



City of Tacoma  
Hearing Examiner

July 17, 2015

FIRST CLASS & ELECTRONIC MAIL DELIVERY

Baseline Engineering, Inc.  
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Jemstone, LLC  
312 South 112<sup>th</sup> Street  
Tacoma, WA 98444

**Re: File No. HEX2014-033 (Vacation Petition File No. 124.1345) Petitioner: Jemstone, LLC**

To the Parties,

In regard to the above referenced matter please find enclosed a copy of the Tacoma Hearing Examiner's (HEX) Report and Recommendation to the Tacoma City Council that is being reissued to include additional information concerning easement reservations.

**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 July 17, 2015, at Tacoma, WA.

Louisa Legg

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1) – Reissued HEX Report and Recommendation and Attachment (1) – Exhibit 12

Transmitted via Inter-office Mail Delivery: Pierce County Assessor-Treasurer

Transmitted First Class Mail Delivery

Qwest d/b/a CenturyLink QC, Attn: R. Jeff Lawrey, Manager, R-o-W, Western WA, 1208 NE 64<sup>th</sup> St.,  
Rm. 401, Seattle, WA 98115

Transmitted via E-mail Delivery

Clerk's Office, City of Tacoma (Nicole Emery); Tacoma Power (Rick Van Allen); Tacoma Fire Department (Ryan Erickson, P.E.); Tacoma Power (Dolores Stegman); Tacoma Public Utilities Real Property (Dylan Harrison); Tacoma Power (Thad Glassy); Solid Waste Management, City of Tacoma (Rick Coyne); Tacoma Water (Tony Lindgren); Public Works Engineering, City of Tacoma (Sue Simpson); Tacoma Water (Jesse Angel); Environmental Services Department, City of Tacoma (Merita Trohimovich-Pollard); Planning and Development Services Department, City of Tacoma (Lisa Spadoni/Jana Magoon); and 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:** Jemstone, LLC

**FILE NO:** HEX 2014-033 (124.1345)

**SUMMARY OF REQUEST:**

The Petitioner Jemstone, LLC (hereinafter “Jemstone”) is requesting to vacate a portion of South Proctor Street right-of-way lying southerly of South 19<sup>th</sup> Street in connection with contemplated future development.

**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 conducted a public hearing on the petition on January 8, 2015. The original Findings of Fact, Conclusions of Law, and Recommendation in this matter was issued by the Hearing Examiner on January 12, 2015. Subsequently, the matter was pulled from the City Council Agenda while the parties further examined the issue of utility easements connected with the vacation. The City submitted a memorandum to the Hearing Examiner on July 15, 2015, addressing the issue of easement reservations, which was included in the record as Exhibit 12. Based upon the submission of Exhibit 12, modifications to the utility easement reservations were made and the Hearing Examiner’s Recommendation is now being reissued.

**ORIGINAL**



**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

**FINDINGS:**

1. The Petitioner Jemstone, LLC (hereinafter “Jemstone”) is requesting to vacate a portion of South Proctor Street right-of-way lying southerly of South 19<sup>th</sup> Street. The area sought to be vacated is more particularly described below:

All that portion of South Proctor Street lying southerly of South 19<sup>th</sup> Street within the Northeast and Northwest Quarters of the Northeast Quarter of Section 12, Township 20 North, Range 02 East, W.M. more particularly described as follows:<sup>1</sup>

All that portion of South Proctor Street as described in paragraph 2 of City of Tacoma Deed No. 1763 recorded under Auditor File No. 1489549, records of Pierce County Auditor, lying southerly of a line 35.00 feet South and parallel with the North line of said Section 12.

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

2. The Petitioner Jemstone is preparing the property adjacent to the proposed street vacation site for future development consistent with the terms of a Concomitant Agreement entered into with the City of Tacoma in June 2008. *Cornforth Testimony; Ex. 6.*

3. The City of Tacoma acquired the right-of-way proposed to be vacated within Special County Treasurer’s Deed, referenced as City of Tacoma Deed No. 1763, which was recorded under Auditor’s File Number 1498549, at Volume 913, Page 675, records of Pierce County, Washington. *See, Ex. 4.* The vacation of this right-of-way was previously considered by the Hearing Examiner in November 2007. *Ferguson Testimony; Ex. 5.* The proposal was not further pursued by the proponent due to an economic downturn in 2008 and the matter did not advance to the City Council. *Ex. 1.* The Petitioner was interested in moving forward with the proposal in 2013, and was advised that a new petition to vacate would be required to reactivate the proposal. The Petitioner then filed the request to vacate at issue in this proceeding. *Ex. 1*

