vacation petition has been reviewed by a number of governmental agencies and utility providers. Several agencies have requested that conditions be placed on the street vacation preserving their rights for utility location and maintenance in the vacated right-of-way. *Ex. 1; Exs. 9 - 17; Ex. 19; Ex. 22*. The Port of Tacoma concurs in the conditions recommended by the commenting agencies and agrees to execute legal documents necessary to comply with the same. *McAboy Testimony*.

11. No witnesses appeared at hearing directly opposing the City and the Port's vacation petition. The Tacoma Fire Department and the City of Tacoma Public Works Department, Traffic Division presented witnesses who testified regarding conditions on the vacation that would be necessary to address their agencies' concerns.

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 (SEPA).

13. All property owners of record and adjacent to the proposed vacation were notified of the hearing date at least 30 days prior to the hearing, as required by TMC 9.22.060. Notice was mailed to 641 postal addresses within the 98421 zip code, which was intended to include all property owners and tenants in the Port area. In addition, notice was posted on the City of Tacoma website, published in the Tacoma Daily Index newspaper, and posted on signs at the site. *Price Testimony; Ex. 1, pp. 3-4.*

14. 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 land-locked 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.

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

4. The Petitioners bear the burden of proof to establish that their 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 the City of Tacoma and the Port's petition to vacate a portion of Milwaukee Way to the Port of Tacoma satisfies the legal standards for approval of vacation of rights-of-way provided the following conditions are imposed:

A. SPECIAL CONDITIONS:

1. PAYMENT OF FEES

The City of Tacoma agreed to vacate this area to the Port of Tacoma without the payment of typical street vacation fees in the Interlocal Agreement dated November 1, 1994. This agreement included other consideration benefitting the City of Tacoma, including the Port's payment of substantial sums for capital construction and improvements to Tacoma Fire Department facilities in the tideflats area. The City determined in 1994 that the terms of the agreement, including the vacation of Milwaukee Way, without payment, would benefit, and be in the best interests of the City of Tacoma. Vacation, without payment is allowed by TMC 9.22.010 and this property should be vacated to the Port without the payment of fees or further consideration in compliance with the terms of the Interlocal Agreement between the City and the Port dated November 1, 1994. *Ex. 3.*

2. ENVIRONMENTAL SERVICES

- a. An easement shall be retained over the entire vacated area for the existing sanitary and storm sewer system. The entire length of the proposed Milwaukee Way vacation contains a 60-inch diameter sanitary sewer outfall for the City of Tacoma's Central Wastewater Treatment Plant, an 18-inch diameter sanitary sewer main, and an 18-inch diameter storm sewer main. The Port of Tacoma will assume ownership of the existing 18-inch diameter storm sewer main. The City will amend the stormwater utility fee currently charged to the Port per TMC Chapter 12.08 based upon the change in ownership. *Ex. 22.*
- b. No permanent structure(s) shall be erected within the public easement area(s) unless specifically approved in writing by the City of Tacoma Environmental Services Director. Permanent structures shall include but not limited to any concrete foundation, wall, rockery, building, portable sheds, private utilities, fences, or other site improvement that will unreasonably

interfere with the need to access or construct public storm and/or sanitary sewer utilities in said easement. Permanent structures shall not mean improvements such as normal landscaping, asphalt paving, concrete road paving, gravel, or other similar site improvements that do not prevent the access of men, materials, and machinery across, along, and within the said easement area.

- c. The Port of Tacoma has requested to take over ownership of the existing 18-inch and 21-inch diameter storm sewer mains on Milwaukee Way, noted in SAP as pipe segments. 6261437, 6261123, 6263479, 6261354, 6263724, 6261036, and 6266730 and all associated appurtenances. Environmental Services will approve the change of ownership on the condition that a Consent to Encroach for the storm main is required. The consent to encroach may be a part of the easement created for the sanitary sewer mains. The document shall be completed, signed and filed with Pierce County within 15 days after the street vacation becomes effective. *Ex. 22.*
- d. The Port of Tacoma shall allow Tacoma Rail to connect into the storm main in Milwaukee Way at the request of Tacoma Rail subject to the requirements of the City of Tacoma's Stormwater Management Manual. *Ex. 22.*
- e. The Port of Tacoma shall retain and maintain all associated appurtenances to the storm main for roadway drainage purposes within the East 11th Street right-of-way. If the Port of Tacoma elects not to retain any or all of the associated appurtenances, the Port of Tacoma shall reroute the connections to a City of Tacoma storm main at the Port's expense. Reconnection shall meet all City of Tacoma standards and be approved in writing by Environmental Services prior to construction. The Port of Tacoma shall obtain all required permits for work in the City of Tacoma right-of-way. *Ex. 22.*

3. TACOMA RAIL

- a. The property to be vacated is parallel and adjacent to Tacoma Rail's South Intermodal Rail (SIM) yard. Currently, Tacoma Rail has an existing railroad track crossing in place near Lincoln Avenue.
- b. Tacoma Rail shall be granted a perpetual easement over, under, across, and through the remainder of the existing right of way for maintenance, repair, modification, and replacement of Rail facilities to include the above mentioned crossing.

