



City of Tacoma
Hearing Examiner

November 3, 2017

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Re: HEX2017-017 (Vacation Petition No. 124.1380) - 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 November 3, 2017, as the result of a public hearing held on October 26, 2017.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) – HEX Report and Recommendation

Cc: Transmitted via Electronic Mail Delivery

- Pierce County Assessor-Treasurer (Darci Brandvold)
- Comcast (Aaron Cantrell)
- Qwest Corp. d/b/a CenturyLink (Sean Sanders of behalf of R. Jeff Lawrey)
- Puget Sound Energy (Marilynn Danby)
- Clerk's Office, City of Tacoma (Nicole Emery)
- Legal (Steve Victor)
- Public Works Traffic Engineering, City of Tacoma (Jennifer Kammerzell)
- Environmental Services, Science & Eng. Div., City of Tacoma (Rod Rossi, PMP)
- Tacoma Public Utilities, Real Estate Services (Gregory Muller)
- Tacoma Public Utilities, Click! (Greg Netcher)
- Tacoma Water, Water Distribution (Jesse Angel)
- Tacoma Power, T&D CBD (Greg Horodyski & Rich Barrutia)
- Tacoma Fire Department (Chris Seaman, P.E.)
- Public Works/LID, City of Tacoma (Sue Simpson)
- Planning and Development Services Department, City of Tacoma (Jana Magoon & Lisa Spadoni)
- Planning and Development Services Department, City of Tacoma (Lihuang Wung)

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 November 3, 2017 at Tacoma, WA.

Louisa Legg

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: City of Tacoma

FILE NO: HEX2017-017 (124.1380)

SUMMARY OF REQUEST:

A petition to vacate a portion of Broadway Avenue, lying between South 9th Street and South 11th Street, to provide ramped access to the back storage area and freight elevator vestibule of the Pantages Theater and additional space for two offices.

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, 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 October 26, 2017. At the conclusion of the hearing the Hearing Examiner held the evidentiary record open until November 2, 2017, to give RPS time to provide the Hearing Examiner clarification regarding City interfund payment obligations of compensation and fees referenced in RPS' report and testimony, particularly, which City department is obligated to pay the compensation and fees, and where such payments are to be made (i.e. to which City department). RPS submitted its answers to these questions on November 1, 2017, and the record closed upon submission.

ORIGINAL

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The Petitioner here is the City of Tacoma, a Washington municipal corporation (the "City"), as the fee owner of the real property subject to the right-of-way interest. The City petitions at the request of the Broadway Center for Performing Arts, a Washington public benefit corporation ("BCPA"), the property manager of the Pantages Theatre and Rehearsal Hall. *Ex. 1.* The area proposed for vacation is legally described as follows:

That portion of the Northwest Quarter of the Northwest Quarter of Section 04, Township 20 North, Range 03 East of Willamette Meridian, situate in the City of Tacoma, County of Pierce, State of Washington more particularly described as follows:

Commencing at a point marking the intersection of the monumented centerline of Broadway Plaza between South 9th Street and South 11th Street and the westerly prolongation of the line common to Lots 2 and 3, Block 905, Map of New Tacoma, Washington Territory, as per plat recorded February 3, 1875, in the office of the County Auditor, from which a surface brass disk marking the intersection of South 9th Street and Broadway Plaza bears North 07 degrees 22 minutes 08 seconds West a distance of 154.96 feet;
Thence North 82 degrees 37 minutes 51 seconds East along said prolongation a distance of 23.50 feet to the **True** Point of Beginning;
Thence continuing North 82 degrees 37 minutes 51 seconds East along said prolongation a distance of 16.50 feet to a point on easterly margin of said Broadway Plaza marking the Northwest corner of said Lot 3;
Thence South 07 degrees 22 minutes 08 seconds East along said easterly margin and parallel with said monumented centerline of Broadway Plaza a distance of 49.98 feet more or less to the Southwest corner of Lot 4 of said block;
Thence South 82 degrees 38 minutes 07 seconds West along the westerly prolongation of the line common to Lots 4 and 5 of said Block 905, a distance of 16.50 feet;
Thence North 07 degrees 22 minutes 08 seconds West parallel with said easterly margin a distance of 49.98 feet more or less to the **True** Point of Beginning.

