



City of Tacoma
Hearing Examiner

March 31, 2016

Troy Stevens, Senior Real Estate Specialist
Rich Price, Senior Real Estate Officer
City of Tacoma, Real Property Services
747 Market Street Room 737
Tacoma, WA 98402
(tstevens@ci.tacoma.wa.us; RPRICE@ci.tacoma.wa.us)
(Inter-office Mail Delivery)

Re: File No. HEX 2015-050 (Vacation Petition No. 124.1363)
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 (HEX) Report and Recommendation to the Tacoma City Council as a result of public hearing proceedings conducted on March 10, 2016.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) – HEX Report 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 March 31, 2016, at Tacoma, WA.

Louisa Legg

March 31, 2016

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Transmitted via First Class Mail Delivery

Tommy Sassone, CenturyLink Network Real Estate, 7145 East 1st St., Scottsdale AZ 85251

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

Transmitted via Electronic Mail Delivery

Aaron Cantrel, Comcast

Marilynn Danby, Puget Sound Energy

Nick Neisler, CenturyLink RoW

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

Legal (Jeff Capell)

Tacoma Power, Click! Network – HFC Engineering (Vince Mounivong)

Tacoma Power, T&D Electrical Services (Rick Van Allen)

Tacoma Power, T&D Electrical Services (Rich Barrutia)

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

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Jesse Angel)

Tacoma Water, Water Supply (Stuart Vaughan, P.E.)

Public Works/Real Property Services, City of Tacoma (Sue Simpson)

Public Works/Site and Building Division, City of Tacoma (Bonnie McLeod)

Public Works/Engineering Division, City of Tacoma (Jennifer Kammerzell)

Public Works/Science & Engineering Division, City of Tacoma (Rod Rossi)

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, 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 2015-050 (124.1363)

SUMMARY OF REQUEST:

Real Property Services has received a petition from the City of Tacoma to vacate the north 125 feet of the southerly 215 feet of Broadway, lying north of South 17th Street, for future development of a hotel near the Greater Tacoma Convention and Trade Center.

RECOMMENDATION OF THE HEARING EXAMINER:

The request is hereby recommended for approval, including a waiver of associated fees and 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 March 10, 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 the north 125 feet of the southerly 215 feet of Broadway, lying north of South 17th Street, for future development. The property to be vacated is more particularly described below:

A portion of the Northwest quarter of the Southwest quarter of Section 4, Township 20 North, Range 03 East, W.M. more particularly described as follows:

That portion of Broadway abutting Lots 19 through 23, inclusive, Block 1506; and abutting Lots 19 through 23, inclusive, Block 1505, Map of New Tacoma, Washington Territory, according to the Plat thereof as recorded February 3, 1875, records of Pierce County Auditor;

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

Ex. 1.

2. The City is assembling property to facilitate private development of a large hotel near the Greater Tacoma Convention and Trade Center. The new hotel would provide blocks of rooms that would help expand the number and type of events that could be hosted at the Convention Center. *Stevens Testimony; Walkowiak Testimony; Ex. 1.*

3. Broadway at this location is a level 80-foot wide fully built right-of-way with sidewalk, curb, and gutter. The street segment in question serves the Greater Tacoma Convention and Trade Center and the adjacent Carlton Building, which is leased by the University of Washington, Tacoma. *Stevens Testimony; Ex. 1.*

4. The City of Tacoma acquired the street right-of way-proposed to be vacated within the Map of New Tacoma, Washington Territory, recorded February 3, 1875. *Stevens Testimony; Ex. 1.*

5. Vacating the proposed street segment right-of-way will not adversely affect the street pattern or traffic circulation in the area as long as the City Traffic Engineering Division's proposed condition of approval requiring a turnaround is met. *Stevens Testimony; Ex. 1.*

6. The public would benefit from the proposed right-of-way vacation because the vacation of this street segment would facilitate the City's plans for future economic development of the area. The property has been identified by the City Council as a Tier 1 site with high priority for development. The anticipated hotel development would be consistent with long-term plans to revitalize the downtown area. A hotel with additional blocks of rooms for convention uses would expand the types of events that could be conducted successfully at the Greater Tacoma Convention and Trade Center. A hotel project would also create both construction jobs and permanent staff positions within the area. Moreover, once the

property is developed, and is no longer in City ownership or control, it would return to the property tax rolls. *Stevens Testimony; Price Testimony; Walkowiak Testimony; Ex. 1; Exs. 13 and 14.*

7. There is no evidence the segment of street right-of-way proposed for vacation would be needed for an additional or different public use in the future. *Stevens Testimony; Ex. 1.*

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

9. The portion of right-of-way proposed for vacation do not abut a body of water and, thus, the provisions of RCW 35.79.035 are not implicated. *Stevens Testimony; Ex. 1.*

10. No member of the public submitted written comments opposing the street vacation and no citizens testified at the hearing against the proposal.

