



City of Tacoma  
Hearing Examiner

November 9, 2018

**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 November 9, 2018, at Tacoma, WA.

*Aundrea Meyers*

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**Re: HEX2018-024 (Street Vacation Petition No. 124.1392)**  
**Petitioner: Connelly Family Properties**

Dear Parties:

Please find enclosed a copy of Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council entered on November 9, 2018, as the result of a public hearing held on November 1, 2018.

Sincerely,

*Aundrea Meyers*

Aundrea Meyers  
Office Assistant

Transmitted via Electronic Mail Delivery

CenturyLink/Pamela Haines, ROW Agent II, Network Real Estate  
Comcast, Planning & Design/Aaron R. Cantrell  
Puget Sound Energy, Inc./Megan Holt SR/WA, Sr. Real Estate Rep.  
Pierce County Assessor-Treasurer, Commercial Dept./Darci Brandvold  
Legal/Steve Victor, Deputy City Attorney  
Tacoma City Clerk's Office/Nicole Emery, Administrative Assistant  
Tacoma Fire Dept., Prevention Division/Chris Seaman, P.E.  
Tacoma Public Utilities (Power, Water, & Click! Network)/Gregory Muller, Real Estate Officer  
Environmental Services, Solid Waste Management/Morgan Jones, Office Administrator  
Tacoma Police Dept., Police Operations Bureau/Shawn Stringer, Police Captain  
Public Works/LID, City of Tacoma/Ronda Cornforth  
Public Works, City of Tacoma/Jennifer Kammerzell, Sr. Eng.  
CEDD, City of Tacoma/Gloria Fletcher, Business Development Mgr.

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** Connelly Family Properties, LLC

**FILE NO:** HEX2018-024 (124.1392)

**SUMMARY OF REQUEST:**

Real Property Services received a petition from Connelly Family Properties, LLC, a Washington limited liability company (the “Petitioner”), initially seeking the vacation of a portion of North 30<sup>th</sup> Street and North Carr Street,<sup>1</sup> at the northwest intersection thereof, abutting and adjacent to commercial property addressed as 2301 North 30<sup>th</sup> Street, as depicted in Exhibits 2, 3 and 4 of the City’s hearing exhibits. If vacated, the area of former right-of-way will be absorbed back into the abutting commercial property curing an existing encroachment resulting from a 1983 alteration to the structure of the adjacent building.

**RECOMMENDATION OF THE HEARING EXAMINER:**

The vacation petition is hereby recommended for approval, subject to conditions, as set forth below.

**PUBLIC HEARING:**

After reviewing the Preliminary Report (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 November 1, 2018. The City of Tacoma (the “City”) was represented by Ronda Cornforth of RPS. Jennifer Kammerzell of Public Works, Traffic Engineering (“PWTE”), and Elliott Barnett of Planning and Development Services (“PDS”) also testified for the City. The Petitioner was represented by Karsen Kever of Jon Graves Architects and Planners, PLLC. The record closed finally after RPS submitted Exhibit 17, which was referenced at the hearing, but not submitted prior.

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<sup>1</sup> Per the testimony of Ronda Cornforth and Karsen Kever at the hearing, the portion of North Carr Street for which vacation was initially sought has been dropped from the petition after concerns were expressed from other City staff.

**ORIGINAL**



**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

**FINDINGS:**

1. The Petitioner, Connelly Family Properties, LLC (the “Petitioner”),<sup>2</sup> has petitioned for the vacation of an approximately 4-foot wide by approximately 45-foot long portion of the North 30<sup>th</sup> Street right-of-way, beginning from the northwest corner of the intersection of North 30<sup>th</sup> Street with North Carr Street (the “Vacation Area”). The Vacation Area abuts and is adjacent to commercial property addressed as 2301 North 30<sup>th</sup> Street. The Vacation Area is legally described as follows:

Commencing at the Southeast corner of Block 6, Map of Tacoma City, according to the Plat thereof recorded in Volume 1 of Plats, Page 10, in Pierce County, Washington;  
Thence South 89°40’51” West, along the Northerly margin of North 30<sup>th</sup> Street and the Southerly line of said Block 6, a distance of 3.06 feet to the True Point of Beginning;  
Thence continuing South 89°40’51” West a distance of 47.26 feet;  
Thence South 00°54’55” West a distance of 3.69 feet;  
Thence South 89°47’34” East a distance of 43.44 feet;  
Thence North 43°18’24” East a distance of 5.65 feet to the True Point of Beginning.

