



City of Tacoma  
Hearing Examiner

June 1, 2015

FIRST CLASS MAIL DELIVERY

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Tacoma, WA 98402  
(Inter-office Mail Delivery)

Re: File No. HEX 2015-005 (Street Vacation Petition No. 124.1344)  
Petitioners: Brad Currah and Deborah McNamara

To the Parties,

In regard to the above referenced matter please find enclosed a copy of the Tacoma Hearing Examiner's Report and Recommendation to the Tacoma City Council as the result of a public hearing held on May 14, 2015.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1) – HEX Report and Recommendation

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Tacoma Power (Rick Van Allen)

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

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Power, Transmission & Distribution New Services Engineering (John Martinson)

Tacoma Water, Water Distribution (Jesse Angel)

Public Works Engineering/L.I.D., City of Tacoma (Sue Simpson)

Public Works Engineering, City of Tacoma (Jennifer Kammerzell)

Environmental Services Department, City of Tacoma (Merita Trohimovich-Pollard)

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**

**PETITIONERS:** Brad Currah and Deborah McNamara

**FILE NO.:** HEX 2015-005 (124.1344)

**SUMMARY OF REQUEST:**

Petitioners Mr. Brad Currah and Ms. Deborah McNamara are requesting to vacate a portion of S. Stevens Street right-of-way lying northerly of South 64<sup>th</sup> Street and adjacent to their properties.

**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 May 21, 2015. After the hearing, the Hearing Examiner conducted a site visit on May 22, 2015.

**ORIGINAL**



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

### **FINDINGS:**

1. Petitioners Mr. Brad Currah (Currah) and Ms. Deborah McNamara (McNamara) are requesting to vacate a portion of S. Stevens Street right-of-way lying northerly of South 64<sup>th</sup> Street. The area to be vacated lies adjacent to their properties and is more particularly described below:

Beginning at the Northwest corner of Lot 10, Block 18, Manito Park, Pierce County, according to the Plat thereof recorded in Volume 8 of Plats at Page 82, in Pierce County, Washington; thence North 88°35'14" West, along the Westerly extended North line of said Lot 10, a distance of 70.00 feet to the Easterly line of Block 19; thence South 01°27'43" West, along the East line of said Block 19, a distance of 85 feet, more or less, to the Northerly margin of South 64<sup>th</sup> Street; thence South 88°36'11" East, along said northerly margin, a distance of 70.00 feet to the West line of said Block 18; thence North 01°27'43" East, along said west line, a distance of 85 feet, more or less to the Point of Beginning.

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

2. The Petitioners Currah and McNamara own residential properties on S. Stevens Street. The right-of-way for S. Stevens Street is essentially a dirt/gravel driveway as it reaches their properties. The driveway ends at the Currah residence and the unimproved right-of-way continues down a steep slope to South 64<sup>th</sup> Street. The Petitioners are seeking to vacate a portion of the S. Stevens Street right-of-way adjacent to their properties for enhanced driveway access and development of landscaping and garden areas. *Ex. 1; Currah Testimony; Cornforth Testimony.*

3. The City of Tacoma acquired the right-of-way proposed to be vacated by Plat filing of Manito Park on June 28, 1907, as filed record under Auditor's File Number 242895, at Volume 8, Page 82, records of Pierce County, Washington. *Exs. 1 and 4.*<sup>1</sup>

4. This portion of S. Stevens Street is unimproved, steeply sloped and does not contain asphalt, curbs, gutters, or sidewalks. This portion of S. Stevens Street right-of-way is currently functioning as a private dirt and gravel driveway to service adjoining parcels. The right-of-way, as dedicated, is 70 feet in width and does not make a through connection to South 64<sup>th</sup> Street due, in part, to a steep gradient between the proposed vacation area and South 64<sup>th</sup> Street. *Ex. 1.*

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 used for vehicular circulation. The right-of-way is not suited to future development of a through

