



City of Tacoma  
Hearing Examiner

### 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 22, 2019, at Tacoma, WA.

Louisa Legg

May 22, 2019

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**Re: HEX2019-009 SV Petition No. 124.1396**

**Petitioner: Greenwood Property Mgmt. LLC**

Dear Parties:

In regard to the above referenced matter, please find enclosed a copy of the Hearing Examiner's Report and Recommendation to the Tacoma City Council entered on May 16, 2019.

Sincerely,

Louisa Legg  
Office Administrator

Attachment (1): Report and Recommendation

#### Transmitted via Electronic Mail Delivery

Century Link, Tommy Sassone, Network Infrastructure Services ([Tommy.Sassone@CenturyLink.com](mailto:Tommy.Sassone@CenturyLink.com))

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**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** GREENWOOD PROPERTY MGMT. LLC<sup>1</sup> **FILE NO:** HEX2019-009 (124.1396)

**SUMMARY OF REQUEST**

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition to vacate the southerly 250 feet of Chandler Street, lying north of Center Street and south of a segment of Chandler Street previously vacated by City of Tacoma Ordinance Number 18560. If approved the requested vacation will cure existing building encroachments currently present on both the westerly and easterly sides of the segment of Chandler Street in question. The vacated area would need to continue to serve as a primary private access and utility corridor for the abutting properties.

**RECOMMENDATION OF THE HEARING EXAMINER**

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

**PUBLIC HEARING:**

After reviewing RPS’ Preliminary Report (the “Report”—Exhibit 1), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on May 16, 2019. Ronda Cornforth of RPS represented the City. Attorney William T. Lynn of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP represented the Petitioner. Testimony was taken, exhibits were admitted, and the record closed at the conclusion of the hearing.

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<sup>1</sup> The spelling and punctuation of Petitioner’s name are taken directly from Petitioner’s business registration listing with the Washington Secretary of State.

**ORIGINAL**

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

**FINDINGS:**

1. Greenwood Property Mgmt. LLC, a Washington limited liability company (the “Petitioner”), submitted a petition for the vacation of public right-of-way (“ROW”) consisting of the southerly 250 feet of Chandler Street, lying north of Center Street and south of a former section of Chandler Street previously vacated. *Cornforth Testimony, Lynn Testimony; Exhibit 1, Exhibit 2, Exhibit 17.*

2. As just mentioned, the City’s Report generally describes the area petitioned for as the southerly 250 feet of Chandler Street, lying north of Center Street and south of a segment of Chandler Street previously vacated by City of Tacoma Ordinance Number 18560 (the “Vacation Area”). The Report legally describes the Vacation Area as follows:

All that portion of Chandler Street, abutting and between, Lots 11 through 20, Block 3 of Replat of Chandler’s Addition to Tacoma, W.T., according to the Plat thereof recorded in Volume 4 of Plats, Page 30, records of Pierce County, Washington, and Lots 10 through 15, inclusive and Lot 20, Block 1, Brockenbrough’s Addition to Tacoma, W.T., according to the Plat thereof recorded in Volume 4 of Plats, Page 9, records of Pierce County, Washington. Said Chandler Street lying northerly of Center Street and southerly of that previous partial street vacation under City of Tacoma Ordinance Number 18560, recorded under Auditor’s File Number 2238706, records of Pierce County, Washington.

All situate in the City of Tacoma, County of Pierce, State of Washington; within the Northeast Quarter of the Southwest Quarter of Section 08, Township 20 North, Range 03 East of the Willamette Meridian.

*Exhibits 1~6, Exhibit 17.*

3. The area of Chandler Street comprising the Vacation Area is largely unimproved, but graded, level and mostly graveled. There are currently no improvements such as curb, gutter or sidewalk along, or in the Vacation Area beyond the curb return and approach coming off of Center Street. Just off Center Street, the Vacation Area is significantly encroached upon from both the east and west, physically reducing the width available for public ROW use to less than what is required by City standards. *Cornforth Testimony; Exhibit 1, Exhibit 2, Exhibit 10, Exhibit 17.*

4. What has become the full sixty-foot (60') width of Chandler Street was dedicated in two stages to the public, first on October 24, 1888 and then on November 6, 1889 by two plat dedications and recordings, specifically the Replat of Chandler’s Addition to Tacoma, W.T., according to the Plat thereof recorded in Volume 4 of Plats, Page 30, which created the westerly 34 feet of Chandler Street, followed by Brockenbrough’s Addition to Tacoma, W.T., according to the Plat thereof recorded in Volume 4 of Plats, Page 9, records of Pierce County, Washington, which added the easterly 26 feet of Chandler Street. *Exhibit 1, Exhibit 5, Exhibit 6.*