All situate in the City of Tacoma, County of Pierce, State of Washington; within the Southeast Quarter of the Southeast Quarter of Section 30, Township 21 North, Range 03 East of the Willamette Meridian.

*Cornforth Testimony; Exs. 1~4.*

2. North 30<sup>th</sup> Street, originally platted to as Second Street, was dedicated to the public on December 3, 1869 by plat dedication and recorded in the Map of Tacoma City plat, filed with the Pierce County Auditor. North 30<sup>th</sup> Street was originally platted as an 80-foot wide right-of-way. *Cornforth Testimony; Ex. 1, Ex. 9.*

3. After being platted, North 30<sup>th</sup> Street was fully improved in 1962 with revisions to segments of the sidewalk and ADA ramps in 2003. North 30<sup>th</sup> Street remains fully improved with curb, gutter, sidewalks, grassy planter strip, and landscaping, and is in relatively good condition. The Vacation Area is located behind the vegetated buffer and is currently occupied by an existing structure. The

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<sup>2</sup> At the hearing, Cornforth informed the Examiner that the actual petitioner should be 2301 North 30<sup>th</sup>, L.L.C. according to a title report that is not part of the record, and that this entity was, in fact, the adjacent property owner with standing to petition. The City’s govME map, oddly enough, has no information on the record owner of the adjacent property at 2301 North 30<sup>th</sup> Street. The Pierce County Assessor shows “Connelly Family Properties” [sic] as the taxpayer. Typically, the listed taxpayer for a parcel of real property is also the owner of record. As a further complication, 2301 North 30<sup>th</sup>, L.L.C. is listed currently as “inactive” with the Secretary of State. It would be difficult at best for an inactive LLC to champion a vacation petition. As a result, the Examiner has maintained Connelly Family Properties, LLC as the Petitioner.

general transformation of the structure between 1978 and the present is evidenced by a historic photo obtained from the Tacoma Public Library and a 2017 Google Earth photo submitted by RPS. *Cornforth Testimony; Ex. 1, Ex. 13.*

4. If vacated, the Petitioner intends to absorb the Vacation Area into its adjacent property to cure an encroachment of a portion of the building. The City concedes that the encroachment was approved by City permitting, and constructed in an alteration to the structure in 1983. *Cornforth Testimony; Ex. 1, Ex. 5, Ex. 6, Ex. 8.* In its initial petition, the Petitioner suggested that the encroachment may date much longer back to improvements that were constructed in 1918. *Keever Testimony; Ex. 17.* For purposes of this Report and Recommendation, the existence of the encroachment is more germane than when it was created, however.

5. This vacation petition has been reviewed by a number of governmental agencies, City departments/divisions, and utility providers. Their comments and concerns have been addressed, or are being addressed through any conditions required herein. *Cornforth Testimony; Ex. 1, Ex. 15, Ex. 16.*

6. No members of the public appeared at the hearing in opposition to the petitioned-for vacation. Although not in opposition to the petition, the City staff members referenced above appeared and testified at the hearing. PWTE had earlier been concerned about vacating the portion of right-of-way on North Carr Street. With that portion of the right-of-way being removed from the petition, PWTE's concerns had been obviated. *Kammerzell Testimony.* PDS expressed concern over this petition creating a policy "precedent" that would bind the City into having to approve permits for improvements that encroach into the right-of-way, and wanted that concern on the record, but was not opposed to this particular petition being granted. *Barnett Testimony.*

7. No abutting property becomes landlocked by the proposed vacation, nor will any access be substantially impaired if this vacation is granted since the Vacation Area is not currently being used for, nor is it needed for right-of-way purposes. *Cornforth Testimony; Ex. 1, Ex. 2, Ex. 3, Ex. 4.*

8. The petitioned-for vacation area neither abuts, nor is proximate to a body of water and, thus, the provisions of RCW 35.79.035 are not implicated. *Cornforth Testimony; Ex. 1.*

9. 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*), and so no environmental study was warranted.

10. RPS' Preliminary Report, which is 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. To the extent that any content of the Report is in conflict with this Report and Recommendation, the provisions of this Report and Recommendation shall control.

