



City of Tacoma
Hearing Examiner

August 26, 2016

INTEROFFICE & ELECTRONIC MAIL DELIVERY

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Re: HEX2016-021 (Vacation Petition No. 124.1369)
Petitioner: City of Tacoma

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 entered on August 26, 2016, as the result of a public hearing held on August 22, 2016.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) – Findings, Conclusions, and Recommendation

cc: See Transmittal List (page 2)

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 August 26, 2016, at Tacoma, WA.

Louisa Legg



City of Tacoma
Hearing Examiner

August 26, 2016

ELECTRONIC MAIL DELIVERY

Rollie Herman
WESTPAC Marine Services, Inc.
2316 South Jefferson Avenue
Tacoma, WA 98402-1405

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Page 2

HEX 2016-021 (124.1369 COT)

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Pierce County Assessor-Treasurer

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Puget Sound Energy (Marilynn Danby)

Clerk's Office, City of Tacoma (Nicole Emery)

Legal (Jeff Capell)

Tacoma Power/T&D (Rick Van Allen)

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

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Jesse Angel & Stuart Vaughan, P.E.)

Public Works, City of Tacoma (Sue Simpson)

Public Works, RPS TPU Acquisition Disp, City of Tacoma (Gregory Muller)

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, Site and Building Division,
City of Tacoma (Larry Criswell)

Planning and Development Services Department, City of Tacoma (Elliott Barnett)

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

PETITIONER: City of Tacoma

FILE NO.: HEX 2016-021 (124.1369)

SUMMARY OF REQUEST:

Real Property Services has received a petition from the City of Tacoma to vacate the north 10 feet of South 23rd Street lying between the westerly margin of Jefferson Avenue and the westerly margin of Fawcett Avenue.

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 convened a public hearing on the vacation request on August 22, 2016. After the hearing, the Hearing Examiner conducted a site visit to view the area.

ORIGINAL

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. The City of Tacoma (City) has petitioned to vacate a portion of South 23rd Street for use in a future economic development project. The property to be vacated is more particularly described below:

That portion of the Northwest quarter of the Northwest quarter of Section 09, Township 20 North, Range 03 East, W.M. and more particularly described as follows:

The Northerly 10.00 feet of South 23rd Street lying between the westerly margin of Jefferson Avenue and the westerly margin of Fawcett Avenue

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

Ex. 1.

2. The Petitioner City is seeking to vacate the property to facilitate a land exchange in connection with the anticipated development of the Tacoma Town Center project. The 10-foot strip of right-of-way on South 23rd Street would be conveyed to the project developer. As part of the sale of a larger adjacent piece of property for the development, the City of Tacoma would be dedicated 25 feet of property along South 23rd Street by the developer. The combined property exchanges would facilitate a better alignment of South 23rd Street abutting the proposed development. *Stevens Testimony; Price Testimony; Ex. 15.*

3. The City of Tacoma acquired the street right-of-way proposed for vacation within the Amendatory Map of Smith and Denton's Addition Tacoma, Washington filed for record on August 21, 1888; and Replat of Spinning's Addition, and Block 2109 Am'ndy. Map of Smith and Denton's Addition Tacoma, Washington filed for record on July 26, 1915, records of Pierce County Auditor. *Ex. 1; Stevens Testimony.*

4. The South 23rd Street right-of-way at this location is 70 feet wide from the westerly edge of Fawcett Avenue and slopes downward in an easterly direction to Jefferson Avenue. Sidewalks are located along the southerly edge of the street right of way along with curb and gutter. The northerly side of the street has a rolled curb and does not include sidewalk. The properties to the north are currently unimproved, but there is a parking lot and business to the south. *Ex. 1; Stevens Testimony.*

5. City of Tacoma Traffic Engineering / Planning and Development Services (PDS) - Long Range Planning has been consulted regarding this petition and does not object to the vacation as long as conditions are put in place to satisfy non-motorized uses within the Fawcett Avenue corridor as it traverses the area. Access for emergency first response vehicles from South 23rd Street must also be retained. The proposed street vacation will not adversely affect future need for this segment of South 23rd Street right-of-way as long as protection for non-motorized uses and retained easements are

reserved for existing public infrastructure and emergency ingress/egress. *Ex. 1; Stevens Testimony.*

6. The proposed vacation has been reviewed by a number of governmental agencies and utility providers. *Exs. 5 through 14.* The reviewing entities have no objection to the project; however, some base their position on the inclusion of conditions preserving the right to utility and transportation easements and installations in the area. The Petitioner City agrees to the conditions identified in the Real Property Services Report. *Price Testimony.*

