

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: THE HUMANE SOCIETY FOR TACOMA AND PIERCE COUNTY → FOUR DOGS AND PEPPER LLC.

FILE NO: HEX2020-002 (124.1407)

SUMMARY OF REQUEST

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition from the Humane Society for Tacoma and Pierce County, a Washington non-profit corporation, (hereinafter referred to separately as the “Humane Society”) to vacate a portion of the alleyway between South 67th and South 69th Streets, and South Adams Street and vacated Durango Street, as depicted on the attached maps identified as City Exhibits C-2 and C-3. The vacation of this alley is requested to facilitate contiguous development of the adjacent parcels. During the pendency of this petition, the Humane Society sold the real property abutting the Vacation Area (defined below) to Four Dogs and Pepper LLC, a Washington Limited Liability Company, making Four Dogs and Pepper LLC (herein “FDP”) the opt-in, successor-in-interest petitioner.

RECOMMENDATION OF THE HEARING EXAMINER

The vacation petition is hereby recommended for approval, subject to the conditions set forth herein below.

PUBLIC HEARING

After reviewing RPS’ Preliminary Report (the “Report”—Exhibit C-1), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on February 20, 2020. Teague Pasco, a Senior Real Estate Officer with RPS, represented the City. Dominic Temmel, Commercial Broker with Coldwell Banker Commercial Danforth, presented written authorization to represent the Petitioner (defined below). Testimony was taken; exhibits were admitted. At the conclusion of the proceedings, the parties agreed to hold the record open until the results of a survey were filed with the Hearing Examiner’s Office. The survey relates to an easement reservation referenced herein, and it was submitted on April 17, 2020, upon which submission, the record closed.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. Petitioner, first the Humane Society and now FDP (collectively the “Petitioner”), submitted a petition requesting the vacation of a portion of the alleyway between South 67th and South 69th Streets, and South Adams Street and vacated Durango Street (the “Vacation Area”). *Ex. C-1~C-3.*

2. RPS’s Report provides the following as the legal description for the Vacation Area:

The 20-foot wide alleyway lying between and abutting Lots 3 through 21, Block 24 and Lots 3 through 21, Block 25, Plat of Villa Park, filed August, 4, 1890 at Volume 5, Pages 60 and 61, records of Pierce County, Washington.

All situate in the City of Tacoma, County of Pierce, State of Washington; within the Northeast Quarter of Section 25, Township 20 North, Range 2 East, of the Willamette Meridian. *Ex. C-1.*

3. The Vacation Area connects to unimproved South 69th Street right-of-way to the south. On the north, the Vacation Area begins approximately 50 feet south of the remaining portion of the alley abutting South 67th Street to the north, and separately owned property to the east and west. This segment of alley is level and unimproved. *Ex. C-1.*

4. The City acquired the right-of-way that comprises the Vacation Area on August 4, 1890 in the Plat of Villa Park. *Ex. C-1; Ex. C-7.*

5. The Petitioner requests vacation of this alley to support planned commercial development of three otherwise contiguous parcels, as shown in Exhibits C-2 and C-3. These three parcels are identified by Pierce County Assessor’s Parcel Nos. 9260001000; 9260001020; and 9260001040 from west to east. The eastern two parcels are bisected by the alley that is the Vacation Area. *Ex. C-2; Ex. C-3; Ex. C-5.*

6. In addition to the alley, the two eastern parcels are also divided by a City of Tacoma-owned 20-foot-wide strip of real property running alongside and immediately adjacent to the Vacation Area. There is a public storm water sewer main located in this strip. *See survey in Exhibit C-17.* The petition requested a Declaration of Surplus and execution of a Quit Claim Deed for this strip of property, subject to the City retaining an easement for the storm water sewer facilities. This conveyance and retained easement, if approved, should be completed concurrently with the effectiveness of the City’s Street Vacation Ordinance. The City took ownership of the proposed surplus property in association with construction of the public storm sewer main. Most similar City acquisitions for storm water infrastructure are for easements only. Environmental Services has determined that an easement 30-feet in width is required, 15 feet on either side of the sewer main center line, but that ownership of the underlying fee interest that the City presently holds is surplus to its needs. *Exs. C-1~C-3, Ex. C-6, Ex. C-17.*

7. At the time of the hearing, the City believed the sewer main to be approximately in the center of the City-owned strip, and a survey to definitely locate the main was completed post hearing in order to more clearly ascertain the needed easement area (the "Survey"). City staff thought it likely that a portion of the eastern 15 feet of easement area would extend into the Vacation Area, and therefore, the vacation is conditioned below upon reservation of an easement in the Vacation Ordinance. *Pasco Testimony; Exs. C-1~C-3, Ex. C-17.*

8. RPS circulated the petition for review by interested governmental agencies, City departments/divisions, and utility providers. These various agencies, departments and divisions provided comments and recommended/requested conditions to RPS. These conditions were incorporated into the Report and referenced in City testimony at the hearing. These conditions, where appropriate, have been incorporated in this Report and Recommendation at Conclusion 8 below. None of the governmental agencies, City departments/divisions, and utility providers objected to the requested vacation. *Ex. C-1, Exs. C-8~C-16.*