(Containing 825± Square Feet or ±0.019 Ac.)

Stevens Testimony; Exs. 1 through 3.

2. The City acquired the Broadway Avenue right-of-way by dedication in the Map of New Tacoma, according to the plat thereof recorded February 3, 1875, records of Pierce County, Washington. A portion of the abutting property, originally platted as Rainier Street, was previously vacated in 1882 under City of Tacoma Ordinance No. 59. *Stevens Testimony; Exs. 1 and 4.*

3. As dedicated, for the first 265 feet south of South 9th Street, Broadway Avenue varies in width from 70 to 120 feet. It is at its widest where it abuts South 9th Street and includes a public plaza with a park-like green space and public art. The remainder of this stretch of Broadway Avenue is 80 feet in width until it reaches South 11th Street. It is a fully built street with sidewalk, curb and gutter and is mostly level with parallel parking. *Stevens Testimony; Ex. 1.*

4. Through its petition, the City seeks to unencumber a portion of its property from the right-of-way dedicated as Broadway Avenue, lying between South 9th Street and South 11th Street, in order for the BCPA to provide ramped access to the back storage area and freight elevator vestibule of the Pantages Theater, as well as to facilitate additional space for two offices. *Stevens Testimony; Exs. 1, 3, 17, and 18.*

5. The vacation is a public benefit because it provides ADA accessibility to the back of the house area and other areas of the theatre, as well as additional office space for the BCPA that will enable it to better serve the entertainment and cultural needs of the public. *Stevens Testimony; Exhibit 1.*

6. City Traffic Engineering staff have been consulted regarding this petition and they do not object, provided that their advisory comments regarding reservation of minimum sidewalk width, and etc. are met at the time of development. *Stevens Testimony, Kammerzell Testimony; Ex. 1.*

7. The vacation request has also been reviewed by a number of outside quasi-governmental agencies, City departments/divisions, and utility providers. None of the entities consulted opposed the proposed vacation and nothing from this consultation indicated that the vacation would adversely affect the public need. *Stevens Testimony; Ex. 1.*

8. The evidence and testimony from the hearing indicate that the proposed vacation area is not needed for future public use. *Stevens Testimony.*

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

10. The proposed 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; Exs. 1 and 2.*

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)*.

12. RPS' Preliminary Report, as 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.

13. On September 21, 2017, a public notice for the October 26, 2017,¹ hearing was placed into the glass display case located on the first floor of the Municipal building abutting the Finance Department. A yellow public notice sign was placed at the southeast corner of Broadway Avenue and South 9th Street. A yellow public notice sign was also placed 170 feet south of the southeast corner of Broadway Avenue and South 9th Street. A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/page.aspx?nid=596> and advertised in the Daily Index newspaper. The Public notice was mailed to all parties of record within the 300 feet of vacation request and was advertised on Municipal Television Channel 12. *Stevens Testimony; Ex. 1.*

14. No members of the public appeared at the hearing to testify regarding the proposed street vacation and no written opposition to the proposed vacation was filed in this case.

15. Any finding above stated which may be deemed to be properly considered a conclusion is hereby adopted as such.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding. *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 when 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. 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 land-locked or access will not be substantially impaired; i.e., there must be an alternative mode of ingress and egress, even if less convenient.

¹ Beyond this date, no other evidence was offered by the City to show compliance with the timing of notice requirements set forth in TMC 9.22.060. In the absence of such express evidence, the Examiner presumes that the other notice activities were also conducted on or around September 21, 2017, such that the requirements of TMC 9.22.060 were met.

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 must demonstrate by a preponderance of the evidence that its vacation request conforms to 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 vacation conforms to the criteria for the vacation of street right-of-way, provided the conditions recommended herein below are imposed. The proposed vacation will facilitate the BCPA in its mission of providing entertainment and cultural opportunities to the citizens of Tacoma. No adverse effects to the street pattern or circulation in the area or community will occur because the petitioned-for vacation segment is only used for pedestrian traffic at present, and this use will be maintained, but perhaps at a lessened width after the area is developed. As such, the public's use of the right-of-way is not materially affected. 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.