11. The street segment proposed for right-of-way vacation has been reviewed by various City departments and outside quasi-governmental agencies. The reviewing entities have no objection to the project; however, some base their position on the inclusion of conditions preserving the right to utility easements and installations in the area. The City's Traffic Engineering group proposed a condition that would require the vacation to include a turnaround for vehicles approaching the area. This would avoid the undesirable feature of a dead end requiring vehicles to back out onto South 17th Street. *Stevens Testimony; Exs. 3 through 12.* The City agrees to the conditions identified in the Real Property Services Report. *Walkowiak 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 March 10, 2016, hearing was posted at the property on January 16, 2016, at least 30 days prior to the hearing, as required by Tacoma Municipal Code (TMC) 9.22.060. The Public Notice was also published in the Tacoma Daily Index and mailed to all parties of record within 500 feet of the vacation request. All required postings of notices for the hearing have been accomplished. *Stevens Testimony; Ex. 1.*

15. Any conclusion of law 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 criteria. *See TMC 1.23.070.*

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 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. The Petitioner City of Tacoma seeks waiver of the appraised value charge for the right-of-way sought to be vacated under TMC 9.22.010, which allows waiver of the otherwise applicable charges when the vacation is initiated by the City or the City Council deems it to be in the best interest of the City. In support of the requested waiver, City of Tacoma cites its role in creating a parcel of property that can be utilized for a major hotel development that will enhance the uses of the Greater Tacoma Convention and Trade Center and will provide employment opportunities associated with construction and operation of the project. Petitioner City of Tacoma also points to the benefits to the public generated by the project's role as a catalyst for economic development in the downtown area. Moreover, the City has indicated that the fair market value of the vacated property will be received by the City when the parcel is sold to the ultimate hotel developer. The public benefits outlined by the City are real and significant. The request for wavier appears reasonable under the facts and circumstances and should be granted.

5. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested right-of-way vacation conforms to the TMC's criteria for the vacation of street rights-of-way, provided the conditions recommended herein are imposed. The public would experience benefits from the requested vacation. The overall project to construct a major hotel adjacent to the Greater Tacoma Convention and Trade center will enhance economic development in the downtown and will return the property to the tax rolls.¹ The property involved is not needed for a different public use in the future. So long as provisions for utility easements and a turnaround for vehicles are included as required conditions, the proposed street segment vacation would not adversely affect the public's needs. The requested right-of-way vacation would not landlock any abutting property and the provisions of RCW 35.79.035 are not applicable. 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.

6. Accordingly, the requested right-of-way vacation should be approved subject to the following conditions:

A. SPECIAL CONDITIONS:

1. PAYMENT OF FEES

The Hearing Examiner is recommending that the Petitioner City of Tacoma not be required to compensate the City in an amount equal to the full appraised value of the area vacated. A waiver of applicable fees under TMC 9.22.010 is recommended. If the City Council rejects the recommendation and chooses to deny a waiver of fees, the following language would then become appropriate as a condition of approval:

The Petitioner shall compensate the City in an amount equal to the full appraised value of the area vacated. 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. CITY EASEMENT RESERVATIONS

A utility easement shall be reserved over the vacate area for the City of Tacoma for maintenance, repair, construction, and replacement of existing and future above ground and underground utilities.

Note: This reservation is required to cover the Environmental Services' request for a 20-foot utility easement (10 feet on either side of the pipe) if

¹ The term "public benefit" as used in the street vacation context is construed broadly and may include the enrichment of the local economy, the facilitating of the providing of goods and services to the community, and increasing property tax revenues. *Banchero v. City Council of Seattle*, 2 Wn. App. 519, 524, 468 P.2d 724 (1970).

the pipe is not relocated before final reading of the ordinance to vacate the subject property and for and Tacoma Water's request to retain a 20-foot water main easement.

3. PUGET SOUND ENERGY (PSE)

PSE has no objection; however, it has an existing 2-inch MPEI main located within the proposed vacate area. An easement shall be reserved to cover this existing line.

4. Any subsequent development obstructing the vacated right-of-way shall comply with the requirement for a vehicle turnaround identified in the Public Works/Traffic Engineering Advisory Comment below.

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 \$1,512.15 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

The proposed partial length vacation of Broadway north of South 17th Street poses a traffic engineering/public access concern. The proposal to only vacate the northern portion of the alley, and with the anticipation that this vacated portion will not remain unobstructed and open for public travel, means the vacation will create a discontinuity in the existing street and the circulation/parcel access it provides. Therefore, an appropriately designed/sized turn-around (hammerhead/branch style, modified from standard if need be), and any easements required to accommodate such design that deviates from the current development and access, would need to be provided at the north end of the remaining publicly accessible south portion of the street. The primary purpose for the turnaround is safety of drivers and pedestrians. If no turnaround is provided, vehicles have to back down the street to exit back to the South 17th Street. This is a hazard to the driver that has to back out, vehicles turning into the street, and pedestrians/bicyclists crossing the street.

At the time of sale or development, Traffic will require a turnaround, in public ROW or through a public easement, to address the concern.

RCW 46.61.605 Limitations on backing, states:

(1) The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(2) The driver of a vehicle shall not back the same upon any shoulder or roadway of any limited access highway.

3. OTHER AGENCIES

No objection or additional comment was received from Tacoma Fire, Tacoma Power, Click! Network, Comcast and CenturyLink.

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 which may be deemed to be properly considered a conclusion of law is hereby adopted as such.

RECOMMENDATION:

The vacation requested is hereby recommended for approval, subject to the conditions contained in Conclusion 6. Waiver of the fees normally associated with a right-of-way vacation is also recommended.

DATED this 31st day of March, 2016.



PHYLLIS K. MACLEOD, 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 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**