9. No members of the public appeared at the hearing to testify nor were any written public comments received.

10. Approving the requested vacation will add the Vacation Area to the taxable square footage of the abutting property(ies), and will facilitate the development of the same. Development of the abutting properties and the Vacation Area for commercial purposes may end up creating employment opportunities that do not exist at present. These combine to establish a public benefit to be derived from approving the vacation. *Ex. C-1.*

11. The Vacation Area is currently undeveloped for right-of-way purposes. As a result, it does not serve the public as right-of-way, nor is it used for access by abutting property owners. City Public Works staff have determined that the Vacation Area is not needed for future right-of-way purposes as well. *Ex. C-1, Ex. C-8.*

12. The Vacation Area neither abuts, nor is proximate to a body of water and, therefore, the provisions of RCW 35.79.035 are not implicated. *Ex. C-1.*

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

14. Notice of the upcoming Public Hearing were posted at the following locations on January 13, 2020:

- a. A yellow public notice sign was placed at the southeast corner of the intersection of South 67th Street and north of the Vacation Area, between South Adams Street and vacated Durango Street.

- b. A yellow public notice sign was placed at the end of developed South 69th Street, adjacent to the southern extent of the Vacation Area, between South Adams Street and vacated Durango Street.

Public hearing notices were posted or published on January 9, 2020, as follows:

- c. A public notice memo was placed into the glass display case located on the first floor of the Municipal building next to the Finance Department.
- d. A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/page.aspx?nid=596>
- e. Public Notice was advertised in the Daily Index newspaper.
- f. A public notice card was mailed to all parties of record within 300 feet of the Vacation Area.
- g. Public Notice was advertised on Municipal Television Channel 12. *Ex. C-1; Ex. C-4.*

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

CONCLUSIONS OF LAW:

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 Tacoma Municipal Code (TMC) 1.23.050.A.5, TMC 9.22.070, RCW 35.79.030.*

2. The Hearing Examiner’s role in street vacation proceedings is quasi-judicial in nature (making findings and conclusions based on evidence presented), 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); TMC 9.22.070.*

3. 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).

4. Petitions for the vacation of public right-of-way must be consistent 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.*¹

5. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. *See TMC 1.23.070.*

6. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested alley vacation conforms to the criteria for the vacation of street right-of-way set forth at Conclusion 4 above, provided the conditions recommended below are imposed and met. No potential for landlocking an abutting owner exists from granting the petition, nor is there any need for, or public purpose served by retaining the Vacation Area as unimproved, unopened right-of-way. The Vacation Area plays no role in the “[s]treet pattern or circulation of the immediate area or the community as a whole.” Public benefit accrues through the potential for increased tax revenue, and the facilitation of economic development.

7. “RCW 35.79.010 gives the legislative authority [of a municipality] -- the city council -- sole discretion as to whether a petition to vacate shall be granted or denied.”²

8. Given the foregoing, the Hearing Examiner recommends that the requested street vacation be approved subject to the following conditions:

A. SPECIAL CONDITIONS:

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

¹ For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

² *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).

management and maintenance of other City owned lands and unimproved rights-of-way. *TMC 9.22.010*.

2. ENVIRONMENTAL SERVICES

A 30-foot wide City utility easement, per the Survey, will need to be reserved in the Vacation Ordinance or otherwise granted in a separate document as a condition precedent to finalizing the vacation ordinance.

B. ADVISORY CONSIDERATION:

RPS/IN-LIEU

RPS has noted that an in-lieu-of-assessment sewer charge of \$1,353.42 is due at this time or at time of development. If the Petitioner chooses to delay payment beyond the vacation process, the amount due may possibly increase.

C. USUAL CONDITIONS/COMMENTS:

1. The recommendation set forth herein is based upon representations made and exhibits, including any development representations, 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 may potentially be subject to the review of the Hearing Examiner and may require additional review and hearings.
2. The Connection Charge In-Lieu-of-Assessment (In-Lieu-of-Assessment Charge[s]) estimates provided by the City's Public Works Department in Exhibit 1 are advisory comments only, and payment thereof is not a condition to approving this vacation. They can be voluntarily paid at time of compensation for the Vacation Area. If not, the In-Lieu-of-Assessment Charge(s) will be required to be paid in conjunction with any future permitting on, or development of the Vacation Area, and may be subject to increase with the passage of time.
3. 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.

4. Other than the conditions/concerns/objections already expressly set forth herein, no objection or additional comment was received from the governmental agencies, City departments/divisions, and utility providers to whom the City circulated the petition.

9. Accordingly, the petition is recommended for approval, subject to the conditions set forth in Conclusion 8 above.

10. 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 8 above.

DATED this 24th day of April, 2020.



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 may 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*