



City of Tacoma
Hearing Examiner

June 2, 2016

FIRST CLASS MAIL DELIVERY

Albert Sze
North America Asset Management, LLC
16400 Southcenter Parkway, Suite 400
Tukwila, WA 98188-3302

Rich Price, Sr. Real Estate Officer
City of Tacoma, Real Property Services
747 Market Street Room 737
Tacoma, WA 98402-3701
(Inter-office Mail Delivery)

Re: HEX2016-014 (Vacation Petition No. 124.1358)
Petitioner: North America Asset Management, LLC

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 as the result of a public hearing held on May 12 and 24, 2016.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) – HEX Report and Recommendation

cc: See Transmittal List (page 2)

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 June 2, 2016, at Tacoma, WA.

Louisa Legg

June 2, 2016

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HEX 2016-014 (124.1358 NAAM)

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

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Jeff McInnis & Dan Wojatala, BergerABAM, 33301 9th Avenue STE 300,

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Transmitted via Electronic Mail Delivery (June 3, 2016)

PierceTransit (Tina Vaslet)

Comcast Communications (Aaron Cantrel)

Qwest Corp. d/b/a CenturyLink (Christopher Omdahl)

Puget Sound Energy (Marilynn Danby)

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

Legal (Jeff Capell)

Tacoma Power (Gregory Muller & Rich Barrutia)

Tacoma Fire Department (Chris Seaman, P.E.)

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Jesse Angel)

Public Works, City of Tacoma (Sue Simpson)

Public Works Engineering Division, City of Tacoma (Joshua Diekmann, P.E.)

Public Works Engineering Division, City of Tacoma (Brennan Kidd, P.E.)

Environmental Services Department, Science & Engineering, City of Tacoma (Merita Trohimovich)

Environmental Services Department, Science & Engineering, City of Tacoma (Rod Rossi)

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 (Elliott Barnett)

Planning and Development Services Department, City of Tacoma (Philip Kao)

Planning and Development Services Department, City of Tacoma (Lihuang Wung)

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: North America Asset Management, LLC

FILE NO.: HEX 2016-014 (124.1358)

SUMMARY OF REQUEST:

Real Property Services has received a petition from North America Asset Management, LLC to vacate that portion of South Fawcett Avenue lying between South 21st and South 23rd Streets, to facilitate construction of a large commercial mixed-use development.

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 (DPW), Real Property Services Division and examining available information on file with the petition, the Hearing Examiner convened a public hearing on the vacation request on May 12, 2016. The Examiner conducted a site visit prior to the hearing. At the close of the proceedings, the Hearing Examiner granted a continuance request that allowed the Petitioner to submit additional evidence regarding project design and provided the City with an opportunity to review the submittal. The hearing was continued to May 24, 2016, to hear testimony addressing the anticipated evidence. The second day of hearing was held on May 24, 2016, and the evidentiary record was closed later in the day upon receipt of a final exhibit.

ORIGINAL

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. North America Asset Management, LLC has petitioned the City to vacate that portion of South Fawcett Avenue lying between South 21st and South 23rd Streets, to facilitate construction of a large commercial mixed use development. The property to be vacated is more particularly described below:

That portion of the Southwest quarter of the Southwest quarter of Section 04 and the Northwest quarter of the Northwest quarter of Section 09, both in Township 20 North, Range 03 East, W.M. and more particularly described as follows:

That portion of Fawcett Avenue lying southerly of the South right of way margin of South 21st Street and northerly of the westerly extended South line of the Replat of Spinning's Addition and Block 2109 of the Amendatory Map of Smith and Denton's Addition Tacoma, Washington as recorded in Volume 10 of Plats at Page 111, records of Pierce County Auditor.

