

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: MultiCare Health System, a Washington nonprofit corporation.

FILE NO: HEX2022-024 (124.1426)

SUMMARY OF REQUEST:

A petition by MultiCare Health System (“Petitioner”) requesting the vacation of a portion of South L Street, lying north of South 5th Street, and a portion of South 4th Street, lying westerly of South L Street to facilitate a health-care redevelopment project.

RECOMMENDATION OF THE HEARING EXAMINER:

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

PUBLIC HEARING:

After reviewing Real Property Services’ 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 January 19, 2023.¹ Senior Real Estate Specialist, Troy Stevens, of Real Property Services (“RPS”) represented the City. Both Jeff Poltawsky, President and Market Leader of Mary Bridge Children’s Hospital & Health Network and David Stokes, Senior Director and Project Manager of CBRE Healthcare, appeared on the Petitioner’s behalf at the hearing.²

¹ This hearing was conducted with in-person participation in the City Council Chambers, and also participation over Zoom at no cost to any participant with video, internet audio, and telephonic access. The Petitioner’s representatives and the City were present in the Council Chambers.

² Mr. Poltawsky represented that he is a duly authorized officer with authority to represent the corporate entity Petitioner in this proceeding.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The Petitioner, MultiCare Health System, a Washington nonprofit corporation (the “Petitioner”), has requested the vacation of a portion of South L Street, lying north of South 5th Street, and a portion of South 4th Street, lying westerly of South L Street (collectively the “Vacation Areas”). The Vacation Areas are legally described as follows:

THAT PORTION OF SOUTH L STREET AND SOUTH 4TH STREET IN THE SOUTHEAST QUARTER, OF THE SOUTHWEST QUARTER, OF SECTION 32, TOWNSHIP 21 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF TACOMA, PIERCE COUNTY, WASHINGTON; SAID PORTIONS BEING DESCRIBED AS FOLLOWS:

SOUTH L STREET

THAT PORTION OF SOUTH L STREET LYING BETWEEN AND ADJACENT TO LOTS 3 THROUGH 12, BLOCKS 423 AND 424, MAP OF NEW TACOMA, WASHINGTON TERRITORY, RECORDED FEBRUARY 3, 1875.

AND

SOUTH 4TH STREET

THAT PORTION OF SOUTH 4th STREET LYING BETWEEN THE NORTH EXTENSION OF THE WEST LINE OF THE EASTERLY 10 FEET OF THE ALLEY VACATED IN ORDINANCE NO. 2773, SAID NORTH EXTENSION TO INTERSECT WITH THE NORTH LINE OF SOUTH 4th STREET, AND THE NORTH EXTENSION OF THE EAST LINE OF BLOCK 424, MAP OF NEW TACOMA, WASHINGTON TERRITORY, RECORDED FEBRUARY 3, 1875, TO INTERSECT WITH THE NORTH LINE OF SOUTH 4th STREET. *Ex. C-1~Ex. C-3.*

2. The property owners of record abutting the Vacations Areas have agreed to the petition and appear to be affiliate entities of the Petitioner. *Ex. C-4*

3. The Petitioner plans on using the Vacation Areas, if unencumbered by the City’s right-of-way interest, to facilitate the development of a new five-story, 96-bed state-of-the-art pediatric hospital building that is focused on patient safety, quality care, and innovative leadership. The new pediatric hospital will have 82 private rooms. 22 of the rooms will be for pediatric intensive care. Many rooms are intended to provide overnight accommodations for parents and caregivers. Petitioner’s resulting medical facility is intended to contain eight operating suites, one cardiac catheterization suite, interventional radiology, two gastroenterology and endoscopy procedure rooms, a dedicated pediatric emergency room, and a Level 2 trauma center that will be specially designed to treat children with behavioral health needs. The Petitioner’s future plans include creating a pediatric healthcare campus that will encompass a new Ambulatory Medical Building that will contain a free-standing Urgent Care center, a behavior health crisis urgent care center, infusion services, and two new parking garages, one for staff and providers, and one for patients and visitors. Petitioner’s intention is to create a concentrated campus that

provides multiple areas of pediatric care in a family-friendly, safe layout. *Poltawsky Testimony; Exs. C-1, C-2, C-5.*

4. Petitioner intends for its new campus to become “a beacon of hope” for the community and a campus dedicated “just for kids.” Petitioner’s project will provide significant economic opportunity during construction, and will be designed to connect into the City’s existing street system and utilize existing and expanding public transportation such as the Link. The development is projected to come in at a cost of over 400 million dollars and create 256 new Mary Bridge jobs. *Id.*

5. The City acquired the South L Street and the South 4th Street right-of-way areas by dedication in the Map of New Tacoma, W.T., according to plat filed for record February 3, 1875 in the Office of the Pierce County Auditor. *Ex. C-1, Ex. C-3.*

