



City of Tacoma  
Hearing Examiner

May 2, 2018

FIRST CLASS MAIL DELIVERY & ELECTRONIC MAIL DELIVERY

John P. De Loma, Principal  
MD Designs  
3220 N 26<sup>th</sup> Street  
Tacoma, WA 98407-6204

Ronda Cornforth, Senior Real Estate Officer  
City of Tacoma Real Property Services  
747 Market Street Room 737  
Tacoma, WA 98402-3701  
(Inter-office Mail Delivery)

**Re: HEX2018-005 (Street Vacation Petition No. 124.1385)**  
**Petitioner: Buckets Johnson**

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 May 2, 2018, as the result of a public hearing held on April 26, 2018.

Sincerely,

Louisa Legg  
Office Administrator

cc: City Clerk (Clerk's Jacket)  
Mathew Managhan, 1130 N Jackson Avenue, Tacoma, WA 98406-1125

Cc: Transmitted via Electronic Mail Delivery  
Pierce County Assessor-Treasurer (Darci Brandvold)  
Legal (Steve Victor)  
Clerk's Office, City of Tacoma (Sola Wingenbach)  
Tacoma Power/T&D (Rich Barrutia)  
Environmental Services, Science & Engineering City of Tacoma (Rod Rossi)  
Public Works, City of Tacoma (Sue Simpson)  
Public Works, City of Tacoma (Jennifer Kammerze<sup>11</sup>)

**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 May 2, 2018, at Tacoma, WA.

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** Buckets Johnson, LLC

**FILE NO:** HEX 2018-005 (124.1385)

**SUMMARY OF REQUEST:**

A petition from the record owner of abutting and adjacent residential real property addressed as 7517 North 10<sup>th</sup> Street, Tacoma, Washington, to vacate that certain portion of North 10<sup>th</sup> Street right-of-way lying westerly of Jackson Avenue in the City of Tacoma, Washington.

**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, 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 April 26, 2018.

**ORIGINAL**

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

**FINDINGS:**

1. The Petitioner, Buckets Johnson, LLC, a Georgia domestic limited liability company (“Buckets Johnson” or “Petitioner”), has petitioned for the vacation of a portion of North 10<sup>th</sup> Street, lying westerly of Jackson Avenue, abutting and adjacent to residential property addressed as 7517 North 10<sup>th</sup> Street. The area proposed for vacation is more particularly described as follows:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 21 NORTH, RANGE 02 EAST OF THE WILLAMETTE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 3-INCH BRASS DISK MARKING HIGHWAY ENGINEER’S STATION (HEREINAFTER DESCRIBED AS HES) FR6 SURVEY LINE PC 0+82.58 AS SHOWN ON SR16, TACOMA: SO .23RD ST. TO NARROWS BRIDGE, SHEET 6 DATED NOVEMBER 5, 1970, AND THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 600.00 FEET FROM WHICH THE CENTER OF CURVATURE BEARS N01°16’00” EAST;

THENCE WESTERLY ALONG SAID FR6 LINE AND CURVE THROUGH A CENTRAL ANGLE OF 8°20’41” AN ARC DISTANCE OF 87.39 FEET TO A POINT MARKING HES FR6 1+69.97;

THENCE NORTH 1°16’00” EAST PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER A DISTANCE OF 16.01 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 1°16’00” EAST A DISTANCE OF 44.71 FEET MORE OR LESS TO THE SOUTH LINE OF VACATION ORDINANCE NO. 24680 BY THE CITY OF TACOMA RECORDED UNDER AUDITOR’S FILE NO. 90092402276, WHICH AMENDED CITY OF TACOMA VACATION ORDINANCE NO. 24413 RECORDED UNDER AUDITOR’S FILE NUMBER 9004020206;

THENCE NORTH 88°23’53” WEST ALONG SAID SOUTH LINE A DISTANCE OF 116.93 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 570.00 FEET, FROM WHICH POINT THE CENTER BEARS N22°14’18”E;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 5°16’10” AN ARC DISTANCE OF 52.42 FEET MORE OR LESS TO THE CENTERLINE OF VACATED CASCADE

AVENUE ACCORDING TO CITY OF TACOMA ORDINANCE NO. 26308 RECORDED UNDER AUDITOR'S FILE NUMBER 9904260633;

THENCE SOUTH 01°15'29" WEST ALONG THE SOUTHERLY PROJECTION OF SAID CASCADE AVENUE CENTERLINE A DISTANCE OF 10.10 FEET TO A POINT ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 597.84 FEET, FROM WHICH THE CENTER BEARS NORTH 28°29'16" EAST;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°45'45" AN ARC DISTANCE OF 174.91 FEET MORE OR LESS TO THE POINT OF BEGINNING;

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

(CONTAINS ±4,031 SQUARE FEET OR APPROXIMATELY 0.09 ACRES)

*Cornforth Testimony; Exs. 1 through 4.*

2. This segment of the North 10<sup>th</sup> Street right of way, also historically referred to as Olympic Boulevard and Frontage Road, has been periodically acquired by, and reconveyed to the City from, the Washington State Department of Transportation for highway development, beginning with State Road 14, then Primary State Highway 14, all of which was later expanded and renamed State Route 16. *Cornforth Testimony; Ex. 1.*