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

2. The Petitioner intends to incorporate the vacated land with adjoining real property being acquired pursuant to a Development Agreement with the City of Tacoma. The combined property will be used to construct a large commercial mixed-use development referred to as the Tacoma Town Center. *Price Testimony; Ex. 1.* The Tacoma Town Center would feature a plaza area incorporating the proposed vacated South Fawcett Avenue property. The plaza would include public spaces and art installations with retail storefronts opening to the courtyard area. Vehicular traffic would be limited to a small drop-off area and emergency vehicle access off of South 21st Street. Bicycle and pedestrian use of the vacated area to traverse between South 21st and 23rd Streets would be maintained pursuant to a retained easement. *Ex. 1; Exs. 19-21.* The complex would contain residential units, commercial/retail space, office space, and parking. *Ex. 19 (Development Agreement).*

3. South Fawcett Avenue is a level 80-foot wide fully constructed right-of-way with sidewalk, curb, and gutter. As of 2006, the asphalt condition assessment rating was 56. Since that time, the surface treatment has degraded a bit more due to time and lack of general maintenance. This street is an unclassified arterial.¹ *Price Testimony; Ex. 1.* South Fawcett Avenue is identified in the Transportation Element of Tacoma's *Comprehensive Plan* as a bicycle priority corridor. The City constructed improvements along South Fawcett Avenue in 2014, making this street a central component of a 13.1 mile bicycle corridor from the south to the north ends of the City. *Barnett Testimony; Ex. 12.* Representatives of Planning and Development Services and Traffic Engineering both emphasized the need to retain the ability to travel across the vacated area for bicycles and pedestrians in order to achieve

¹ The street will have to be removed from the arterial designation under Tacoma Municipal Code (TMC) 11.05.490 prior to finalizing vacation of the area.

transportation goals now and in the future. *Barnett Testimony; Diekmann Testimony.*

4. The City of Tacoma acquired the street right-of-way proposed to be vacated within the Replat of Spinning's Addition and Block 2109 Amendatory Map of Smith and Denton's Addition Tacoma, Washington, filed for record on July 26, 1915; and Cavender's 2nd Addition to Tacoma W.T., filed for record on April 11, 1887, records of Pierce County Auditor. *Price Testimony; Ex. 1.*

5. The street segment proposed for right-of-way vacation has been reviewed by various City departments and outside quasi-governmental agencies. The reviewing entities have no objection to the project; however, some base their position on the inclusion of conditions preserving the right to utility easements, transportation installations, and emergency vehicle access in the area. *See Exs. 4-16.* The primary concern raised by Traffic Engineering and Long-Range Planning is the importance of South Fawcett Avenue as a part of the bicycle and pedestrian transportation plans in this area. South Fawcett Avenue is designated as a bicycle boulevard, and some improvements have already been installed to facilitate bicycle traffic along this street. If the street is to be vacated, Traffic Engineering and Planning can only support the vacation if an easement is retained, and a commitment is made, to assure dedicated bicycle and pedestrian ways are provided through the plaza area. A 40-foot wide easement has been recommended for reservation as a condition of the vacation that would allow for utility installations and would be the site of a designed passage for bicycles through the area. *Ex. 1.* Intersection improvements to connect bicycles to the adjacent segments of South Fawcett Avenue at South 21st and 23rd Streets would also be required. Under those conditions, the project can be implemented in a manner that retains non-vehicular circulation through the vacated right-of-way. *Diekmann Testimony.*

6. The responding City departments also brought forward the need to retain easement access for emergency vehicles needing to approach buildings fronting on the plaza area. This will require an unimpeded route of sufficient size to accommodate fire apparatus. In addition, rights in the air space above the easement must be retained sufficient to assure no structures are built that would interfere with fire truck operations, including ladder trucks. *Ex. 6; Ex. 12.*

7. The public would benefit from the proposed right-of-way vacation because the project will facilitate the City's plans for economic development in the area. This property is classified as a Tier 1 property, pursuant to the City's General Government Surplus Property Policy and is a prime location for a mixed-use development incorporating retail, commercial and residential uses with a pedestrian-friendly gathering place. Once the property is developed and is no longer in City ownership or control, it will return it to the Pierce County tax rolls. As part of the project conditions, a strip of property will be acquired by the City from the developer to allow for future reconstruction of South 23rd Street to meet the minimum design standard of 52 feet of right-of-way width. The project will create employment opportunities both during construction and during ongoing operation of businesses on the site. The project will be a catalyst for additional development and activity in the downtown area and the nearby University of Washington Tacoma campus. Operations at the project site will generate tax benefits including property taxes, B&O taxes, and sales taxes. The development will include a public gathering area that contains substantial public art installations as a required element of the design. *Anderson Testimony; Price Testimony; Ex. 1.* The Development Agreement between the developer and the City of

