

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: YWCA HOME AT LAST LLC

FILE NO: HEX2020-023 (SV 124.1399)

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 4th Street, lying between Broadway and Court C, to facilitate development of an affordable family housing project.

RECOMMENDATION OF THE HEARING EXAMINER:

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

PUBLIC HEARING:¹

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 July 23, 2020. Troy Stevens, a Senior Real Estate Officer with RPS, represented the City of Tacoma. The YWCA Home at Last LLC (the “YWCA” or “Petitioner”) was represented at hearing by Miriam Barnett, CEO, YWCA. Ellen Lohe, a development consultant for the Petitioner was also present. Testimony was taken, exhibits were referenced and admitted, and the record closed at the conclusion of the hearing.

¹ Due to National, State of Washington and City of Tacoma Proclamations of Emergency made in response to the COVID-19 virus, the City of Tacoma closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet and telephonic access.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. Petitioner, YWCA, submitted a petition requesting the vacation of a portion of South 4th Street, lying between Broadway and Court C (the “Vacation Area”). *Ex. C-1, Ex. C-2.*
2. RPS’ Report provides the following as the legal description for the Vacation Area:

A 3.00 FOOT STRIP OF LAND WITHIN THE RIGHT-OF-WAY FOR SOUTH 4TH STREET, BETWEEN BROADWAY AND COURT C, BEING ADJACENT TO AND NORTHWESTERLY OF THE NORTHERLY LINE OF LOT 1, BLOCK 406, MAP OF NEW TACOMA, WASHINGTON TERRITORY, ACCORDING TO PLAT FILED FOR RECORD FEBRUARY 3, 1875 IN THE OFFICE OF THE COUNTY AUDITOR;

SAID STRIP BEING A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 21 NORTH, RANGE 03 EAST, WILLAMETTE MERIDIAN, IN TACOMA, PIERCE COUNTY, WASHINGTON. *Ex. C-1.*
3. South 4th Street is an 80-foot wide residential street right-of-way with a 28-foot wide improved asphalt road in the center. The South 4th Street right-of-way between Court C and Broadway is improved with sidewalk curb and gutter, and is steeply sloped at a downward grade from west to east, or upward from east to west, if you prefer. The southerly side of the right-of-way, at or near the Vacation Area, includes a driveway and planter strips with grass and landscaping. The north side abuts a five-story residential multi-family building. *Ex. C-1.*
4. The City acquired the South 4th Street right-of-way by dedication in the Map of New Tacoma, W.T., according to the plat thereof filed February 3, 1875, records of Pierce County, Washington. *Ex. C-1, Ex. C-3.*
5. The Petitioner currently uses a portion of the Vacation Area as permitted under Right-of-Way Occupancy Permit ROCC19-0017, filed of record under Pierce County Recording number 201907260555. *Ex. C-1; Ex. C4.*
6. The Petitioner requested vacation of the right-of-way strip comprising the Vacation Area to facilitate construction of “54 units of permanent affordable housing adjacent to [Petitioner’s] main program building and emergency shelter.” *Ex. C-1, Ex. C-14.*
7. Pursuant to Tacoma Municipal Code (“TMC”) 9.22.030, 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 reviewed the petition with an eye toward determining whether conditions were necessary in order to approve the petition. By and large, no conditions were recommended as part of this review process. Conditions, such as they are, are addressed in this Report and Recommendation at Conclusion 8 below. None of the reviewing governmental

agencies, City departments/divisions, and utility providers objected to the requested vacation. *Ex. C-1, Exs. C-5~C-13.*

8. In making its Report, RPS analyzed the petition against the vacation criteria set forth in Tacoma Municipal Code (“TMC”) 9.22.070. At the end of that analysis RPS concluded as follows:

- The vacation is a public benefit because it places the property (Vacation Area) on the tax rolls and facilitates an affordable rate housing project.
- City of Tacoma Traffic Engineering has been consulted regarding this petition and does not object.
- The petition has been considered by City staff and outside quasi-governmental agencies and it does not adversely affect the public need.
- The right of way [Vacation Area] is not needed for future public use.
- No abutting owner becomes landlocked nor will their access be substantially impaired.
- The vacated area is not close to a body of water as contemplated under RCW 35.79.035. *Stevens Testimony, Ex. C-1, Ex. C-2, Exs. C-6~C-13.*

9. Petitioner proposes to improve at least part of the Vacation Area with “a stair or hill climb along South 4th Street, to make travel along the steep slope between Court C and Broadway safer and more usable for pedestrians.” Petitioner has stated that “The hill climb will be used by residents of the new building, shelter clients, and will also be publicly accessible.” *Barnett Testimony; Ex. C-14.*

10. No members of the public appeared at the hearing to testify nor were any written public comments 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. Notices of the Public Hearing were posted at the following locations by Real Property Services in conjunction with the City of Tacoma Clerk’s Office on June 25, 2020:

- a. A yellow public notice sign was posted at the southeast corner of the intersection of Court C and South 4th Street.
- b. A yellow public notice was posted sign at the southwest corner of Broadway and South 4th Street.

- c. 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.
- d. A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/page.aspx?nid=596>.
- e. Public Notice was advertised in the Daily Index newspaper.
- f. Public Notice mailed to all parties of record within the 300 feet of vacation request.
- g. Public Notice was advertised on Municipal Television Channel 12. *Ex. C-1*.

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

CONCLUSIONS OF LAW:

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), and therefore, no environmental review was necessary, nor was one conducted.

4. Petitions for the vacation of public right-of-way 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.*²

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 vacation conforms to the criteria for the vacation of street right-of-way set forth at Conclusion 4 above. No potential for landlocking an abutting owner exists from granting the petition, nor is there any need for, or public purpose served by retaining the Vacation Area as it is currently in excess of the improved right-of-way area used by the public as South 4th Street. As such, the Vacation Area plays no role in the “[s]treet pattern or circulation of the immediate area or the community as a whole.” Public benefit accrues through the potential for increased tax revenue resulting from the unencumbered addition of the Vacation Area to Petitioner’s abutting real property, and through the facilitation of economic development and the provision of additional affordable housing to the Tacoma market—something very much in need at present. Petitioner’s hill climb will enhance the Vacation Area for traversal up and down the hill as well.

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.”³

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

A. SPECIAL CONDITION:

The RPS Report, as is typically done in street vacations, included the following as a recommended condition of approval:

1. PAYMENT OF FEES

The Petitioner 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 For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

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

RPS then noted that “The Petitioner has requested waiver of the market value payment by City Council because the Petitioner will be providing affordable family housing.”

Under the circumstances, the City Council would be within its authority, justified by the public purpose of assisting in the provision of affordable housing, to waive payment of compensation for the Vacation Area, and the Examiner has no reservation in recommending just that.

B. ADVISORY CONSIDERATION:

RPS/IN-LIEU

- a. Please contact Lee Russell at (253) 591-5277 regarding RPS In-Lieu comments.
- b. An In-Lieu amount of \$1,399.94 is due for sanitary sewer.

The amount is not required to be paid at this time; however, if the Petitioner chooses not to pay it as part of the vacation process, the possibility exists that the fee could increase.

C. USUAL CONDITIONS/COMMENTS:

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 Connection Charge In-Lieu-of-Assessment (In-Lieu-of-Assessment Charge[s]) estimates provided by the City’s Public Works Department in Exhibit 1 are advisory comments only, and payment thereof is not a condition to approving 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.
3. 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.

4. Other than the conditions/concerns/objections 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 the petition.

9. Accordingly, the petition is recommended for approval, subject to potential imposition of the payment condition set forth in Conclusion 8 above, should the City Council reject Petitioner's request to waive its imposition.

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 28th day of July, 2020.



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*