5. The Petitioner intends to absorb this segment of ROW into its adjacent real property, thereby eliminating the encroachment of an existing building into the Chandler Street ROW in hopes of being able to retain the structure. Lynn testified regarding the importance of the encroaching building to Petitioner's operations on its property, including that the encroaching building presently provides ADA access to the rest of the improvements on the property. Approving the vacation petition would also eliminate an encroachment on the east side of the Vacation Area as well. *Cornforth Testimony; Exhibit 1, Exhibit 2, Exhibits 6~9.*

6. Regarding these encroachments, the City testified that the encroachment affecting the west side of Chandler Street appears to have actually been mistakenly permitted by the City on March 4, 1966. At that time, the City of Tacoma approved building plans for a remodel of the then existing structure adding offices to the existing Pacific Hardware Company under Permit Number 97005. The plans submitted were in error however, and incorrectly depicted the right-of-way margin as the constructed curb line. Approving the permit allowed the creation of an encroachment by approximately seventeen feet (17') into Chandler Street. *Cornforth Testimony; Exhibit 1, Exhibit 7, Exhibit 8.*

7. The encroachments affecting the east side of Chandler Street come from the restaurant located at 1607 Center Street having constructed what appears to be a storage building and cooling room, neither of which are readily documented by City permits beyond a partial depiction on a 1999 building permit for another separate building addition. *See Exhibit 9.* Since 1999, it appears that the encroachments within the easterly half of the Chandler Street ROW have continued to expand to a depth of approximately fifteen feet (15'). *Cornforth Testimony; Exhibit 1, Exhibit 9.*

8. Cornforth testified that the two largest encroachments reduce what was otherwise a sixty-foot (60') wide ROW to a width of only twenty-eight feet (28'), making it so that this ROW no longer meets the Design Manual requirements for public road access to the six parcels of real property that abut the Vacation Area. *See also Exhibit 10.* That notwithstanding, because this segment of Chandler Street presently serves as the primary ingress/egress and utility corridor for the abutting property owners, City staff has recommended that a condition of this vacation should be the execution of a Reciprocal Easement Agreement ("REA"), acceptable to all abutting property owners. The City indicated that the REA should include "[e]lements defining rights of their continued perpetual ingress/egress (both pedestrian and vehicular) and utilities uses." *Exhibit 1, Exhibit 11, Exhibit 14.*

9. RPS circulated the petition for review by interested governmental agencies, City departments/divisions, and utility providers. These various agencies, departments and divisions provided comments and recommended/requested conditions to RPS and these were incorporated into the Report and referenced in City testimony at the hearing. These comments and requests, where appropriate, have been incorporated in this Report and Recommendation at Conclusion 8 below. *Cornforth Testimony; Exhibit 1, Exhibits 11~16.*

10. No members of the public appeared at the hearing in opposition to the petitioned-for vacation, nor were any written comments in opposition received.

11. Provided that the abutting property owners successfully execute the REA, no property abutting the Vacation Area becomes landlocked by the proposed vacation, nor will any access be substantially impaired if this vacation is granted. The City testified that it has no need of the Vacation

Area having anything to do with present or future City ROW use aside from the preservation of existing public utility facilities by reservation of an easement. *Cornforth Testimony; Exhibit 1.*

12. The Vacation Area neither abuts, nor is proximate to a body of water and, therefore, the provisions of RCW 35.79.035 are not implicated. *Exhibit 1, Exhibit 2.*

13. RPS' Report, which is entered into the record as Exhibit 1, accurately describes the proposed vacation, general and specific facts about the site and Vacation 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.

14. Public hearing notices were posted/published at various locations beginning on April 11, 2019, and concluding on April 14, 2019. Notices of the upcoming Public Hearing were posted/published at the following locations and dates/times:

a. Two yellow public notice signs, affixed to an A-Board sign stand, were posted on the sidewalk along Center Street, at Chandler Street, immediately adjacent to the 1625 Center Street property on Sunday, April 14, 2019 at approximately 12:00 pm.

b. A public notice memo was placed into the glass display case located on the first floor of the Municipal building next to the Finance Department on Friday, April 12, 2019.

c. On or around this same time, electronic public notices were advertised on Thursday, April 11, 2019, on the City of Tacoma web site at address: <http://www.cityoftacoma.org/notices>.

d. On or around this same time, a public notice was published in the Daily Index newspaper.

e. On or around this same time, a public notice mailing was sent to all parties of record within the 300 feet of the Vacation Area.

f. On or around this same time, public notice was advertised on Municipal Television Channel 12.