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<sup>1</sup> The City Real Property Services Division indicated that the numbering in the staff report was not the same as the numbering on the submitted exhibits. The Exhibit numbers on the documents admitted into evidence will be used throughout this Report and Recommendation.

connection to South 64<sup>th</sup> Street due to the steep topography. *Cornforth Testimony; Currah Testimony; Ex. 1.*

6. The public would benefit from the proposed street right-of-way vacation because it would return unneeded right-of-way property to the tax rolls and diminish the City's maintenance responsibility for the right-of-way. *Cornforth Testimony; Ex. 1.*

7. There is no evidence the portion of S. Stevens Street proposed for vacation would be needed for an additional or different public use in the future. As long as provisions are made for emergency vehicle access, 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. The right-of-way is used as a driveway access to properties owned by the petitioning parties Currah and McNamara. Access to other properties would not be impacted. *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. Two members of the public appeared at the hearing to speak regarding the Currah / McNamara petition to vacate the proposed portion of S. Stevens Street right-of-way. Jeffrey Hubert, whose parents own a nearby property, questioned whether the vacation was the first step in developing the vacant property at the corner of S. Stevens Street and South 64<sup>th</sup> Street. He indicated that there is no opposition to use of the vacated property for landscaping, gardening, and driveway purposes. He has more concerns about any construction or water diversion on the undeveloped property. *J. Hubert Testimony.* William Hubert, long-time resident of the area, expressed concern over the potential use of the vacated property. If the property is used for a new residence on the undeveloped parcel, he objects. If it is used for landscaping and gardening, he is not opposed. He is experiencing problems with the alley running between his house and the undeveloped property and does not want to see additional use of that area. *W. Hubert Testimony.* In response to the Huberts' testimony, Brad Currah stated that he bought the undeveloped lot to prevent someone from building on it. He has no intent to develop the property and wants to utilize the vacated property only for the stated uses of driveway access, landscaping, and gardening. He shares the neighbors' concerns over cleaning up the area and the overgrown vegetation on the undeveloped property. *B. Currah Testimony.*

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 including conditions regarding emergency vehicle access to the existing residences. Additional agency comments address requirements for access in the case of future development. *Cornforth Testimony; Exs. 1, 5-7.*



13. Petitioners Currah and McNamara concur in the conditions recommended by the commenting agencies and agree to comply with the same. *Currah 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*.

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 May 21, 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 benefits from the requested vacation by returning unused property to the tax rolls and by reducing City maintenance obligations. 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 emergency vehicle access 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. TRAFFIC ENGINEERING

In order to provide a safe and reasonable area for the public to turnaround, an approved turnaround or cul de sac shall be required at time of development if the property is developed in the future. In addition, a driveway approach to delineated private property from public right of way shall be required at time of development. Blocking the right of way, such as installing a gate or fence, shall not be allowed without proper turnaround.

3. TACOMA FIRE

Tacoma Fire has no objection; however, the Tacoma Fire Department's access to the sites fronting the vacation area must be maintained. The



construction of any gate or barricade that restricts or modifies access to the sites fronting the vacation area requires a building permit and Tacoma Fire Department approval.

**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.

**C. ADVISORY COMMENTS:**

1. PUBLIC WORKS/L.I.D.

There is no connection charge in lieu of assessment for sanitary sewer at this time. The properties to the west of S. Stevens Street have not been assessed, as they do not abut a sanitary sewer main. Development plans would be required to determine how the westerly properties would be served.



2. TRAFFIC ENGINEERING

Traffic Engineering recommends that the overgrown vegetation along 6250 S. Stevens Street be removed to allow for better vehicular access and clearance.

3. TACOMA FIRE

- a. In the case of future development, the addition of a fire hydrant and associated water main extension on S. Stevens Street may be required.
- b. In the case of future development, the construction of a turnaround meeting fire department apparatus requirements may be required.

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 1<sup>st</sup> day of June, 2015.

  
**PHYLLIS K. MACLEOD, Hearing Examiner**

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

**ORIGINAL**  
-7-

## 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**