- c. The easement shall include unlimited access to the easement area, as well as provide for access to Tacoma Rail's property as necessary to allow for its railroad operations.
- d. To avoid conflicts with existing facilities and access, Tacoma Rail shall have review and approval rights for any proposed improvements within the easement area.
- e. Any relocation or adjustment of existing Tacoma Rail infrastructure requested by the Port shall be done by Tacoma Rail at the expense of the Port of Tacoma.
- f. Tacoma Rail shall not be responsible for restoration of Port improvements within the easement area as a result of its maintenance or construction activity.
- g. Damage to any Tacoma Rail facilities within the easement area by the Port of Tacoma or their lessee shall be repaired by Tacoma Rail at the expense of the Port of Tacoma.
- h. Any equipment which can be used to load shipping containers from trucks onto rail cars shall be prohibited.

4. TACOMA WATER

- a. The requested vacation area contains major trunk mains which supply fire and domestic service to the tide flats industrial area and Northeast Tacoma. This includes a 24 inch steel main in Milwaukee Way.
- b. Tacoma Water shall have a perpetual easement over, under, across, and through the existing right of way for maintenance, repair, construction, modification, and replacement of existing and future Tacoma Water facilities.
- c. The easement shall include unlimited access to the easement area.
- d. To avoid conflicts with existing facilities and access, Tacoma Water shall have review and approval rights for any proposed improvements within the easement area.
- e. Any relocation or adjustment of existing Tacoma Water infrastructure requested by the Port shall be done by Tacoma Water at the expense of the Port of Tacoma.

- f. Tacoma Water shall not be responsible for restoration of Port improvements within the easement area as a result of its maintenance or construction activity.
- g. Damage to any Tacoma Water facilities within the easement area by the Port of Tacoma or their lessee shall be repaired by the Tacoma Water at the expense of the Port of Tacoma.
- h. No permanent structures shall be placed within the easement area.
- i. Due to the potential for damage to Tacoma Water underground infrastructure, no heavy equipment shall be used within the easement area that exceeds legal load requirements in place at the time of the street vacation.
- j. No grading shall be allowed within the easement area without prior consent of Tacoma Water. No removal of material over Tacoma Water infrastructure will be allowed which will produce a depth of cover of less than 3 feet. No filling over Tacoma Water infrastructure shall be allowed which will produce a depth of cover of greater than 5 feet.

5. TACOMA POWER

- a. Tacoma Power has significant overhead and underground infrastructure in the area, specifically within the current right of way. This infrastructure serves properties adjoining Milwaukee Way and beyond.
- b. Tacoma Power shall have a perpetual easement over, under, across, and through the existing right of way as currently described for maintenance, repair, modification, and replacement of its transmission and distribution infrastructure.
- c. The easement shall include unlimited access to the easement area at all times.
- d. To avoid conflicts with existing facilities and access, Tacoma Power requests review and approval rights for any proposed improvements within the easement area.
- e. Any relocation or adjustment of existing Tacoma Power infrastructure requested by the Port shall be done by Tacoma Power at the expense of the Port of Tacoma.

- f. Tacoma Power will not be responsible for restoration of Port improvements within the easement area as a result of its maintenance or construction activity.
- g. Damage to any Tacoma Power facilities within the easement area by the Port of Tacoma or their lessee shall be repaired by the Tacoma Power at the expense of the Port of Tacoma.
- h. No permanent structures shall be placed within the easement area.
- i. Tacoma Power shall have the right to place and modify Tacoma Power facilities, including overhead and underground structures, wires, conduits, cables, and appurtenant equipment with the easement area without prior approval of the Port.

6. TACOMA FIRE DEPARTMENT

- a. Fire Department administrative staff agreed to the Port of Tacoma's proposal to vacate Milwaukee between 11th Street and Lincoln Avenue fifteen years ago, before several subsequent Port sponsored projects further reduced the street network within the Port area while increasing rail and truck traffic on the remaining roadway.
- b. Because of the previous agreement and because the Port used its awareness of the agreement to plan subsequent Port development, Fire cannot reasonably refuse to support completion of the vacation process.
- c. However, it is apparent to Tacoma Fire that the Port's development plans have led to a shortage of usable transportation corridors within the Port and its vicinity. Those corridors are needed for timely emergency response and for evacuation. As a condition of the vacation, the Port shall allow access across the vacated portion of Milwaukee Way for emergency response and evacuation or provide access across an acceptable alternative corridor for those purposes.