Tacoma is structured to assure public benefits of the street vacation are realized, by requiring the developer to show proof the development is moving to the construction phase before the street vacation is finalized. *Price Testimony; Exs. 19 and 20.*

8. The City of Tacoma Traffic Engineering group indicates that the vacation of this portion of South Fawcett Avenue will not have a significant adverse effect on the street pattern or traffic circulation in the area. A traffic study has been prepared covering a larger geographic area referred to as the Tacoma Brewery District. *Ex. 22.* The study included analysis of traffic impacts if a development is undertaken on the parcels in question involving closure of South Fawcett Avenue from South 21st to South 23rd Streets. The study concluded that vehicular traffic on South Fawcett Avenue is light and that it could be accommodated on other streets such as Tacoma Avenue South and Jefferson Avenue. By contrast, bicycle circulation along the north-south corridor through the downtown would be negatively impacted by the closure of South Fawcett Avenue. Accordingly, bicycle circulation must be protected through retention of bicycle and pedestrian access through the proposed development on a reserved easement. Under those circumstances, Traffic Engineering supports the proposed street vacation. *Diekmann Testimony.*

9. Long-Range Planning and Traffic Engineering witnesses demonstrated that the public need for South Fawcett Avenue right-of-way would not be compromised by the street vacation if conditions are put in place to satisfy the need for non-motorized uses, the need for utility infrastructure, and the need for emergency vehicle access. Traffic studies support the feasibility of closing this segment of South Fawcett Avenue in support of a large mixed-use development at the project site. *Barnett Testimony; Diekmann Testimony; Ex. 1.*

10. The evidence indicated that the proposed street vacation will not adversely affect future public need for use of South Fawcett Avenue right-of-way as long as the contemplated easements are retained for non-motorized uses, utility infrastructure, and emergency access. *Barnett Testimony; Diekmann Testimony; Ex. 1.* The developer has committed to work closely with City staff to ensure the non-motorized connection is protected. *Blázej Testimony.* The future street improvements in the area may be benefitted by the frontage improvements and dedications included as part of development conditions for the project. *Diekmann Testimony.*

11. No abutting property or nearby property would become landlocked or have its access substantially impaired as a result of the proposed vacation of the subject segments of right-of-way. *Price Testimony; Ex. 1.*

12. The portions of right-of-way proposed for vacation do not abut a body of water and, thus, the provisions of RCW 35.79.035 are not implicated. *Ex. 1.*

13. 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.*

14. 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.

15. A Public Hearing Notice for the May 12, 2016, hearing was posted at the southwest corner of the intersection of South 21st Street and South Fawcett Avenue and at the northeast corner of the intersection of South 23rd Street and South Fawcett Avenue on April 12, 2016, at least 30 days prior to the hearing, as required by Tacoma Municipal Code (TMC) 9.22.060. The Public Notice was also published in the Tacoma Daily Index and mailed to all parties of record within 300 feet of the vacation request. All required postings of notices for the hearing have been accomplished. *Ex. I.* The continuation of the May 12, 2016, proceedings to May 24, 2016, was announced during the open hearing on May 12, 2016.

16. Any conclusion hereinafter stated which may be deemed to be properly considered a finding of fact herein is hereby adopted as such.

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding. *See TMC 1.23.050.A.5 and TMC 9.22.*

2. Proceedings that involve 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).* The petitioner must demonstrate, by a preponderance of the evidence, that its vacation request conforms to the applicable criteria. *See TMC 1.23.070.*

3. Petitions for the vacation of public right-of-way are reviewed under the TMC for consistency with the following criteria:

1. The vacation will provide a public benefit, and/or will be for 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. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested South Fawcett Avenue right-of-way vacation conforms to the TMC's criteria for the vacation of street rights-of-way, provided the conditions recommended herein are imposed. The public would experience a wide variety of benefits from the requested vacation. The overall project will enhance economic development in the downtown area and will return the property to the tax rolls.² Jobs will be created during both the construction phase and the ongoing business operations. The economic activity generated by the project will increase tax revenues. The project is designed to provide a community gathering space in the plaza that will be enhanced by public art. The residential aspects of the project will increase vibrancy in the area. The requested right-of-way vacation would not landlock any abutting property and the provisions of RCW 35.79.035 are not applicable. So long as provisions for non-motorized transportation, utility infrastructure, and emergency access easements are included as required conditions, the proposed street vacation would not adversely affect the public's needs now or in the future. South Fawcett Avenue is a bicycle corridor through the downtown and the non-motorized transportation through the area to be vacated must be retained in order to meet the requirement of not adversely affecting the public need for the right-of-way. The evidence presented at the hearing demonstrated that the proposed right-of-way vacation, as conditioned, meets the criteria for approval contained in TMC 9.22.070.

