



City of Tacoma
Hearing Examiner

July 17, 2015

FIRST CLASS & ELECTRONIC MAIL DELIVERY

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Re: File No. HEX2015-010 (Street Vacation Petition File No. 124.1356)
Petitioner: Tacoma Hospitality, LLC

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 the result of a public hearing held on July 9, 2015.

Sincerely,

Louisa Legg
Office Administrator

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 July 17, 2015, at Tacoma, WA.

Louisa Legg

Enclosure (1) – HEX Report and Recommendation

cc: See Page 2

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Page 2 – HEX2015-010 (124.1356) Tacoma Hospitality, LLC

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

Transmitted via Electronic Mail Delivery

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

Legal (Jeff Capell)

Public Works Engineering/L.I.D., City of Tacoma (Sue Simpson)

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.: HEX 2015-010 (124.1356)

PETITIONER: Tacoma Hospitality, LLC

SUMMARY OF REQUEST:

Real Property Services has received a petition from Tacoma Hospitality, LLC seeking to vacate a one-foot portion of right-of-way running along Commerce Street, South 15th Street, and Pacific Avenue to cure a building foundation encroachment for the Waddell building, previously permitted under Street Occupancy Permit No. 140.

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 (DPW), Real Property Services Division and examining available information on file with the application, the Hearing Examiner conducted a public hearing on the petition on July 9, 2015. After the hearing, the Hearing Examiner conducted a site visit on July 10, 2015.

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

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ORIGINAL

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. Tacoma Hospitality, LLC is requesting vacation of a one-foot portion of Commerce Street, South 15th Street, and Pacific Avenue right-of-ways to cure a building foundation encroachment for the Waddell Building, previously permitted under Street Occupancy Permit No. 140, more particularly described as follows:

The Westerly 1.00 foot of Pacific Avenue lying adjacent to and being contiguous with the Northerly 34.37 feet of Block 1504, of the Map of New Tacoma, according to the plat recorded February 3, 1875 in Volume 1 of plats, page 1, records of Pierce County, Washington;

AND

The Easterly 1.00 foot of Commerce Street lying adjacent to and being contiguous with the Northerly 35.57 feet of said Block 1504;

AND

The Southerly 1.00 foot of South 15th Street lying adjacent to and being contiguous with Lot 1 of said Block 1504;

TOGETHER WITH the Southerly 1.00 feet of said South 15th Street lying adjacent to and contiguous with said Westerly 1.00 foot of Pacific Avenue;

AND TOGETHER WITH the Southerly 1.00 feet of said South 15th Street lying adjacent to and contiguous with said Easterly 1.00 foot of Commerce Street;

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

2. Pacific Avenue, South 15th Street, and Commerce Street are fully improved streets with curbs, gutters, and sidewalks. Pacific Avenue and Commerce Streets are relatively level. South 15th Street from Commerce Street to Pacific Avenue slopes downward toward Pacific Avenue, and the Tacoma Link light rail runs on Commerce Street. *Stevens Testimony; Ex. 1.*

3. The City acquired the right-of-way proposed to be vacated when the map of New Tacoma was filed in February 3, 1875, in Volume 1 of plats, page 1, records of Pierce County, Washington. The Waddell Building was originally built in 1890 by James Waddell; it has undergone several renovations and remodels over the last one hundred and twenty-five years. *Stevens Testimony; Ex. 1.*

During the most recent remodel of the Waddell Building in connection with the construction of the Marriott Hotel, a survey disclosed a one foot portion of the Waddell Building's foundation encroached into the right of way at Commerce Street, South 15th Street, and Pacific Avenue. *Stevens Testimony; Exs. 1 and 3.* As an interim measure, the City and building owner Hollander Investments, Inc.¹ entered into a Development Agreement and Street Occupancy Permit (SOP 140) to allow the encroaching portion of the building foundation to

¹ Hollander Investments, Inc. is the parent company of Tacoma Hospitality, LLC. *Stevens Testimony.*

remain in the right of way. It was mutually agreed the foundation encroachment would be cured via the street vacation process.

The Development Agreement was signed in April 2002, and was amended in December 2002 (Exhibit 5). *Stevens Testimony; Ex. 1, 4, 5.* The Covenant, Conditions and Restrictions, and the Street Occupancy Permit were also executed in December 2002. *Stevens Testimony; Exs. 1, 6, and 7.*

4. The vacation of the requested one-foot portion of Commerce Street, South 15th Street, and Pacific Avenue will not adversely affect the street pattern or traffic circulation in the area or in the wider community. The traveled portion of the right-of-way will remain unchanged. *Stevens Testimony; Ex. 1.*

5. The evidence indicated the public would benefit from the proposed vacation to the extent that it would complete the terms agreed to by the City and Hollander Investments, Inc. in the Hollander Investments Inc. Development Agreement regarding the foundation footing encroachment. The Hollander Investments Inc. Development Agreement was an effort to facilitate and encourage economic development, and completion of the vacation is an example of the City's continued commitment to supporting economic development within the City. The proposal would also permit the unneeded right-of-way to be returned to the public tax rolls. *Stevens Testimony; Ex. 1.*

6. There is no evidence the portion of right-of-way being proposed for vacation would be needed for an additional or different public use in the future.

7. No abutting property would become landlocked or have its access substantially impaired as a result of the requested street vacation.

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. No members of the public appeared at the hearing to oppose approval of Tacoma Hospitality, LLC's petition to vacate the one-foot portion of Commerce Street, South 15th Street, and Pacific Avenue.

10. 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.

11. 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.

12. All property owners of record within 400 feet² 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. Stevens Testimony; Ex. 1.*

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

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 Tacoma Hospitality, LLC bears the burden of proof to establish that its petition for vacation is consistent with the foregoing criteria. *TMC 1.23.070.A.*

² The DPW's Preliminary Report describes the notice radius as within 900 feet, however, at hearing Mr. Stevens noted that the actual notice radius was 400 feet.

5. Findings entered herein, based on substantial evidence, support a conclusion that Tacoma Hospitality, LLC's vacation petition satisfies the legal standards for approval of vacation of rights-of-way, provided the conditions recommended herein are imposed. The public would experience benefits from the requested vacation by returning unused property to the tax rolls and by supporting economic development in the downtown area. The Tacoma Hospitality, LLC project has been an important improvement in downtown Tacoma, encouraging tourism and use of the Greater Tacoma Convention & Trade Center and providing jobs to members of the community. The public interest in street circulation and access will be unimpeded by the street vacation because the abutting streets are fully developed and do not utilize the area being vacated. The small strip of property in question is not needed for future public purposes.

6. Accordingly, the requested street vacation should 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 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.

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. Accordingly, the Hearing Examiner recommends that the street vacation petition submitted by Tacoma Hospitality, 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 herein, is hereby adopted as such.

RECOMMENDATION:

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

DATED this 17th day of July, 2015.



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,
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