4. The portion of South Proctor Street proposed for vacation is unimproved and does not contain curbs, gutters or sidewalks. The right-of-way does not connect to another right-of-way and does not meet the minimum right-of-way width required for a residential street. A portion of the area is being used as a private driveway to access the proposed development site. *Ex. 1; Cornforth Testimony.*

5. The vacation of this street right-of-way will not adversely affect the street pattern or traffic circulation in the area or in the wider community because the right-of-way being vacated is not being

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<sup>1</sup> Real Property Services, subsequent to the hearing held on January 8, 2015, submitted a memorandum correcting minor scrivener’s errors discovered in its Staff Report. In particular, corrections were made to the subject area’s legal description. *Ex.11.*

used for vehicular circulation and it is not adequately sized for such use in the future. *Cornforth Testimony; Ex. 1.*

6. The public would benefit from the proposed street right-of-way vacation because it would return property to the tax rolls, would provide economic, residential density and/or employment viability to the community, and would facilitate economic development. *Cornforth Testimony; Ex. 1.*

7. There is no evidence the portion of South Proctor Street proposed for vacation would be needed for an additional or different public use in the future. As long as easements are provided for utilities in the vacated right-of-way, public need would not be adversely affected by the vacation. *Cornforth Testimony.*

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

9. The portion of street right-of-way proposed for vacation does not abut a body of water and, thus, the provisions of RCW 35.79.035 are not implicated. *Cornforth Testimony; Ex. 1.*

10. The vacation petition has been joined by all owners of property abutting the right-of-way proposed to be vacated. *Cornforth Testimony.*

11. No members of the public appeared at the hearing to oppose approval of Jemstone's petition to vacate that portion of South Proctor Street right-of-way lying southerly of South 19<sup>th</sup> Street.

12. The proposed street vacation 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 certain rights in the vacated area, such as easements for utilities. Utility easements are required for City of Tacoma utilities and may be required for Century Link. *Cornforth Testimony; Exs. 1, 7-10.*

13. The Petitioner Jemstone concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Ferguson Testimony.*

14. 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)*.

15. 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.

16. All property owners of record adjacent to the proposed vacation were notified of the



January 8, 2015, hearing at least 30 days prior to the hearing, as required by *Tacoma Municipal Code (TMC)* 9.22.060 and all required posting of notices for the hearing have been accomplished. *Cornforth Testimony; Ex. 1.*

17. Any conclusion hereinafter stated which may be deemed to be properly considered a finding herein 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 TMC 9.22.*
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).*
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 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 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 TMC's criteria for the vacation of street rights-of-way, provided the conditions recommended herein are imposed. The public would experience

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

benefits from the requested vacation by returning unused property to the tax rolls and by supporting economic development. The requested street vacation does not involve right of way that is being used for traffic circulation and the street vacation would not landlock any abutting owner. The street vacation would not adversely affect the public need so long as provisions for utility easements are included as required conditions.

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

2. City of Tacoma

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

3. Century Link

Petitioner shall execute an easement over and along the northerly 10' feet of the subject South Proctor Street vacation area in favor of Century Link for future facilities, if requested.

**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.

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 hereinbefore stated which may be deemed to be properly considered a conclusion herein is hereby adopted as such.

**RECOMMENDATION:**

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

**DATED** this 17<sup>th</sup> day of July, 2015.



**PHYLLIS K. MACLEOD, Hearing Examiner**

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



## 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 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**





**TO:** Phyllis Macleod, Hearing Examiner  
**FROM:** Ronda Cornforth, Sr. Real Estate Specialist  
**SUBJECT:** **Jemstone Street Vacation Petition 124.1345  
Memorandum of Amendment**  
**DATE:** July 16, 2015

Real Property Services been been advised by legal counsel to consolidate Sections 6.A.2 and 6.A.3 to be a reservation within the Ordinance of a general City Utility Easement to read as follows:

Section 6, A.2. CITY OF TACOMA

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

The Ordinance shall read as follows:

An easement is reserved over the vacation area to the City of Tacoma for use specifically by the City's Department of Public Utilities as well as for any and all City utility purposes generally.

In the event that City utilities are relocated, formally abandoned and/or removed from the retained easement area and the easement is deemed, in the City's sole discretion, to be no longer necessary, the City shall, upon formal request, relinquish the no longer necessary easement, or any part thereof, as retained herein.

**Background:**

While it had been the Department of Utilities intent to secure additional rights for protections of future development by execution of separate documentation in lieu of reservations within the ordinance, it has since been determined by the City's legal department that such is not authorized under the provisions of the RCW35.79.030 which states in part: "The ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services." Such provision does not authorize the City to require execution of separate documentation.

**ORIGINAL**

EXHIBIT 12