



City of Tacoma
Hearing Examiner

August 28, 2018

FIRST CLASS MAIL DELIVERY & ELECTRONIC MAIL DELIVERY

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City of Tacoma Real Property Services
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Re: HEX2018-018 (Street Vacation Petition No. 124.1390)
Petitioner: Doreen and Christopher Gavin

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 August 28, 2018, as the result of a public hearing held on August 23, 2018.

Sincerely,

Louisa Legg
Office Administrator

Transmitted via Electronic Mail Delivery
William Chunyk, wechunyk@gmail.com
CenturyLink/Pamela Haines, ROW Agent II, Network Real Estate
Comcast, Planning & Design/Aaron R. Cantrell
Puget Sound Energy, Inc./Megan Holt SR/WA, Sr. Real Estate Rep.
Pierce County Assessor-Treasurer, Commercial Dept./Darci Brandvold
Legal/Steve Victor, Deputy City Attorney
Tacoma City Clerk's Office/Sola Wingenbach, OA
Tacoma Fire Dept., Prevention Division/Chris Seaman, P.E.
Tacoma Water LID/Shelly Shaffer, LID Rep.
Tacoma Water, Stuart Vaughan, Principal Engineer
Tacoma Power, Click!Network, T&D/Regina Collier, HFC Planning & Design Tech
Tacoma Power, T&D/Rudy Eckert, Power Engineer 1
Tacoma Public Utilities/Gregory Muller, Real Estate Officer
Environmental Services, Site & Building Division, City of Tacoma/Corey Newton, P.E.
Environmental Services, Science & Engineering, City of Tacoma/Rod Rossi, PMP
Public Works/LID, City of Tacoma/Ronda Cornforth
Public Works, City of Tacoma/Jennifer Kammerzell, Sr. Eng.
CEDD, City of Tacoma/Gloria Fletcher, Business Development Mgr.

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 28, 2018, at Tacoma, WA.

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONERS: Doreen and Christopher Gavin

FILE NO: HEX2018-018 (124.1390)

SUMMARY OF REQUEST:

Real Property Services has received a petition to vacate that certain southerly portion of North 32nd Street, lying between North Cedar Street and North Junett Street, as further set forth herein, to facilitate private improvements and landscaping.

RECOMMENDATION OF THE HEARING EXAMINER:

The request is hereby recommended for approval, subject to conditions.

PUBLIC HEARING:

After reviewing the Preliminary Report (“Report”) of the Department of Public Works, Real Property Services Division (“RPS”), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on August 23, 2018.

ORIGINAL

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The Petitioners, Doreen and Christopher Gavin (collectively the “Petitioners”), have petitioned for the vacation of that certain southerly portion of North 32nd Street lying between North Cedar Street and North Junett Street legally described as follows:

A PORTION OF THE NORTHEAST QUARTER OF THE
SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 21
NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN
BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTHERLY 10 FEET OF NORTH 32ND STREET
ABUTTING LOT 3, BLOCK 55, TACOMA SUPPLEMENTARY
MAP, AS FOUND IN VOLUME 1 OF PLATE AT PAGE 11,
RECORDS OF PIERCE COUNTY, STATE OF WASHINGTON.

*Stevens Testimony; Ex. 1.*¹

2. The City acquired the North 32nd Street right-of-way by plat filing in the Supplementary Map of Tacoma, W.T., according to the plat thereof recorded February 18, 1874, records of Pierce County, Washington. *Stevens Testimony; Ex. 1, Ex. 5.*

3. As platted, North 32nd Street is a 100-foot wide residential street right-of-way, but currently is only improved with a 28-foot wide asphalt road in the center. As currently improved, the North 32nd Street right-of-way between North Junett and Cedar Streets does not include sidewalk curb and gutter, and has a fairly steep downward grade from west to east. The platted, but unimproved right-of-way area includes a variety of driveways, parking pads, and landscaping improvements. *Stevens Testimony; Ex. 1, Ex. 2.*

4. If vacated, the Petitioners plan on using the vacated right-of-way area to facilitate front yard improvements, access to their property, and landscaping. *Stevens Testimony, Doreen Gavin Testimony;*² *Ex. 1, Ex.3, Ex. 4, Ex. 18.*

