



City of Tacoma  
Hearing Examiner

March 15, 2016

FIRST CLASS MAIL DELIVERY

LPI Holdings, LLC  
Attn: Nick Parodi, Principal  
2715 64<sup>th</sup> Avenue NE  
Tacoma, WA 98422-3352

Troy Stevens, Senior Real Estate Specialist  
City of Tacoma, Real Property Services  
747 Market Street Room 737  
Tacoma, WA 98402  
(Inter-office Mail Delivery)

**Re: File No. HEX 2015-049 (Vacation Petition No. 124.1361)**  
**Petitioner: LPI Holdings, 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 as a result of public hearing proceedings conducted on March 3, 2016.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1) – HEX Report and Recommendation

cc: See *Transmittal List* (page 2)

**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 March 15, 2016, at Tacoma, WA.

March 15, 2016

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HEX 2015-049 (124.1361 – LPI Holdings, LLC)

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

Transmitted via First Class Mail Delivery

Daniel Mullerleile, 2701 61<sup>st</sup> Avenue NE, Tacoma, WA 98422-3325

Transmitted via Electronic Mail Delivery

Aaron Cantrel, Comcast

Marilynn Danby, Puget Sound Energy

Nick Neisler, CenturyLink RoW

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

Legal (Jeff Capell)

Tacoma Power, Click! Network – HFC Engineering (Vince Mounivong)

Tacoma Power, T&D Electrical Services (Rick Van Allen)

Tacoma Fire Department (Chris Seaman, P.E.)

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Jesse Angel)

Tacoma Water, Water Supply (Stuart Vaughan, P.E.)

Public Works/Real Property Services, City of Tacoma (Sue Simpson)

Public Works/Site and Building Division, City of Tacoma (Bonnie McLeod)

Public Works/Engineering Division, City of Tacoma (Jennifer Kammerzell)

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 CITY COUNCIL**

**PETITIONER:** LPI Holdings, LLC

**FILE NO.:** HEX 2015-049 (124.1361)

**SUMMARY OF REQUEST:**

A petition to vacate the unimproved alley lying easterly and abutting Norpoint Way Northeast, and lying between 28<sup>th</sup> Street NE and 29<sup>th</sup> Street NE, for use in a multi-family residential 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 March 3, 2016. After the hearing the Hearing Examiner made a site visit on March 4, 2016.

**ORIGINAL**

## **FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

### **FINDINGS:**

1. LPI Holdings, LLC, (LPI) is requesting vacation of the unimproved alley lying easterly and abutting Norpoint Way Northeast, and lying between 28<sup>th</sup> Street NE and 29<sup>th</sup> Street NE, for use as part of a multi-family residential development. The area to be vacated is more particularly described below:

That portion of the Southeast quarter of the Northwest quarter of Section 25, Township 21 North, Range 03 East, W.M., more particularly described as follows:

The alley abutting Lots 1 through 18, inclusive, Block 13, of Northeast Tacoma, Pierce County, Washington as recorded in Volume 8 of Plats at Pages 18 and 19, records of Pierce County Auditor.

EXCEPTING therefrom the Westerly 10 feet of said Block 13 as conveyed to the City of Tacoma by Deeds recorded under Auditor's File Numbers 2087836 and 2109242, records of Pierce County, Washington.

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

*Ex. 1.*

2. Petitioner LPI requests vacation of this alley to facilitate development of a multi-family housing project on the site. *Ex. 1; Stevens Testimony.*

3. The City of Tacoma acquired the alley right-of-way proposed to be vacated within the plat of Northeast Tacoma, Pierce County, Washington, originally on March 24, 1906. The area was replatted on December 7, 1911.<sup>1</sup> *Ex.1; Stevens Testimony.*

4. The alley area is unimproved, as are the adjacent lots. The alley is mostly level and contains a combination of grass and fairly dense vegetation. The alley slopes downward at the west end as it approaches Norpoint Way NE. The property is located at the corner of a busy intersection at Norpoint Way NE and 29<sup>th</sup> Street NE *Ex. 1; Stevens Testimony.*

5. The vacation of the proposed section of alley 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 used for vehicular circulation currently and is not well positioned for such a use in the future. *Ex. 1; Stevens Testimony.*

6. The public would benefit from the proposed alley right-of-way vacation by returning the property to the tax rolls. The alley vacation would allow productive use of unneeded City right-of-way.

