



City of Tacoma
Hearing Examiner

November 10, 2015

FIRST CLASS & ELECTRONIC MAIL DELIVERY

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Re: File No. HEX2015-024 (Vacation Petition File No. 124.1353)
Petitioner: PCSD Tacoma Facilities I, 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 November 5, 2015.

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 November 10, 2015, at Tacoma, WA.

Louisa Legg

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONERS: PCSD Tacoma Facilities I, LLC

FILE NO.: HEX 2015-024 (124.1353)

SUMMARY OF REQUEST:

Petitioner PCSD Tacoma Facilities I, LLC requests to vacate the alley between East D Street and East E Street, north of Puyallup Avenue and south of BNSF Railway Company property and the terminus of the City right-of-way, for use as a passenger drop-off and bus zone.

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 conducted a public hearing on the petition on November 5, 2015. After the hearing the Hearing Examiner conducted a site visit on November 5, 2015.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. Petitioner PCSD Tacoma Facilities I, LLC (PCSD), has petitioned to vacate the alley adjacent to their school building at 409 Puyallup Avenue. The area to be vacated is more particularly described below:

A portion of 20 foot alley way lying between Blocks 7321 and 7322 of the Plat of TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., recorded July 7, 1884, Pierce County, Washington, situated in the Northwest quarter of the Northeast quarter of Section 09, Township 20 North, Range 03 East, W.M. more particularly described as follows:

Commencing at the Northeast corner of said Block 7321 and the southerly margin of the Burlington Northern and Santa Fe Railway Company's right of way; Thence South 07°32' 17", a distance of 121.12 feet to the Point of Beginning; Thence continuing South 07°32' 17" East, a distance of 158.88 feet to the Southeast corner of said Block 7321; Thence North 82°37' 19" East, a distance of 20.00 feet to the Southwest corner of said Block 7322; Thence North 07°32' 17" West along the westerly margin of said Block 7322, a distance of 158.49 feet.

Thence South 83°43' 54" West a distance of 20.00 feet to the Point of Beginning.

Ex. 1; Ex. 12.

2. Petitioner PCSD requests vacation of this alley to combine the alley between East D Street and East E Street, north of Puyallup Avenue and south of BNSF Railway Company property, with its adjacent property for use as a passenger drop-off and bus zone. *Ex. 1; Stevens Testimony.*

3. The City of Tacoma acquired the rights-of-way proposed to be vacated under the Tacoma Land Company's First Addition to Tacoma, W. T. filed on July 7, 1884, in the records of Pierce County Washington. *Ex. R-1; Stevens Testimony.* In 2003, two boundary line adjustments were completed on property abutting the alley on either side. A portion of the alley lying to the north of the proposed alley area was previously vacated under Substitute Ordinance No. 27216. *Ex. 4; Ex. 5.*

4. The proposed area to be vacated is 20 feet wide and approximately 160 feet long. The alley is paved and runs between an adjacent building to the west and a parking area to the east. The building is being used by PCSD as a school. *Ex. 1; Ontiveros Testimony.*

5. The vacation of the proposed section of alley right-of-way will not adversely affect the street pattern or traffic circulation in the area or in the wider community because the right-of-way being vacated is not being used for vehicular circulation. *Stevens Testimony; Ex. 1.*

6. The public would benefit from the proposed alley right-of-way vacation because it will help facilitate private development by giving the developer more flexibility in utilizing the adjoining property. The public would also benefit from increased safety afforded students of the school through a designated drop-off and bus zone. *Ontiveros Testimony.* The alley vacation is consistent with excellent stewardship of the natural and built environment by allowing a valuable use of unneeded City right-of-way and by returning the property to the tax rolls. *Stevens Testimony; Ex. 1.*

7. There is no evidence the alley right-of-way proposed for vacation would be needed for an additional or different public use in the future. *Ex. 1.*

8. 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 portion of alley right-of-way. *Stevens Testimony; Ex. 1.*

9. The portion of alley right-of-way proposed for vacation does not abut a body of water and, thus, the provisions of RCW 35.79.035 are not implicated. *Stevens Testimony; Ex. 1.*

10. The vacation petition has been joined by all owners of property abutting the right-of-way proposed to be vacated. *Stevens Testimony.* No members of the public appeared at the hearing to oppose the project.

11. The proposed alley 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 retain utility easements and installations in the area. *Stevens Testimony; Exs.6 through 11.*

12. Petitioner PCSD concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Ontiveros Testimony.*

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 November 5, 2015, hearing, was posted at the southeast corner of the alley between East D Street and East E Street on September 30, 2015, at least 30 days prior to the hearing, as required by Tacoma Municipal Code (TMC) 9.22.060 and all required posting of notices for the hearing have been accomplished. The Public Notice was also published in the Tacoma

Daily Index, posted at locations within the Tacoma Municipal Building, advertised on TV Tacoma, and mailed to all parties of record within 300 feet of the vacation request. *Stevens Testimony; Ex. 1.*

16. Any conclusion which may be deemed properly considered a finding is hereby adopted as such.

CONCLUSIONS:

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 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 alley 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 benefit from the alley vacation because it will help facilitate private development in the area. The vacation would give the petitioner more flexibility in utilizing the adjoining property. The public would also benefit from increased public safety for students and visitors to the school with the addition of a

designated drop-off and bus zone. The alley vacation is will allow valuable use of unneeded City right-of-way and will return the property to the tax rolls. The requested alley vacation does not involve right-of-way that is being used for traffic circulation and the right-of-way will not be needed for future public use. The proposed alley right-of-way vacation would not adversely affect the public need so long as provisions for utility easements are included as required conditions. The proposed vacation would not landlock any abutting owner and the provisions of RCW 35.79.035 are not applicable.

5. Accordingly, the requested vacation covering this segment of alleyway 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. CITY EASEMENT RESERVATIONS

A utility easement shall be reserved over the entire vacated area for the City of Tacoma for maintenance, repair, construction, and replacement of existing and future above ground and underground utilities.

3. PUGET SOUND ENERGY (PSE)

The Petitioner shall grant PSE an easement for the existing gas main located in the alley serving 409 Puyallup Avenue.

4. PUBLIC WORKS/LID

An in-lieu assessment fee payment will be required by Public Works/LID in the amount of approximately \$3,053.71.

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. ENVIRONMENTAL SERVICES/SITE REVIEW

Site Review approves the proposed vacation, however, the Petitioner must complete the plans under Work Order 6000039382 with associated public easements.

2. TACOMA FIRE

Tacoma Fire has no objection; however, changes to the site access, including but not limited to, gates, barriers, and traffic calming devices shall not be installed without the approval of Tacoma Fire.

3. COMCAST COMMUNICATIONS

Comcast has one (1) empty 2” conduit within the proposed vacated area that originates in the Puyallup Avenue right-of-way and ends at the Pacific Charter School building. Its sole purpose is to provide future service to the school. It will be at the Petitioner’s sole discretion as to the disposition of the existing conduit. An easement will not be required; but, a Right of Entry will be. If not, Comcast, will consider the equipment abandoned.

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 hereinbefore stated is deemed to be properly considered a conclusion is hereby adopted as such.

RECOMMENDATION:

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

DATED this 10th day of November, 2015.



PHYLLIS K. MACLEOD, 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 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**