5. 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. Initially, all responders, except Century Link, had no objection to the petition being granted because no responder had utility infrastructure in the petitioned-for vacation area. *Stevens Testimony, Gavin Testimony; Ex. 1, Exs. 6 through 17.* Century

¹ It appears from the record, that the Petitioners originally requested vacation of a twenty foot (20') wide swath of the North 32nd Street right-of-way. However, by May 31, 2018, the Petitioners modified their request from 20'x50' down to 10'x50' at least in part due to concerns from the City's Traffic Engineering division of its Public Works Department. *Stevens Testimony, Ex. 7.*

² Hereafter referred to only as “Gavin Testimony” as only Doreen Gavin offered testimony at the hearing.

Link, on the other hand, requested that it be granted an eight foot (8') easement within the petitioned-for vacation area as a condition precedent to finalizing the vacation. *Stevens Testimony; Ex. 1, Ex. 6.*

Gavin testified that she had engaged the 811 utility locate service for the proposed vacation area, and the result was that there were no public or private utilities currently located in the proposed vacation area. Stevens contacted Century Link post hearing and conveyed Gavin's 811 findings suggesting that Century Link's concerns and need for an easement should be reconsidered in light of the lack of concrete evidence of Century Link facilities in the petitioned-for vacation area. Century Link agreed. *See Ex. 19.* Stevens moved to reopen the record to include this newly acquired information; Gavin joined in this request. *Id.* The motion was granted and this information exchange is now included in the formal record as Exhibit 19. *See also Ex. 1a, RPS's "Amendment to the Preliminary Report."* As a result, Century Link's original request for an easement is no longer made a condition of the recommendation contained herein.

6. No one appeared at the hearing in opposition to the petitioned-for vacation.

7. No abutting property becomes landlocked by the proposed vacation, nor will any access be substantially impaired if this vacation is granted since the petitioned-for area is not currently being used for, nor is it needed for right-of-way purposes. The Petitioners are the sole abutting property owners to the petitioned-for vacation area. *Gavin Testimony, Stevens Testimony; Ex. 1, Ex. 2, Ex. 3.*

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

9. 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*).

10. 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, as presently amended, 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 this Report and Recommendation shall control.

11. Public notices were given at least thirty (30) days prior to the hearing, as required by Tacoma Municipal Code ("TMC") 9.22.060. On July 11, 2018, a yellow public notice sign was placed at the southeast corner of the intersection of North 32nd and North Cedar Streets. Subsequently, on July 12, 2018, a Public Notice Memo for the August 23, 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 July 12, 2018. *Stevens Testimony; Ex. 1.*

12. No written opposition to the proposed vacation was received in this case.

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 TMC 1.23.050.A.5 and 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.*

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, provided the minimal conditions recommended herein below are imposed, and that the Petitioner

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

complies with them. The petitioned-for vacation will have no 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 petitioned-for portion of the City's right-of-way interest is easily ceded to the underlying fee owners of the property—the Petitioners. No potential for landlocking an abutting owner exists, and the provisions of RCW 35.79.035 governing areas close to bodies of water do not apply to this location. Finally, at least some public benefit is achieved through the vacation area being added back to the property tax rolls.

6. Accordingly, the requested street vacation should be approved subject to the following conditions:

A. SPECIAL CONDITION:

PAYMENT OF FEES

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 right-of-way areas.
TMC 9.22.010.

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.
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 the development and activities facilitated by the vacation will comply with such laws, regulations, and ordinances. If, during the term of any 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.

7. Accordingly, the vacation petition should be granted, subject to the conditions set forth in Conclusion 6 above.

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

ORIGINAL

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

C. ADVISORY NOTE:

No objection or additional comment was received from PW Traffic Engineering; PDS, Site Development; Environmental Services, Science & Engineering, Tacoma Fire; City of Tacoma, Community and Economic Development; Comcast; Tacoma Water, LID; Tacoma Water, Supply; Click! Network; and Tacoma Power, New Services.

RECOMMENDATION:

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

DATED this 28th day of August, 2018.



JEFF H. CAPELL, 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 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*.

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.

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