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<sup>1</sup> The plat was replatted to correct certain blocks and tracts; however, the subject alley was not one of the areas modified. *Stevens Testimony.*

It will also facilitate construction of a multi-family residential development that will provide increased housing opportunities in the area. *Ex. 1; Stevens Testimony; Parodi Testimony.*

7. There is no evidence the alley right-of-way proposed for vacation would be needed for an additional or different public use in the future. *Ex. 1; Stevens 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 alley right-of-way. *Ex. 1; Stevens Testimony.*

9. The portion of alley 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. *Ex. 1; Stevens Testimony.*

10. Daniel Mullerleile, a neighbor, appeared at the hearing to oppose the project. He lives on 61<sup>st</sup> Avenue NE, which abuts the east side of the project site. He is concerned that traffic from a multi-family development will be a problem in this location. The nearby intersection often becomes jammed during peak traffic hours and the addition of more traffic would aggravate the situation. He is also concerned about the impact of a multi-family complex on nearby single-family residences. He would prefer to see the property developed with homes to more closely maintain the single-family character of the neighborhood. *Ex. 17; Mullerleile Testimony.* Nick Parodi, of Petitioner LPI, indicated that the planned complex would include 40 units that would use 61<sup>st</sup> Avenue NE for ingress and egress. The rents would be affordable, but not low-income. Fulcrum Real Estate Services, an experienced management company, will manage the complex and will employ high standards to preserve the community. A rezone will be needed to accommodate the planned development. *Parodi Testimony.*

11. The proposed alley vacation has been reviewed by various City departments and outside quasi-governmental agencies. The reviewing entities have not raised any objection to the project, although some have submitted advisory comments regarding the project. *Stevens Testimony; Exs. 4 through 14.*

12. Petitioner LPI concurs in the condition recommended by Real Property Services regarding payment for the appraised value of the property being vacated and agrees to comply with the same. *Parodi 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. 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.

15. A Public Hearing Notice for the March 3, 2016, hearing, was posted 130 feet south of the southeast corner of the intersection of Norpoint Way NE and 29<sup>th</sup> Street NE on January 27, 2016, 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. The Public Notice was also published in the Tacoma Daily Index, posted at locations within the Tacoma Municipal Building, advertised on TV Tacoma, and mailed to all parties of record within 500 feet of the vacation request. *Ex. 1; Stevens Testimony.*

16. Any conclusion which may be deemed properly considered a finding 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).* The Petitioner must demonstrate by a preponderance of the evidence that its vacation request conforms to the applicable criteria. *See TMC 1.23.070.*

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. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested alley right-of-way vacation conforms to the TMC's criteria for the vacation of rights-of-way, provided the conditions recommended herein are imposed. The public would benefit from the alley vacation because it will help facilitate private development of affordable housing

in the area.<sup>2</sup> The alley vacation will allow valuable use of unneeded City right-of-way and will return the property to the tax rolls. Neighbors' legitimate concerns about the density of the proposed development and neighborhood compatibility are more appropriately addressed as part of any rezone application for the residential complex. The criteria governing right-of-way vacations are focused on the attributes of the property being vacated, rather than on evaluating the impacts of a future development proposal on the neighborhood's character. The requested alley vacation does not involve right-of-way that is being used for traffic circulation and the right-of-way will not be needed for future public use. The proposed vacation would not landlock any abutting owner and the provisions of RCW 35.79.035, relating to right-of-way vacations near water bodies, are not applicable.

5. Accordingly, the requested vacation covering this segment of alleyway should be approved subject to the following conditions:

**A. SPECIAL CONDITION:**

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*.

**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

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<sup>2</sup> The term "public benefit" as used in the street vacation context is construed broadly and may include the enrichment of the local economy, the facilitating of the providing of goods and services to the community, and increasing property tax revenues. *Banchemo v. City Council of Seattle*, 2 Wn. App. 519, 524, 468 P.2d 724 (1970).

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.

**C. ADVISORY COMMENTS:**

1. REAL PROPERTY SERVICES/IN-LIEU

Real Property Services has no objection; however, the property has been partially assessed for sanitary sewer. An in-lieu of assessment fee is not currently applicable. When use of the property changes, it will be determined at that time.

2. PUBLIC WORKS/TRAFFIC ENGINEERING

a. Traffic has no objection; however, the proposed vacation is subject to the following advisory comments:

1) Direct vehicular access for parcel 6350000900 will not be allowed on 29th Street NE due to the proximity of the intersection. Future limited or restricted access may be allowed on Norpoint Way and will be assessed during the time of development.

2) Limited and restricted vehicular access for parcel 6350000890 on 29th Street NE may be allowed and will be assessed during the time of development.

3) Cross access easement is recommended to serve parcels 6350000900 and 6350000890 from 61st Avenue NE.

3. OTHER AGENCIES

No objection or additional comment was received from PDS/Site Review, Tacoma Fire, Comcast, Tacoma Water Supply, Tacoma Water (Distribution), Click! Network, Puget Sound Energy and CenturyLink.

6. Based upon the facts and the governing law, the vacation petition should be granted, subject to conditions set forth in Conclusion 5 above.

7. Any finding hereinbefore stated deemed to be properly considered a conclusion is hereby adopted as such.



**RECOMMENDATION:**

The vacation request is hereby recommended for approval, subject to the conditions contained in Conclusion 5.

**DATED** this 15<sup>th</sup> day of March, 2016.

  
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**PHYLLIS K. MACLEOD, 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 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**