11. Public notices were given at least thirty (30) days prior to the hearing, as required by Tacoma Municipal Code ("TMC") 9.22.060. On or about September 29, 2018, a yellow public notice sign was posted at the subject right-of-way, in the planter strip of North 30<sup>th</sup> Street immediately adjacent

to 2301 North 30<sup>th</sup> Street. Subsequently, on September 29, 2018, a Public Notice Memo for the November 1, 2018 hearing was placed into the glass display case in the Tacoma Municipal Building outside the Finance Department. Additionally, 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, Public Notice was mailed to all owners of record within 1,000 feet of the vacation request also on or around September 29, 2018. *Cornforth Testimony; Ex. 1.*

12. No written opposition to the proposed vacation was received in this case.

13. Any finding above, which may be more properly deemed or considered a conclusion, is hereby adopted as such.

### **CONCLUSIONS:**

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding to conduct a hearing and make a recommendation to the City Council. *See TMC 1.23.050.A.5 and TMC 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 that is 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. The [petitioned-for] right-of-way vacation shall not adversely affect the street pattern or circulation of the immediate area or the community as a whole.
3. The public need shall not be adversely affected.
4. The petitioned-for right-of-way is not contemplated or needed for future public use.
5. No abutting owner becomes landlocked or access will not be substantially impaired; i.e., there must be an alternative mode of ingress and egress, even if less convenient.
6. The petitioned-for vacation of right-of-way shall not be in violation of RCW 35.79.035.

TMC 9.22.070.<sup>3</sup>

4. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets 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 minimal conditions recommended herein below are imposed and met. Because the Vacation Area is occupied by building improvements, the petitioned-for vacation will have no effect on the street pattern or circulation of traffic, nor will it affect the City's right-of-way needs or goals, and as such the Vacation Area is easily ceded to the underlying fee owner of the property—the Petitioner. No potential for landlocking an abutting owner exists from granting the petition, and the provisions of RCW 35.79.035 governing areas close to bodies of water do not apply to this location. Finally, at least some public benefit is achieved through the vacation area being added back to the property tax rolls.

6. Accordingly, the requested street vacation should be approved subject to the following conditions:

**A. SPECIAL CONDITION:**<sup>4</sup>

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.*

**B. USUAL CONDITIONS:**

1. The recommendation set forth herein is based upon representations made and exhibits, including any development plans and proposals, submitted at the hearing conducted by the Hearing Examiner. Any material change(s) in any such development plans, proposals, or conditions of approval imposed

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<sup>3</sup> For consistency, outline numbering is kept the same as in the original TMC text.

<sup>4</sup> Section J. of the Report (Recommended Conditions of Approval) contains three (3) paragraphs. At the hearing, it was determined that paragraphs 2 and 3 are not actually conditions needing to be met before the City Council can act on this vacation petition. Rather, paragraphs 2 and 3 were included more in the nature of placeholders for PWTE and PDS to express their concerns. PWTE's concern was addressed by the removal of the North Carr Street portion of right-of-way from the present petition. PDS' concern over this petition becoming precedent for similarly situated future actions has no basis in codified law or case law so there is no cause for PDS to feel that the City will be bound in future actions by the City Council's determination here.



shall potentially be subject to the review of the Hearing Examiner and may require additional review and 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 any development or other activities facilitated by the vacation will comply with such laws, regulations, and ordinances. If, during the term of any approval granted, any development or other 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 NOTE:**

1. Other than those concerns already set forth herein, no objection or additional comment was received from PWTE; PDS, Planning Division; Environmental Services, Solid Waste; Tacoma Fire; Tacoma Police; Comcast Communications; CenturyLink; Pierce Transit; Puget Sound Energy; Public Works, LID; Tacoma Water; Click! Network; and Tacoma Power.
2. There is currently an in-lieu of assessment against the Petitioner's property for sanitary sewer outstanding in the amount of \$1,394.00 that can be paid at the time of the City Council's decision on this petition, but such payment at that time is not required. It will be required to be paid in conjunction with any future permitting on, or development of the Petitioner's real property at 2301 North 30<sup>th</sup> Street.

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 more properly deemed or considered a finding, is hereby adopted as such.

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**RECOMMENDATION:**

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

**DATED** this 9<sup>th</sup> day of November, 2018.



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**JEFF H. CAPELL, Hearing Examiner**



NOTICE

**RECONSIDERATION/APEAL 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*.**

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