5. Accordingly, the requested right-of-way vacation, covering the identified segment of property between that portion of South Fawcett Avenue lying between South 21st and South 23rd Streets, 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.*

² The term "public benefit" as used in the street vacation context is construed broadly and may include the enrichment of the local economy, the facilitating of the providing of goods and services to the community, and increasing property tax revenues. *Banchemo v. City Council of Seattle*, 2 Wn. App. 519, 524, 468 P.2d 724 (1970).

2. CITY EASEMENT RESERVATIONS

An easement shall be reserved over the center 40 feet of the vacation area for the City of Tacoma for the protection, maintenance, repair, construction, and replacement of existing and future above ground and underground utilities along with establishment of non-motorized access easement and emergency access easement including such interest in the air rights above the easement as necessary to assure no interference with emergency apparatus will occur.

3. PUGET SOUND ENERGY (PSE)

PSE has an existing 2-inch STW IP main located within the proposed vacate area. The Petitioner shall provide PSE with an easement to cover this existing line.

4. QWEST COMMUNICATIONS

Qwest indicates that facilities are in the area. Their rights shall be protected by means of an easement or relocation of their facilities at the developer's expense.

5. COMCAST COMMUNICATIONS

Comcast advises it has aerial system crossing South Fawcett Avenue east to west at South 21st Street. Any relocation shall be the responsibility of the developer.

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.

C. ADVISORY COMMENTS:

1. REAL PROPERTY SERVICES (RPS)/IN-LIEU

RPS has no objection; however, an in-lieu of assessment of \$1,466.66 is due at this time or at time of development. If the petitioner chooses to wait, the amount due may increase.

2. PUBLIC WORK/TRAFFIC ENGINEERING

a. The Transportation Master Plan delineates this vacation request area as a bicycle priority corridor. The City constructed improvements along South Fawcett Avenue in 2014 making this segment a central component of a 13.1 mile corridor from south to north ends of the City.

b. A 40-foot wide easement will be retained to provide non-motorized connectivity. The easement would not allow through travel for motorized vehicles to ensure the remaining area could safely and efficiently accommodate non-motorized traffic. The easement should reserve all existing rights for construction of public facilities, and should provide the City approval authority for anything to be located within the air rights of this retained corridor.

c. All design concepts within the corridor shall at a minimum, adhere to the NACTO Urban Street Design Guide and be in conformance of the goals sought within the *Comprehensive Plan*.

3. PIERCE TRANSIT

Pierce Transit advises they have bus stops in the area. Should there be a project in the future that would impact these bus stops, the project proponents should work with Pierce Transit to determine alternate locations.

4. TACOMA POWER

Tacoma Power has infrastructure in the former alleys lying on either side of South Fawcett Avenue. From the plans, it appears the project proponents want to redevelop these areas. If an agreement is not reached to relocate the infrastructure, they would request that the easements reserved in the 2002 vacation ordinance be reaffirmed at the time of property sale.

5. ENVIRONMENTAL SERVICES SCIENCE & ENGINEERING (ESSE)

ESSE provides possible relocation options for the rerouting of wastewater infrastructure and further advises that the Surface water main located within the vacation request needs to be relocated, privatized or abandoned in place.

6. NO OBJECTION

No objection or additional comment was received from Environmental Services/Solid Waste Management.

6. Based upon the facts and the governing law, the vacation petition should be granted, subject to conditions set forth in Conclusion 5 above.

7. Any finding of fact hereinbefore stated which may be deemed to be properly considered a conclusion of law herein is hereby adopted as such.

RECOMMENDATION:

The vacation requested is hereby recommended for approval, subject to the conditions contained in Conclusion 5.

DATED this 2nd day of June, 2016.



PHYLLIS K. MACLEOD, Hearing Examiner

ORIGINAL

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 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.

Notice - No Fee (7/11/00)

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