6. Both the South L Street and South 4th Street right-of-way are dedicated at 80 feet wide, paved with asphalt, and include concrete sidewalk, curb, and gutter, and parallel parking. South L Street has planter strips on both sides with grass or gravel, and trees. Each side of South L Street also includes a driveway. South 4th Street only has a planter strip on the north side of the right-of-way, with grass or gravel and trees. The south side of South 4th Street has a sidewalk and driveways that allow access to a parking lot. *Ex. C-1.*

7. The requested vacations have been reviewed by outside quasi-governmental agencies, City departments/divisions, and both public and private utility providers. Reviewing agencies indicated that they have no concerns or objection to the request, provided that the conditions of approval set forth herein are imposed and met. The City testified that vacating the Vacation Areas as requested will not have any adverse effect on traffic circulation in the area, will not affect access, and that it sees no future need for the Vacation Areas that is integral to the City’s street right-of-way system. The City agrees with Petitioner that its planned pediatric campus will not have a detrimental effect on public traffic circulation in and around the Vacation Areas. Petitioner already has significant medical facilities in the area. *Stevens Testimony, Poltawsky Testimony; Ex. C-1, Ex. C-6~Ex. C-17.*

8. The Petitioner affirmed that it has no objection to any of the City’s recommended conditions of approval. *Poltawsky Testimony.*

9. No members from the public appeared at the hearing virtually through Zoom or in-person to offer comments/testimony. Poltawsky testified that the Petitioner has solicited, and will continue to solicit community input regarding its intended development project.

10. City staff determined that the public would benefit from the proposed vacations to the extent that they will add value to the Petitioner’s property to which the Vacation Areas will attach, and thereby should increase tax revenue. In addition, the Vacation Areas will facilitate expansion of health-care services beneficial to the community. *Ex. C-1.*

11. Except for the rights to be reserved under (a) City utility easement(s), the Vacation Areas are not needed for future public use by the City, and no abutting owner becomes landlocked as a result of the vacations, nor will their access be substantially impaired by the vacations. The Vacation Areas are currently not used for any absolutely essential public right-of-way purpose beyond utility line placement

and access into the Petitioner's facilities, which access will remain based on the redeveloped configuration. *Stevens Testimony, Poltawsky Testimony; Ex. C-1.*

12. The Vacation Areas do not abut, provide access to, or are they proximate to a body of water and, therefore, the provisions of RCW 35.79.035 are not implicated. *Id.*

13. No environmental review of the proposed vacation was conducted, because such is not required by law. *See Conclusion of Law 4*, below.

14. Public hearing notices were posted/published at the various locations and on the dates indicated below as follows:

On December 15, 2022-

- a. A public notice memo was placed into the glass display case located on the First Floor of the Tacoma Municipal Building next to the Finance Department.
- b. A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/cms/one.aspx?objectId=2283>.
- c. Public notice was advertised in the Daily Index newspaper.
- d. A public notice mailing was sent to all parties of record within a 300-foot radius of the Vacation Area.
- e. Public Notice was advertised on Municipal Television Channel 12. *Ex. C-1.*

On December 16, 2022-

- a. A yellow public notice sign was posted 130 feet west of the northwest corner of South 4th Street and South L Street.
- b. A yellow public notice sign was posted at the northeast corner of South 5th Street and South L Street.

15. RPS' Preliminary Report, as entered into the hearing record as Exhibit C-1 (the "Report"), accurately describes the requested vacations, general and specific facts about the abutting properties, and the Vacation Areas and applicable codes. The Report is incorporated herein by this reference as though fully set forth. Any conflict between this Recommendation and the Report should be resolved in favor of this Recommendation, however.

16. Any conclusion hereinafter stated which may be more properly deemed a finding 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 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 somewhat quasi-judicial in nature, making findings and conclusions based on evidence presented, but without a final decision. The Examiner's recommendation leads 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. "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."³ Long-standing case law in Washington has held that the vacation of right-of-way is a legislative/political function that belongs to municipal authorities.⁴

4. Pursuant to WAC 197-11-800(2)(i), the vacation of streets or roads (right-of-way) is exempt from the threshold determination and Environmental Impact Statement requirements of RCW 43.21.C, the State Environmental Policy Act (SEPA).

5. If they are to be approved, petitions for the vacation of public right-of-way must be consistent with the following criteria:⁵

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.

³ *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).

⁴ *Taft v. Washington Mut. Sav. Bank*, 127 Wash. 503, 221 P. 604 (1923); *Capitol Hill Methodist Church of Seattle v. City of Seattle*, 52 Wn.2d 359, 368, 324 P.2d 1113 (1958); *Fry v. O'Leary*, 141 Wash. 465, 469, 252 P. 111 (1927); *Banchemo v. City Council of City of Seattle*, 2 Wn. App. 519, 523, 468 P.2d 724 (1970).