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

A. SPECIAL CONDITIONS:

1. PAYMENT OF FEES

The City attached a value of \$66,825.00 to the requested vacation area. Given the vintage and method of the dedication of the Broadway Avenue right-of-way (i.e. in 1875 by plat filing), it is unlikely that the City paid anything significant to acquire this right-of-way area. In addition, the City, as both right-of-way interest holder (in trust for the public) and underlying fee owner, has requested through RPS that the City Council waive any interfund transfer as compensation for the requested vacation. *Ex. 19.* TMC 9.22.010 provides the authority for just such a waiver, therefore no payment of compensation for the vacation is recommended here.

2. REAL PROPERTY SERVICES/LID

An in-lieu of assessment in the amount of \$1,303.28² is due for sanitary sewer. The BCPA, as the current tenant of the benefitted property would be responsible for payment of this amount to the City's Environmental Services Department. This amount can be paid now or upon redevelopment.

² Stevens verbally testified at the hearing that this amount is \$1,254.26 which differs from the amount set forth in writing in Exhibit 1. Stevens later confirmed that the written amount is correct and that he misspoke at the hearing.

3. ENVIRONMENTAL SERVICES

The City's Environmental Services Department ("ES") indicated that it has no objection to the requested vacation; however, ES requested that an easement be reserved in the vacation ordinance for a surface water pipe and catch basins located in the vacation area if the conditions or concerns set forth in *Exhibit 1* are not resolved prior to final reading. ES may have misunderstood the ownership situation of the subject property. Given that ES is a City Department and, given that the City owns the area on which the ES surface water pipe and catch basins are located, no easement is necessary, nor can one effectively be granted under applicable law because the easement grantor and grantee would be the same entity—the City of Tacoma. Internal City maintenance and operation concerns can be resolved internally.

B. ADVISORY COMMENTS:

1. TRAFFIC ENGINEERING

Traffic Engineering has no objection; however, the following should be observed:

- a. At the time any development of the vacation area reduces the existing sidewalk, not including the curb, a minimum of seven (7) feet shall be provided for unobstructed pedestrian passage. The remaining sidewalk width shall meet ADA standards and be free of obstructions, such as signs, bollards, street lights, and tree wells. The unobstructed sidewalk could be allowed to affect the location of ADA parking on Broadway Avenue adjacent to the site, in that it is possible that the two (2) existing ADA stalls could be reduced to a single stall and still remain compliant;
- b. On streets within downtown Tacoma, the preferred sidewalk/amenity zone width on pedestrian/retail streets, such as Broadway Avenue, is 15.5 feet. The elimination of on-street parking adjacent to this site may be required to accommodate future bicycle and enhanced pedestrian amenities outlined in the downtown Tacoma Plan and City of Tacoma Design Manual;
- c. At the time of development that impacts the existing street light infrastructure, the street light shall be removed and reinstalled by the development applicant to a City approved location; and
- d. The comments and recommended conditions are consistent with the Transportation Master Plan Goals and Policies to "prioritize the

movement of people and goods via modes that have the least environmental impact and greatest contribution to livability in order to build a balanced transportation network that provides mobility options, accessibility, and economic vitality for all across all neighborhoods.” It is also consistent with policies 2.3 Improve Safety, 2.4 Promote Health, 3.1 Complete Streets/Layered Network, 3.2 Green Hierarchy, 3.6 Street System Design, 3.7 Special Needs of Transportation Users, and 3.9 Pedestrian Facilities. The comments are also consistent with the City of Tacoma Design Manual for street design. These comments do not serve as approval of proposed site plans.

2. TACOMA FIRE

The City Fire Department has no objection to the vacation; however, the BCPA is advised that all future construction shall comply with the adopted Fire Code at the time of building permit submittal.

3. NO OTHER OBJECTIONS

No objection or additional comment was received from Pierce Transit, Puget Sound Energy, Environmental Services, Comcast, CenturyLink, Tacoma Power, Click! Network Transmission, Tacoma Water, Distribution, and Planning and Development Services.

C. 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) in such development plans, proposals, or conditions of approval imposed shall potentially be subject to the review of the Hearing Examiner and may require further and additional 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.

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

RECOMMENDATION:

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

DATED this 3rd day of November, 2017.



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 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.