

## Meyers, Aundrea

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**From:** Hearing Examiner (hearing.examiner@cityoftacoma.org)  
**Sent:** Thursday, January 16, 2020 11:29 AM  
**To:** jtomlinson@dpearson.com; Cornforth (Van Allen), Ronda  
**Cc:** mlucente@dpearson.com; Victor, Steve(Legal); Krupa, Angie (Legal); Darci Brandvold; Russell, Lee; Magoon, Jana; Wung, Lihuang; eric.charity1@centurylink.com; Daniels, Tony; Rossi, Rod  
**Subject:** HEX2019-031 (SV 124.1404) Steve and Darlene Guiberson  
**Attachments:** HEX2019-031\_SV124.1404\_Guiberson\_HEX\_FindingsConcsRecommendation\_01.16.20.doc.pdf

**Importance:** High

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|                  | Rossi, Rod                    | Delivered: 1/16/2020 11:32 AM |

Dear Parties,

Please find attached the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council.

Sincerely,

**Louisa Legg**  
Office Administrator  
Tacoma Hearing Examiner Office  
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**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONERS:** STEVE AND DARLENE GUIBERSON    **FILE NO:** HEX2019-031 (124.1404)

**SUMMARY OF REQUEST**

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition to vacate a portion of South 66th Street right-of-way (“ROW”), lying between South Adams Street and the Central Puget Sound Regional Transit Authority (Sound Transit) railroad corridor lying westerly of South Tacoma Way. The vacated area of ROW will be incorporated into the southerly abutting two parcels for business expansion and related commercial use.

**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 C-1), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on January 9, 2020. Ronda Van Allen of RPS represented the City. Attorney James R. Tomlinson, represented the Petitioners. Testimony was taken, exhibits were admitted, and the record closed at the conclusion of the hearing.

*ORIGINAL*

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

### **FINDINGS:**

1. Petitioners Steve and Darlene Guiberson (the "Petitioners"), submitted a petition for vacation of public ROW, specifically a portion of South 66th Street, lying between South Adams Street and the Central Puget Sound Regional Transit Authority (Sound Transit) railroad corridor lying westerly of South Tacoma Way, as depicted in Exhibits C-2 and C-3 of the Hearing Record (the "Vacation Area"). The Petitioners' stated intention for the Vacation Area is to incorporate it into their abutting real property (to the south) for the enhancement and expansion of their current business operations. *Van Allen Testimony; Ex. C-1.*

2. The City's Report goes on to describe the Vacation Area more specifically as "The southerly portion of South 66th Street (also known as Cottage Place), abutting Lots 4 through 10, Block 2, Villa Park, according to the Plat thereof recorded in Book 5 of Plats, Page 60, records of Pierce County, Washington," and then provides the following metes and bounds legal description:

Beginning at the Northwest corner of said Lot 4, Block 2, Villa Park; Thence North 00°59'44" East, along the extended westerly margin of said Lot 4, a distance of 56.98 feet;

Thence South 85°55'02" East a distance of 67.56 feet to a northerly angle point in a chain link fence; Thence South 85°07'24" East a distance of 117.69 feet, more or less, to the westerly margin of the Central Puget Sound Regional Transit Authority (Sound Transit) railroad corridor; Thence South 01°59'45" East, along the westerly margin of said railroad corridor, a distance of 48.56 feet to the north line of said Block 2, Villa Park; Thence North 88°03'05" West, along said north line, a distance of 187.44 feet, more or less, to the Point of Beginning.

All situate in the City of Tacoma, County of Pierce, State of Washington; within the Northeast Quarter of the Northeast Quarter of Section 25, Township 20 North, Range 02 East of the Willamette Meridian.