7. Provided easements are retained or granted for existing utilities that would be impacted by the street vacation, the public need would not be adversely affected by the proposed vacation. The street segment at issue is not contemplated or needed for future public use as a transportation route. The remaining portion of South 23rd Street would serve anticipated transportation needs. *Ex. 1; Stevens Testimony.*

8. Vacation of the proposed right-of-way would provide a public benefit by facilitating the City of Tacoma's plans for economic development, specifically the Tacoma Town Center project. When the property has been conveyed to the developer under the terms of governing agreements, the property will be returned to the tax rolls. This proposed street vacation is associated with a project that will create employment opportunities in the City of Tacoma and increase City tax revenues. *Ex. 1; Stevens Testimony.*

9. No abutting property would become landlocked or have its access substantially impaired as a result of the vacation of the subject right-of-way. *Ex. 1; Stevens Testimony.*

10. The street right-of-way proposed for vacation does not abut, nor is it proximate to a body of water. The provisions of RCW 35.79.035 are, therefore, not implicated. *Ex. 1; Stevens Testimony.*

11. Two members of the public appeared at the hearing to make comments about the proposed street vacation. Rollie Herman, owner of a nearby building on Jefferson Avenue appeared to request that the alley access behind his building be retained under the new South 23rd Street configuration. He would like to see enough space left so that large delivery trucks can continue to approach the alley from South 23rd Street because the alley terminates near his property and cannot be accessed from the south. *Herman Testimony.* Robert Hill testified expressing concern over continued viability of the bicycle connection along Fawcett Avenue. He indicated that he believed the City of Tacoma's Transportation Commission had not been fully apprised of the earlier vacation of a portion of Fawcett Avenue right-of-way. He suggested exploring a different configuration for traffic along South 23rd Street, to maximize safety for bicycle users. *Hill Testimony.*

12. 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.*

13. 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.

14. A Public Hearing Notice for the August 22, 2016, hearing was posted at the northwest corner of the intersection of South 23rd Street and Jefferson Avenue and at the northwest corner of the intersection of South 23rd Street and Fawcett Avenue on June 20 and 22, 2016, at least 30 days prior to the hearing, as required by Tacoma Municipal Code (TMC) 9.22.060. The Public Notice memo was also placed into the glass display case located on the second floor of the Tacoma Municipal Building; placed into the glass display case located on the first floor of the Tacoma Municipal Building abutting the Finance Department; and advertised on the City of Tacoma's web site. In addition, a Public Notice was published in the Daily Index newspaper and mailed to all parties of record within 300 feet of the vacation request. All required postings of notices for the hearing have been accomplished. *Ex. 1; Stevens Testimony.*

15. Any conclusion hereinafter stated, which may be deemed to be properly considered a finding of fact herein, is hereby adopted as such.

CONCLUSIONS OF LAW:

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).* The petitioner must demonstrate, by a preponderance of the evidence, that its vacation request conforms to the applicable requirements. *See TMC 1.23.070.*

3. Petitions to vacate public right-of-way are reviewed under the TMC 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. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested vacation of the north 10 feet of South 23rd Street lying between the westerly margin of Jefferson Avenue and the westerly margin of Fawcett Avenue conforms to the TMC's criteria for the vacation of rights-of-way, provided the conditions recommended herein protecting utilities, infrastructure, and transportation uses are imposed. The vacation of this portion of South 23rd Street will facilitate a better street interface between the Tacoma Town Center development and South 23rd Street and a better street alignment along the development perimeter. The project is a major economic enhancement effort with multiple benefits to the Tacoma community including job creation and increased tax revenues. The 10-foot strip of property being vacated is not needed for a different public use in the future and no property owner would become landlocked as a result of the vacation. The remaining width of South 23rd Street would serve the public's anticipated transportation needs in the future and the street configuration would protect the bicycle corridor on Fawcett Avenue. At the conclusion of the property transfers associated with the City of Tacoma's sale of adjacent property to the developer, the vacated property will return to the tax rolls. The evidence presented at the hearing demonstrates that the proposed right-of-way vacation meets the criteria for approval contained in TMC 9.22.070.

5. The Hearing Examiner is recommending that the Petitioner City not be required to compensate the City of Tacoma in an amount equal to the full appraised value of the area vacated. Rather, a waiver of applicable fees under TMC 9.22.010 is recommended. The City of Tacoma will receive the value of the vacated property from the developer/purchaser as part of the closing of the property sale for the proposed development.