In 1987, in accordance with an existing turnback agreement, WSDOT conveyed this segment of North 10<sup>th</sup> Street back to the City by Quit Claim Deed, which is recorded under Pierce County Auditor's File Number 8704290460. *Cornforth Testimony; Ex. 1.*

3. North 10<sup>th</sup> Street is fully improved with curb, gutter, and sidewalks and is in relatively good condition in this area.<sup>1</sup> The right of way area petitioned for here is sloped and vegetated and is not being used for public traversal. *Cornforth Testimony; Ex. 1.*

Access to adjoining properties, located at 7517 North 10<sup>th</sup> Street and 1102 North Jackson Avenue,<sup>2</sup> is shared by a single improved driveway and driveway approach from North 10<sup>th</sup> Street. A portion of the petitioned-for vacation area is part of this shared driveway. This shared driveway, and its maintenance, is governed by a privately negotiated Road Maintenance Agreement dated April 19, 1990, and recorded under Pierce County Auditor's File Number 9004190490. This Road Maintenance Agreement appears to be limited only to those portions of the two owners' property not encumbered by the City's right-of-way interest. *Cornforth Testimony; Exs. 1, 3, and 5.*

<sup>1</sup> That notwithstanding, Petitioner's agent, John De Loma, testified that Petitioner intends to redo/install sidewalk in the area as part of its intended project, should the vacation be granted. *See also Exs. 8A-8C.*

<sup>2</sup> The referenced access to 1102 North Jackson Avenue is a secondary access.

4. If vacated, the Petitioner intends to include this segment of right-of-way into its plans for redevelopment and expansion of residential yard space. *Cornforth Testimony; DeLoma Testimony; Ex. 1.*

5. This vacation petition has been reviewed by a number of governmental agencies, City departments/divisions, and utility providers. None of the entities/departments consulted opposes the petitioned-for vacation. *Cornforth Testimony; Ex. 1, Ex. 6, Ex. 7.*

6. Petitioner expressed no opposition to the conditions recommended herein below. No one appeared at the hearing in opposition to the petitioned-for vacation, although two nearby area residents were present out of curiosity for the process.

7. Vacating the portion of right-of-way petitioned for would not affect the public's right to travel on North 10<sup>th</sup> Street, as currently existing, lying westerly of Jackson Avenue, and abutting and adjacent to the residential property addressed as 7517 North 10<sup>th</sup> Street because the petitioner-for segment of right-of-way is not improved for street traversal purposes at present in any event. In addition, the petitioned-for right-of-way area is not contemplated or needed for future public use as a right-of-way, nor is the general public served in any way by this sloped right-of-way segment. The petitioned-for vacation is a public benefit because 1) it will add residential square footage to real property already on the tax rolls; and 2) it will reduce the City's overall maintenance expenditures. *Cornforth Testimony; Ex. 1.*

8. No abutting property becomes landlocked by the proposed vacation, nor will any access be substantially impaired if this vacation is granted. *Cornforth Testimony; Ex. 1.*

9. The petitioner-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.*

10. 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)*.

11. 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.

12. On March 24, 2018, a Public Notice Memo for the April 26, 2018, hearing was placed into the glass display case in the Tacoma Municipal Building outside the Finance Department, and posted on two yellow public notice signs at the intersection of Jackson Avenue and North 10<sup>th</sup> Street and immediately adjacent to the 7517 North 10<sup>th</sup> Street residence along North 10<sup>th</sup> Street. These notices were given at least 30 days prior to the hearing, as required by Tacoma Municipal Code (TMC) 9.22.060. In addition, 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. *Cornforth Testimony; Ex. 1.*

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

14. 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 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 when 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 land-locked 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.*

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 criteria for the vacation of street right-of-

way, provided the conditions recommended herein below are imposed and complied with. The proposed vacation will have no effect on City right-of-way needs or goals, and as such the City's right-of-way interest is easily ceded to the underlying fee owner of the property—the Petitioner. No potential for landlocking an abutting owner exists, and the provisions of RCW 35.79.035 governing areas close to bodies of water do not apply to this location.

6. Accordingly, the requested street 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. PUBLIC WORKS/TRAFFIC ENGINEERING

Based on Public Works Traffic Engineering's comments, prior to finalization of a vacation ordinance (Second Reading), the Petitioner will be required to complete execution of a revised/amended Road Maintenance Agreement (or functional equivalent, subject to Traffic's approval), relocating or otherwise restructuring the existing shared driveway(s) at 7517 North 10<sup>th</sup> Street and 1102 North Jackson Avenue, to meet Tacoma Right-of-Way Design Manual requirements and Tacoma Municipal Code Chapter 10.14.

**B. ADVISORY COMMENT:**

PUBLIC WORKS/LID

Public Works LID Section has no objection to this petition; however, there currently is an in-lieu-of assessment for sanitary sewer in the amount of \$1,796.71. This amount may be voluntarily paid as part of the vacation proceeding, or otherwise will be required at the time of development.

**C. 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 material change(s) in such development plans, proposals, or conditions of approval imposed 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 the development and activities facilitated by the vacation will comply with such laws, regulations, and ordinances. If, during the term of any 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 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.

**RECOMMENDATION:**

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

**DATED** this 2<sup>nd</sup> day of May, 2018.



JEFF H. CAPELL, 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 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.**

#### 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**