Side lines to lengthen or shorten to meet at all angle points and terminate at the boundaries of the above described parcel. *Ex. C-1.*

3. The Vacation Area is a mixture of asphalt pavement, gravel and grass, and is currently cordoned off within chain link fencing. The Petitioners are using the Vacation Area primarily for parking for their adjacent business. No part of South 66<sup>th</sup> Street that is currently improved and used by the public for traversal is part of the Vacation Area. At most, a minimal slope area is contemplated for inclusion under this vacation. *Van Allen Testimony; Exs. C-1~C-3.*

4. South 66<sup>th</sup> Street, formerly known as Cottage Place, at the location of the Vacation Area is approximately 153 feet in width, the southerly 60 feet of which was dedicated to the public by the Plat filing of "Villa Park" and the northerly 93' was acquired apparently by eminent domain under Pierce County Superior Court Cause Number 56865 (Judgment #138) and Warranty Deed recorded under Pierce County Auditor's File Number 1595783. *Id.*

5. South 66<sup>th</sup> Street was originally constructed in 1914, by Local Improvement District No. 878, and was sited between Blocks 2 and 3 of Villa Park for an at-grade crossing of the railroad tracks to the east. Between 1926 and 1927, South 66<sup>th</sup> Street was realigned and constructed to the north, as evidenced by the Rail Track Undercrossing drawings attached to the Report and included in the record as Exhibits C-11 and C-12. *Van Allen Testimony.*

6. No abutting real property becomes landlocked by the granting of this vacation, nor will the vacation work any substantial impairment of access to abutting properties. The Vacation Area serves no public purpose at present, ROW-related or otherwise, and it is not contemplated for future ROW use. *Van Allen Testimony; Ex. C-1.*

7. The vacation is a public benefit because unencumbering the Vacation Area from the City's ROW interest will add taxable square footage to the Petitioners' real property, and vacating will reduce the City's ROW maintenance expenditures. *Id.*

8. 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. *Id.*

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. These comments and requests were incorporated into the Report and referenced in City testimony at the hearing, and where appropriate, have been incorporated in this Report and Recommendation at Conclusion 8 below. *Van Allen Testimony; Ex. C-1.*

10. No members of the public appeared to testify at the hearing, and no written public comments were received.

11. RPS' Report, which is entered into the record as Exhibit C-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.

12. Public hearing notices were posted/published at the various locations and on the dates indicated below:

On November 21, 2019-

- a. 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.
- b. A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/notices>

- c. A public Notice was advertised in the Daily Index newspaper.
- d. A public notice mailing was mailed to all parties of record within the 300 feet of the Vacation Area.
- e. Public Notice was advertised on Municipal Television Channel 12.

On November 26, 2019-

- f. Yellow public notice signs were posted at the subject right of way of South 66<sup>th</sup> Street, and at the intersection of South 66<sup>th</sup> Street and South Adams Street. *Ex. C-1*.

13. 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 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. “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>1</sup>

5. 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.

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<sup>1</sup> *Puget Sound Alumni of Kappa Sigma v. Seattle, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).*

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>

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

7. 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 forth at Conclusion 5 above, provided the conditions recommended below are imposed and met. No potential for landlocking an abutting owner exists from granting the petition. The Vacation Area is not currently used as ROW, nor does the City perceive any future use of the Vacation Area for that purpose. 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 into property tax valuations for the Petitioners' abutting real property, and by facilitating the Petitioners' business operations while reducing the City's maintenance obligations.

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

The Petitioners shall compensate the City 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 rights-of-way. *TMC 9.22.010*

2. ENVIRONMENTAL SERVICES

The City's Environmental Services Department has requested that an easement be retained in the Vacation Area to protect existing utility infrastructure. It is recommended that such an easement be retained as part of the requested vacation.

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

3. TACOMA POWER

Likewise, the Power Division of the City's Department of Public Utilities has requested that an easement be retained in the Vacation Area to protect exiting utility infrastructure. It is recommended that such an easement be retained as part of the requested vacation.

**B. THIRD PARTY CONSIDERATIONS:**

CENTURY LINK

Century Link has no objection to the requested vacation, provided services (aerial facilities) remain to the building. Century Link has indicated that relocation and/or disconnection will be at Petitioners' sole expense.

**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]) estimate (of \$4,906.44) provided by the City's Public Works in Exhibit C-14 are advisory comments only, and payment thereof is not a condition to this vacation. The charges 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 16th day of January, 2020.



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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**