6. Accordingly, the requested right-of-way vacation, covering the north 10 feet of South 23rd Street lying between the westerly margin of Jefferson Avenue and the westerly margin of Fawcett Avenue, should be approved subject to the following conditions:

A. SPECIAL CONDITIONS:

1. PAYMENT OF FEES

The Petitioner City shall not be required to compensate the City of Tacoma in an amount equal to the full appraised value of the area vacated. The requirement to pay the value of the vacated area is waived pursuant to TMC 9.22.010. The value of the vacated property will be received from the developer/purchaser as part of the closing of the real estate sale transaction for the development property. *TMC 9.22.010.*

2. CITY EASEMENT RESERVATIONS

An easement shall be reserved over the vacation area for the City of Tacoma for the protection, maintenance, repair, construction, and replacement of existing and future above ground and underground utilities along with establishment of a non-motorized access easement and emergency access easement.

3. PUGET SOUND ENERGY (PSE)

PSE has an existing 2-inch MPE IP main located within the proposed vacate area. An easement shall be granted to cover this existing line.

4. CENTURYLINK COMMUNICATIONS

CenturyLink has facilities in the area and their rights shall be protected by means of an easement.

5. COMCAST COMMUNICATIONS

Comcast has an aerial system attached to Tacoma Public Utility poles running north/south in the alley between Jefferson Avenue and Fawcett Avenue. There is also a Comcast duct bank running north/south along Jefferson Avenue. The installations shall be protected by means of easement or relocation. Any relocation shall be the responsibility of the developer.

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. REAL PROPERTY SERVICES (RPS)/IN-LIEU

RPS has no objection; however, an in-lieu of assessment of \$1,264.50 is due at this time or at time of development. If the petitioner chooses to wait, the amount due may increase

2. PUBLIC WORKS/TRAFFIC ENGINEERING

- a. The idea to vacate this portion of the South 23rd Street right-of-way was initiated via discussions about the need for additional right-of-way on South 23rd Street between Fawcett Avenue and Tacoma Avenue. Taken together, the 10-foot vacation east of Fawcett Avenue (which reduces the right-of-way from 70 feet to 60 feet) and the 8-foot dedication west of Fawcett Avenue (which increases the right-of-way from 52 feet to 60 feet) provide a more uniform cross-section along South 23rd Street between Jefferson Avenue and Tacoma Avenue.

It is likely that the ultimate cross section would look similar to the attached image, which provides for one lane of travel in each direction, on-street parking, and a wide sidewalk with an amenity/planting zone.

This new cross section within the new right-of-way will allow a design that is consistent with the comments we provided for the previously submitted application to vacate Fawcett Avenue.

In summary, the proposed vacation is consistent with the right-of-way needed to improve the transportation network in this area. Since the envisioned improvements are tied to the dedication west of Fawcett, it is preferred that the two actions are executed simultaneously. However, since the efficacy of the Jefferson-Fawcett Avenues segment will not be reduced without the dedication

between Fawcett Avenue and Tacoma Avenue, the dedication need not be a condition of the vacation.

Note - (Traffic's Comments from SV 124.1358/ HEX 2016-014):

- i. The Transportation Master Plan delineates this vacation request area as a bicycle priority corridor. The City constructed improvements along Fawcett in 2014 making this segment a central component of a 13.1 mile corridor from south to north ends of the City.
- ii. Retaining the 40-foot easement would reduce the current right of way to half of current width. This proposal presumes non-motorized connectivity can be maintained in this smaller easement width. This would require de-emphasizing motorized travel to ensure the remaining area could safely and efficiently accommodate non-motorized traffic. The easement should reserve all existing rights for construction of public facilities, and should provide the City approval authority for anything to be located within the air rights of this retained corridor.
- iii. All design concepts within the corridor shall at a minimum adhere to the NACTO Urban Street Design Guide and be in conformance of the goals sought within the Comprehensive Plan.

3. HEARING EXAMINER

In applying the street improvement standards for development of South 23rd Street, consideration should be given to retaining viable access for large delivery trucks to the alley that enters South 23rd Street from the south between Jefferson Avenue and Fawcett Avenue.

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 of fact hereinbefore stated, which may be deemed to be properly considered a conclusion of law herein, is hereby adopted as such.

RECOMMENDATION:

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

DATED this 26th day of August, 2016.



PHYLLIS K. MACLEOD, Hearing Examiner

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

ORIGINAL

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**