



City of Tacoma
Hearing Examiner

December 12, 2018

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Re: HEX2018-028 (Street Vacation Petition No. 124.1389)
Petitioner: 5 South G LLC

Dear Parties:

Please find enclosed a copy of Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council entered on December 12, 2018, as the result of a public hearing held on December 6, 2018.

Sincerely,


Aundrea Meyers
Office Assistant

Transmitted via Electronic Mail Delivery

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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 December 12, 2018 at Tacoma, WA.



OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: 5 South G LLC

FILE NO: HEX2018-028 (124.1389)

SUMMARY OF REQUEST:

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department has received a petition to vacate the westerly portion of South 1st Street lying between South G Street and Tacoma Avenue South (the “Vacation Area”), to facilitate a new senior housing development. The Vacation Area is generally depicted in Exhibit 2 of the official hearing record.

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”), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on December 6, 2018. Troy Stevens of RPS represented the City. Christopher DeWald of the Rush Companies represented the Petitioner. The record closed later in the day on December 6, 2018, after RPS and the Petitioner submitted combined Exhibit 19, which was referenced at the hearing, but not submitted prior.

ORIGINAL

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. 5 South G LLC, a Washington limited liability company (the "Petitioner"),¹ has petitioned for the vacation of what is generally described as the westerly portion of South 1st Street lying between South G Street and Tacoma Avenue South (the "Vacation Area"). The Vacation Area is adjacent to real property presently owned by the Petitioner at the southeast corner of Division Avenue and South G Street in the city of Tacoma. The Vacation Area is legally described as follows:

That portion of Right-of-Way lying North of the North line of Lot 1, Block 113 of the plat of Tacoma Land Company's Third Addition to Tacoma W.T. recorded on July 21st, 1885, in the Office of the Auditor of Pierce County, Washington and South of the South line of Lot 6, Block 13, of the Map of New Tacoma, Washington Territory, recorded on February 3, 1875, in the Office of the County Auditor, being more particularly described as follows:

BEGINNING at the Northwest corner of said Lot 1;
THENCE North 21°31'15" West, 82.49 feet to the Southwest corner of said Lot 6;
THENCE South 07°29'24" East, 80.03 feet to the North line of that portion of Right-of-Way vacated per City of Tacoma Ordinance Number 26801, recorded under Auditor's File Number 200207100671, records of Pierce County, Washington;
THENCE North 82°30'36" East, 20.00 feet along said North line to the POINT OF BEGINNING.

Stevens Testimony; Exs. 1~3, Ex. 19.

2. The Vacation Area is triangular in shape, is 80 feet wide at its more-or-less west-facing front, and it contains a private asphalt paved area that has the look of a residential street right-of-way with sidewalk, curb, and gutter. There is a gate currently present onsite which was installed after a nearby street vacation that was approved under City of Tacoma Ordinance No. 28183 in 2004. *Stevens Testimony; Ex. 1, Ex. 2, Ex. 3; See FoF 5 below.*

3. The City acquired the right-of-way that is the Vacation Area by plat filing in the Map of New Tacoma, Washington Territory, recorded on February 3, 1875 in the Office of the Pierce County Auditor (the "Subject Plat"). The Subject Plat abuts the separate plat of Tacoma Land Company's Third Addition to Tacoma W.T. filed of record on July 21st, 1885, also in the Office of the Pierce County Auditor. *Stevens Testimony; Ex. 1, Ex. 4, Ex. 5.*

4. Stevens testified that during review of the present petition, RPS initially requested that the Petitioner obtain the signature of the abutting property owner to the south, First Presbyterian Church;

¹ The Report listed three different entities as potential petitioners. In response to questioning and based on the Applicant's material submitted as part of Exhibit 19, it has been established that the real property adjacent to the Vacation Area is owned by 5 South G LLC, making 5 South G LLC the entity with standing to be the Petitioner here. *See also DeWald Testimony.*

but, after further consideration and review by the City Surveyor and the City Attorney's Office, it was determined that First Presbyterian Church's real property was not part of the Subject Plat and therefore, under Washington law, First Presbyterian Church was not required to sign the petition to achieve 100 percent joinder. *Id.*, *Ex. 19*.² The City was correct in its conclusion. *See CoL 6*.

5. Two nearby portions of South 1st Street, between South G Street and Tacoma Avenue South were previously vacated under City of Tacoma Ordinance Nos. 26801, in 2002, and 28183, in 2004. Ordinance No. 26801 also vacated an easterly 32-foot wide by 100-foot long portion of South G Street. *Stevens Testimony; Ex. 1, Ex. 6*.

6. As referenced above, if vacated, the Petitioner intends to use the Vacation Area to facilitate the development of a new senior housing project. *Stevens Testimony; Ex. 1, Ex. 3*.

7. This vacation petition has been reviewed by a number of governmental agencies, City departments/divisions, and utility providers. Their comments and concerns have been addressed, or are being addressed through any conditions required herein. *Stevens Testimony; Ex. 1, Exs. 7~18*.

8. No members of the public appeared at the hearing in opposition to the petitioned-for vacation.

9. No abutting property becomes landlocked by the proposed vacation, nor will any access be substantially impaired if this vacation is granted since the Vacation Area is not currently being used for any material right-of-way purposes, nor is it needed for future right-of-way. *Stevens Testimony; Ex. 1, Ex. 2, Exs. 7~18*.

