



City of Tacoma
Hearing Examiner

March 26, 2014

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Re: File No. HEX 2013-050 (Vacation Petition No. 124.1339) Petitioner: 4910 Pine Street, LLC

To the Parties,

Please find enclosed a copy of the Tacoma Hearing Examiner's Report and Recommendation to the Tacoma City Council concerning the above referenced matter as the result of a public hearing held before the Hearing Examiner on March 20, 2014.

Sincerely,

Louisa Legg, Legal Assistant

Enclosure (1) – HEX Report and Recommendation

Transmitted via Inter-office Mail Delivery:

Pierce County Assessor-Treasurer

Transmitted via E-mail Delivery:

CenturyLink, Attn: Leslie Ferguson (leslie.watson@centurylink.com)
Clerk's Office, City of Tacoma (Nicole Emery)
Tacoma Fire Department (Ryan Erickson, P.E.)
Tacoma Power (Rick Van Allen)
Tacoma Water (Jesse Angel)
Solid Waste Management, City of Tacoma (Rick Coyne)
Public Works Engineering, City of Tacoma (Sue Simpson)
Legal Department, Civil Division, City of Tacoma
Environmental Services Department, City of Tacoma (Merita Trohimovich-Pollard)
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

TACOMA CITY COUNCIL

HEX FILE NO.: 2013-050 (124.1339)

PETITIONER: 4910 Pine Street, LLC

SUMMARY OF REQUEST:

Real Property Services has received a petition from 4910 Pine Street, LLC to vacate the alley between Pine Street and vacated South Junett Street from South 50th Street, north approximately 50 feet in Tacoma, Washington, for a low density multi-family housing development.

RECOMMENDATION OF THE HEARING EXAMINER:

The requested vacation petition is recommended for approval, subject to the conditions contained herein.

PUBLIC HEARING:

After reviewing the report of the Department of Public Works, Real Property Services Division and examining available information on file with the application, the Hearing Examiner conducted a public hearing on the application on March 20, 2014.

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

- 1 -
ORIGINAL

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. 4910 Pine Street, LLC (Pine Street LLC) is requesting vacation of the remaining portion of the alley between Pine Street and vacated South Junett Street, north of South 50th Street in Tacoma, Washington, more particularly described as follows:

That portion of the alley between Blocks 11 and 12, South Park Addition to Tacoma, W.T., according to the Plat thereof recorded in Volume 3 of Plats, Page 64, records of Pierce County, Washington, lying south of that portion of said alley vacated by City of Tacoma Ordinance 12726, recorded under Auditor's File Number 1383345, and North of the North margin of South 50th Street.

The petition has been joined by all owners of property abutting the rights-of-way proposed for vacation. *Stevens Testimony.*

2. Pine Street LLC is developing an apartment complex in the area east of Pine Street, west of vacated South Junett Street, and north of South 50th Street in Tacoma, Washington. The proposed complex will be constructed with a perimeter fence. A large part of the alley between Pine Street and vacated South Junett Street in this area has been previously vacated, however, the southerly portion of the alley right-of-way remains in City ownership. The alley is not currently improved for vehicular travel. At one time, the alley could have served a single-family residence at the corner of Pine Street and South 50th Street. That home is no longer present on the site. All property abutting the alley right-of-way is currently unimproved. Obtaining the remaining alley right-of-way through this vacation would allow Pine Street LLC to complete the perimeter fence without an indentation at the alley site. The developers suggest this uninterrupted fence configuration would benefit the public safety by eliminating a potential area for persons or vehicles to congregate while shielded from view. *Dearth Testimony.*

3. The southerly 100 feet¹ of the alley between Pine Street and vacated South Junett Street was dedicated in South Park Addition to Tacoma, W.T., according to the Plat thereof recorded in Volume 3 of Plats, Page 64, records of Pierce County, Washington. It lies south of that portion of the alley vacated in 1945 by City of Tacoma Ordinance 12726, recorded under Auditor's File Number 1383345. *Ex. 6.*

¹ Public Works, Real Property Services Division has informed the Hearing Examiner's Office that the correct length of the alley segment in question is 50 feet. *Ex. 7.*