7. PUBLIC WORKS / ENGINEERING DIVISION / LID

The parcel has been partially assessed for sewer. An In Lieu sewer assessment fee for sanitary sewer is due in the amount of \$12,273.66.

8. COMCAST

Comcast is currently attached to Tacoma Public Utility's poles throughout the vacation limits. Comcast's easement is currently protected under the Master Pole Agreement with TPU and the Cable Act.

9. CENTURY LINK COMMUNICATIONS

- a. Century Link has facilities in the area addressed by this action and shall retain any and all rights to remain in said area and to add facilities in the future as needed.
- b. The provisions of the vacation shall retain Century Link's rights by means of an easement containing explicit language granting to "Qwest Corporation d/b/a QC and its successors" rights that will cover its existing and future facilities.
- c. The easement shall contain a notation stating that Century Link shall have 24/7 access to all equipment, and "no cargo containers shall be stacked on top of vault lids.

10. PUBLIC WORKS/ENGINEERING DIVISION/PLANNING

- a. The City Public Works Engineering Division has reviewed the Applicant's proposed street vacation request for a portion of Milwaukee Way lying between East 11th Street and Lincoln Avenue. The proposal was reviewed in 2000 with limited conditions. Since then, there have been substantial changes to the City's arterial street system serving the Port-area properties which warrant revisions to the previously recommended conditions of approval. In 2011, the Lincoln Avenue Grade Separation was constructed to eliminate rail and car conflicts. As a result, the overpass limits access to Lincoln Avenue from Milwaukee Way. By vacating Milwaukee Way north of Lincoln Avenue, the proposal creates a dead end, adversely impacting an arterial and heavy haul route.
- b. The applicant shall provide a public roadway connection from Milwaukee Way to Lincoln Loop Road. The roadway shall be designed to accommodate truck traffic commensurate with its anticipated role as a heavy haul route. The roadway could include providing a public easement over the private drive that connects Lincoln Loop Road to Milwaukee Way or improving the roadway adjacent to the Lincoln Avenue Grade Separation. If the roadway is not a public right-of-way maintained by the

City, the easement shall specifically allow Heavy Haul traffic, and must stipulate that the owner maintain the roadway in a condition suitable to support heavy-haul traffic. Construction of the new public roadway connection may require a Work Order.

c. The following amendments to the Tacoma Municipal Code shall be required within 180 days of approval of the proposed vacation:

- Delete Milwaukee Way between Lincoln Avenue and East 11th Street from TMC 11.05.540 Forty miles per hour limit – Streets designated.
- Delete Milwaukee Way between Lincoln Avenue and East 11th Street from TMC 11.55.020 Defined Terms that identifies this section as a “Heavy Haul Industrial Corridor.”
- In the case that the alternate street connection is a Public Highway as defined in TMC 11.55.020, the new connection between Lincoln Loop Road and Milwaukee Way, and Lincoln Loop Road, shall be described in TMC 11.55.020.C.

11. PORT OF TACOMA FIBER OPTIC NETWORK

- a. The Port of Tacoma fiber optic network has franchise rights that include a 5.0 foot wide strip of land lying within the Milwaukee Way right-of-way. This area may fall within the ownership of Tacoma Rail by virtue of the vacation of Milwaukee Way. The Port is negotiating with Tacoma Rail to obtain ownership of the entire right of way being vacated, however, the final agreement has not been completed. *Ex. 21.* In order to protect the Port’s interest in its fiber-optic network, an easement shall be executed in favor of the Port covering the 5.0-foot strip of land and allowing its use for the Port’s fiber optic system.
- b. The City will work with the Port of Tacoma to adopt a new Ordinance amending Ordinance No. 28016 relating to cable communications and franchise services based on the change in ownership. *Ex. 22.*

12. MISCELLANEOUS

The applicant shall comply with all City regulations for any future use of the subject site.

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

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 PETITIONERS REPRESENT 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 PETITIONERS AGREE TO PROMPTLY BRING SUCH DEVELOPMENT OR ACTIVITIES INTO COMPLIANCE.
6. The Hearing Examiner recommends that the street vacation petition submitted by the City of Tacoma and the Port of Tacoma be granted subject to the conditions set forth above.
7. 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. This vacation is recommended for approval without the payment of further monetary compensation or fees to the City, pursuant to the terms of the Interlocal Agreement dated November 1, 1994, and TMC 9.22.010.

DATED this 23rd day of October, 2013.


PHYLLIS K. MACLEOD, Hearing Examiner

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**

ORIGINAL