*Exhibit 1.*

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

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**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 Tacoma Municipal Code (TMC) 1.23.050.A.5, TMC 9.22.070, RCW 35.79.030.*

2. The Hearing Examiner’s role in street vacation proceedings is quasi-judicial in nature (making findings and conclusions based on evidence presented), 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); TMC 9.22.070.*

3. 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).

4. Petitions for the vacation of public ROW must be consistent 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>2</sup>

5. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. *See TMC 1.23.070.*

6. 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 ROW set

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<sup>2</sup> For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

forth at Conclusion 4 above, provided the conditions recommended below are imposed and met. No potential for landlocking an abutting owner exists from granting the petition, provided that abutting property owners execute the REA recommended by City staff, as further addressed below. The provisions of RCW 35.79.035, governing areas close to bodies of water do not apply to this location. Finally, public benefit accrues through the vacation area being added back to the property tax rolls, and the fact that the vacation facilitates local business productivity.

7. "RCW 35.79.010 gives the legislative authority [of a municipality] -- the city council -- sole discretion as to whether a petition to vacate shall be granted or denied."<sup>3</sup>

8. Given the foregoing, the Hearing Examiner recommends that the requested street vacation be approved subject to the following conditions:

**A. SPECIAL CONDITIONS:**

1. PAYMENT OF FEES

Prior to finalizing the vacation, the City should be compensated in an amount equal to the full appraised value of the Vacation Area, 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 areas. *TMC 9.22.010*.

2. PUBLIC WORK/TRAFFIC

Public Works Traffic division had no objection to approving this petition, provided that continued pedestrian and vehicular accesses, and existing utility facilities are preserved by executing and recording the REA among all of the abutting property owners, and reserving utility easements as necessary. The REA should be executed and recorded prior to finalizing this vacation through second reading of an ordinance.

3. TACOMA POWER & CLICK! NETWORK

An easement shall be retained over, under, along and across the east thirty feet (30') of the Vacation Area in order to preserve City/Tacoma Power/Click utility facilities.

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<sup>3</sup> *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).

4. TACOMA WATER

The easement reserved for City utilities should cover the south half of the east half of the Vacation Area in order to preserve City/Tacoma Water utility facilities.

**B. THIRD PARTY CONSIDERATIONS:**

Both Comcast and Century Link responded to the City's circulation of the present vacation petition claiming to have facilities in the Vacation Area that needed protecting through easements. Comcast indicated a presence on TPU poles within the Vacation Area. Any such lines should be protected by an easement executed between the affected property owner and Comcast prior to finalization of the vacation. *See Exhibit 15.*

Century Link did not identify the location of its facilities within the Vacation Area; instead, it appeared to mark the entirety of the Vacation Area as its desired scope of an easement. Although this is for the abutting property owners and Century Link to work out ultimately, an easement over the entire Vacation Area is over reaching. Century Link should identify the actual location of any facilities it has in the Vacation Area, and an easement specific to the preservation of those facilities and the space they actually occupy should be granted prior to finalization of the vacation. *See Exhibit 16.*

**C. USUAL CONDITIONS:**

1. The recommendation set forth herein is based upon representations made and exhibits, including any development representations, 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 may 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.



**D. ADVISORY NOTES:**

1. Other than the conditions/concerns already expressly set forth herein, no objection or additional comment was received from the governmental agencies, City departments/divisions, and utility providers to whom the City circulated this petition.
2. The Connection Charge In-Lieu-of-Assessment (In-Lieu-of-Assessment Charge[s]) estimates provided by the City's Public Works in Exhibit 1 are advisory comments only, and payment thereof is not a condition to this vacation. They can be voluntarily paid at time of compensation for the Vacation Area. If not, the In-Lieu-of-Assessment Charge(s) will be required to be paid in conjunction with any future permitting on, or development of the Vacation Area, and may be subject to increase with the passage of time.

9. Accordingly, the petition is recommended for approval, subject to the conditions set forth in Conclusion 8 above.

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

**RECOMMENDATION:**

The present vacation petition is hereby recommended for approval, subject to conditions contained in Conclusion 8 above.

**DATED** this 22<sup>nd</sup> day of May, 2019.



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**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 may 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***