4. The vacation of this alley will not adversely affect the street pattern or traffic circulation in the area or in the wider community because the right-of-way is not being used for vehicular travel and is not planned for such use in the future. *Stevens Testimony.*

5. The proposed vacation would benefit the public by returning unneeded public property to the tax rolls and by supporting positive economic development. *Stevens Testimony.*

6. There is no evidence the right-of-way would be needed for an additional or different public use in the future. As long as easements are provided for existing utilities in the vacated right-of-way, public need would not be adversely affected by the vacation. *Stevens Testimony.*

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

8. As the right-of-way in question does not abut, nor is it proximate to a body of water, the provisions of RCW 35.79.035 are not implicated. *Stevens Testimony.*

9. The alley vacation petition has been reviewed by a number of governmental agencies and utility providers. None of the reviewers object to the vacation petition, however, some based their position on the inclusion of conditions protecting certain rights in the vacated area, such as easements for utilities. *Stevens Testimony; Exs. 3-6.*

10. The Petitioner Pine Street LLC concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Dearth Testimony.*

11. No witnesses appeared at the hearing opposing Petitioner Pine Street LLC's alley vacation petition. One telephone call was received by the Public Works Real Property Services Division regarding the project. The commenting party expressed the opinion that the area had enough apartments and that the property would be better used for a dog park or a single-family residential development. The commenter made no specific reference to the alley vacation per se. *Stevens 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 (SEPA).

13. All property owners of record within 300 feet of the proposed vacation were notified of the hearing date at least 30 days prior to the hearing, as required by *Tacoma Municipal Code (TMC) 9.22.060*. Additional public notice was given through posted signs, the City of Tacoma's website, and publication in the Tacoma Daily Index. *Stevens Testimony.*

14. Any conclusion of law which is deemed to be properly considered a finding of fact is hereby adopted as such.

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

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction in the matter pursuant to *TMC 1.23.050.A.5* and *TMC 9.22.070*.

2. Proceedings involving the 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). Accordingly, testimony in this matter was taken under oath.

3. Petitions for the vacation of public rights-of-way must be 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 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 Pine Street LLC bears the burden of proof to establish that its petition for vacation is consistent with the foregoing criteria. *TMC 1.23.070.A*.

5. Findings entered herein, based on substantial evidence, support a conclusion that Pine Street LLC's vacation petition satisfies the legal standards for approval of vacation of rights-of-way. The alley is not being used for vehicular travel and its vacation will not adversely affect the street pattern or circulation in the area or community. The public has no anticipated need for use of this remnant of the alley right-of-way. Any public interest in the alley related to providing utility services is protected by the required utility easements. The proposed vacation presents no potential for landlocking an abutting owner and the provisions of RCW 35.79.035 governing areas close to bodies of water do not apply.

6. Accordingly, the requested alley vacation should be approved provided the following conditions are imposed:

A. SPECIAL CONDITIONS:

1. 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 rights-of-way. *TMC 9.22.010.*

2. TACOMA POWER

A public easement shall be reserved over a 10' wide x 20' long area at the southeast corner of the vacated area for an existing down guy and anchor.

3. PUBLIC WORKS/L.I.D.

The Petitioner shall pay the collection in-lieu of assessment for sanitary sewer which is currently \$1,290.09. When the Petitioner submits a development plan, the in-lieu amount will be reviewed and may be recalculated.

4. CENTURYLINK

The Petitioner shall provide CenturyLink with an easement for the aerial cable that crosses South 50th Street into the area that is going to be vacated and its associated aerial terminal. In the alternative, the Petitioner shall pay CenturyLink's relocation costs.

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.

7. The Hearing Examiner recommends that the alley vacation petition submitted by Pine Street LLC be granted, subject to the conditions set forth above.

8. Any finding of fact, which is deemed to be properly considered a conclusion of law is hereby adopted as such.

RECOMMENDATION:

The requested vacation petition is recommended for approval, subject to conditions set forth above.

DATED this 26th day of March, 2014.



PHYLLIS K. MACLEOD, Hearing Examiner

NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION:

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.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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