10. The petitioned-for vacation area neither abuts, nor is proximate to a body of water and, therefore, the provisions of RCW 35.79.035 are not implicated. *Stevens Testimony; Ex. 1*.

11. 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 so no environmental study was warranted.

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

13. Public notices were given at least thirty (30) days prior to the hearing, as required by Tacoma Municipal Code ("TMC") 9.22.060. On or about October 31, 2018, yellow public notice signs were posted in the vicinity of the subject right-of-way, at the southeast corner of the intersection of South G Street and Division Avenue, and 130 feet south of the southeast corner of the intersection of

² First Presbyterian Church's real property is actually in the plat of Tacoma Land Company's Third Addition to Tacoma, W.T. *See also CoL 6 below*.

South G Street and Division Avenue. Subsequently, on November 1, 2018, a Public Notice Memo for the December 6, 2018 hearing was placed into the glass display case in the Tacoma Municipal Building outside the Finance Department. Additionally, the Public Notice Memo was advertised on the City of Tacoma web site and in the Tacoma Daily Index, as well as on Municipal Television Channel 12. Lastly, Public Notice was mailed to all owners of record within 300 feet of the vacation request also on or around November 1, 2018. *Stevens Testimony; Ex. 1.*

14. No written opposition to the proposed vacation was received in this case. RPS' analysis led to a recommendation that the requested vacation should be approved. *Stevens Testimony; Ex. 1.*

15. 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 TMC 1.23.050.A.5 and TMC 9.22.*

2. The Hearing Examiner's role in street vacation proceedings is quasi-judicial in nature, 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).

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 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 9.22.070.³

4. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. *See TMC 1.23.070*. In this case, the Petitioner relied heavily on the testimony and evidence of the City.

5. 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 right-of-way set forth above, provided the conditions recommended below are imposed and met. The petitioned-for vacation will have no material effect on the street pattern or circulation of traffic, nor will it affect the City's right-of-way needs or goals, and as such the Vacation Area may be ceded to the underlying fee owner of the property—the Petitioner—unencumbering its property from the existing public right-of-way interest. No potential for landlocking an abutting owner exists from granting the petition, and 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 through the subsequent development of the area as senior housing.

6. The City and Petitioner correctly concluded that First Presbyterian Church has no standing as an abutting property owner giving the plat demarcation lines present here. Under Revised Code of Washington (RCW) 58.17.212 street vacations are contained within the plat that originally dedicated the right-of-way in question. RCW 58.17.212 provides, in relevant part, as follows:

When the road or street that is to be vacated was contained wholly within the subdivision and is part of the boundary of the subdivision, title to the vacated road or street shall vest with the owner or owners of property contained within the vacated subdivision.

Here, the Vacation Area is wholly within the Subject Plat. First Presbyterian Church's real property lies across the line of the Subject Plat in the plat of Tacoma Land Company's Third Addition to Tacoma W.T. As a result, First Presbyterian Church has no claim on the Vacation Area.

7. In accordance with the above, the requested street vacation should be approved subject to the following conditions:

³ For consistency, outline numbering is kept the same as in the original TMC text.

A. SPECIAL CONDITIONS:⁴

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 right-of-way areas.
TMC 9.22.010.

2. TACOMA WATER EASEMENT

Tacoma Water did not object to this petition; however, because there is a water main currently located in the Vacation Area, unless that water main is relocated prior to final City Council action on this petition, a 20-foot easement will need to be reserved over the Vacation Area for the length of the water main, and for any fire hydrant, service laterals, and meters.

3. PUGET SOUND ENERGY

Puget Sound Energy (“PSE”) did not object to this petition; however, it has requested a 3rd party easement be granted to protect its existing 2” PE IP gas main within the Vacation Area. The City requested, on PSE’s behalf, that this easement be granted as a condition to the vacation being approved. The Petitioner did not object, and therefore the PSE easement is made a condition here.

B. USUAL CONDITIONS:

1. The recommendation set forth herein is based upon representations made and exhibits, including any development 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 shall potentially be subject to the review of the Hearing Examiner and may require additional review and hearings.

⁴ Section J. of the Report (Recommended Conditions of Approval) contains four (4) paragraphs. At the hearing, it was determined that paragraph 3 is not actually conditions needing to be met before the City Council can act on this vacation petition. Rather, paragraph 3 represents more of an advisory condition and so it is included in this Report and Recommendation as such.

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.

C. ADVISORY NOTES:

1. Other than the conditions/concerns already expressly set forth herein, no objection or additional comment was received from Public Works Traffic Engineering, Planning and Development Services, Environmental Services, Tacoma Fire, Tacoma Police, Comcast Communications, CenturyLink, Pierce Transit, Puget Sound Energy, Public Works LID, Tacoma Water, Click! Network, and/or Tacoma Power.
2. There is currently an in-lieu of assessment against the Petitioner's property for sanitary sewer outstanding in the amount of \$1,258.66 that can be paid at the time of the City Council's decision on this petition, but such payment at that time is not required. It will be required to be paid in conjunction with any future permitting on, or development of the Petitioner's real property, and may be subject to increase.

8. Accordingly, the vacation petition should be granted, subject to the conditions set forth in Conclusion 7 above.

9. 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 7 above.

DATED this 12th day of December, 2018.



JEFF H. CAPELL, Hearing Examiner

ORIGINAL

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

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 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*