⁵ For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

6. The petitioned-for vacation of right-of-way shall not be in violation of RCW 35.79.035. *TMC 9.22.070.*

6. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. *See TMC 1.23.070.* The Petitioner is entitled to rely on all evidence made part of the record, whatever the source of that evidence.

7. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested partial street vacations conform to the criteria for the vacation of right-of-way set forth at Conclusion 5 above, provided the conditions recommended below are met. The public would experience benefits from the potential increased tax revenue that the requested vacation may generate. Additional public benefit may be derived from the Petitioner's business use of the Vacation Areas through the addition of substantial health-care services and the creation of new jobs. The requested partial vacations will not impair traffic circulation. The requested vacation will not landlock any abutting owner, or adversely affect the public need for right-of-way. The easement reservations referenced herein will sufficiently protect the need for on-going public utility use.

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 Areas. The City shall devote one-half of the revenue received 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.*

2. PUBLIC WORKS/TRAFFIC ENGINEERING AND SAFETY

- a. Public Works Traffic Signal/Streetlighting requires that the streetlights in the Vacation Areas (*see Exhibit C-7*) be disconnected from the City's streetlighting system by the City, at Petitioner's expense, within 6 months of the approval of the street vacation.
- b. The City shall be compensated (*see Estimating Form, Exhibit 1 to Exhibit C-7*) for the decommissioned City assets within the Vacation Areas.
- c. The Petitioner will notify the City of Tacoma Traffic Signal/Streetlight Shop, (253) 591- 5287, to coordinate the disconnection of the lighting within the Vacation Areas from the City's system. Until such time that this work is completed, the City shall operate and maintain the lighting system and shall have complete access to the system.

3. TACOMA POWER AND TACOMA WATER

- a. A City utility easement will be reserved over the east 20 feet and the south 20 feet of South L Street as proposed for vacation. This easement will protect existing and future underground power lines and above ground pad mounted equipment to serve multiple parcels on the east side of South L Street.

Note: Although Tacoma Power HFC will not require a separate easement reservation, the petitioner/developer is put on notice of customer-owned conduit that crosses under South L Street.

- b. A City utility easement will be reserved for Tacoma Water facilities in South 4th Street and South L Street as follows:

The southerly 50 feet of the proposed vacation of South L Street, as well as the easterly 40 feet of the proposed vacation area of South L Street; and The southerly 20 feet of the proposed vacation area of South 4th Street.

Note: The South 4th Street area will not be required in the easement if customer chooses to abandon the water main prior to street vacation.

City utility easement for Tacoma Water facilities shall include the following requirements:

- a) Property Owner/Developer (Petitioner) will need to maintain clearances from Tacoma Water's facilities.
- b) A minimum 10' of clearance must be maintained from any mains, and a minimum 5' of horizontal clearance and minimum 1' of vertical clearance must be maintained from any hydrants.
- c) If existing Tacoma Water facilities need to be relocated or adjusted, they will be relocated by Tacoma Water at the Property Owner/Developer's (Petitioner's) expense.
- d) Tacoma Water facilities must remain accessible at all times. Any damage to Tacoma Water facilities will be repaired by Tacoma Water crews at the expense of the Property Owner/Developer (Petitioner).

4. ENVIRONMENTAL SERVICES (ES)

- a. A City utility easement must be reserved within the Vacation Areas to protect, maintain, and allow for replacement and access to the following facilities:

Environmental Services asset, SAP #6263833, within the proposed vacation. The surface water segment is a 10-inch line.

5. PRIVATE UTILITIES

Both Puget Sound Energy (PSE) and Lumen have private utility facilities that may be affected by the requested vacations. The City will monitor efforts between the Petitioner and PSE and Lumen to help ensure that these private utility facilities are adequately maintained and accounted for prior to finalization (second reading) of any vacation ordinance.

B. ADVISORY NOTE:

RPS/IN-LIEU

Any LID estimates or other in-lieu amounts referenced in the RPS Report are set forth as advisory comments only, and are not included here as a condition of approval; they can be voluntarily paid as part of the vacation process, or they may be required at the time of any subsequent development of the Vacation Areas. Such fees are subject to increase until paid.

Beyond the conditions set forth above, no objections or additional comments were received from the governmental agencies, City departments/divisions, and utility providers to whom the City circulated this petition.

C. USUAL CONDITIONS:

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 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 vacations 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.

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 vacation petition is hereby recommended for approval, subject to the conditions contained in Conclusion 8 above.

DATED this 24th day of January, 2023.



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*