



City of Tacoma
Hearing Examiner

March 15, 2016

FIRST CLASS & ELECTRONIC MAIL DELIVERY

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Re: File No. HEX2015-052 (Street Vacation Petition File No. 124.1360)
Petitioner: Active Investment Co., 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 a result of public hearing proceedings conducted on March 3, 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 March 15, 2016, at Tacoma, WA.

Louisa Legg

March 15, 2016

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HEX 2015-052 (124.1360 – Active Inv. Co., LLC)

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

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Aaron Cantrel, Comcast

Marilynn Danby, Puget Sound Energy

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

Legal (Jeff Capell)

Tacoma Power, Click! Network – HFC Engineering (Vince Mounivong)

Tacoma Power, T&D Electrical Services (Rick Van Allen)

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

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Jesse Angel)

Tacoma Water, Water Supply (Stuart Vaughan, P.E.)

Public Works/Real Property Services, City of Tacoma (Sue Simpson)

Public Works/Site and Building Division, City of Tacoma (Bonnie Macleod)

Public Works/Engineering Division, City of Tacoma (Jennifer Kammerzell)

Planning and Development Services Department, City of Tacoma (Elliott Barnett)

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 CITY COUNCIL

PETITIONER: Active Investment Co., LLC

FILE NO.: HEX 2015-052 (124.1360)

SUMMARY OF REQUEST:

A request to vacate the south 125 feet of the alley between Union Avenue and Puget Sound Avenue, lying north of South 40th Street, to allow the Petitioner to consolidate its adjoining properties and facilitate future development of the site.

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 March 3, 2016.

ORIGINAL

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. Active Investment Co., LLC, is requesting the vacation of the south 125 feet of the alley between Union Avenue and Puget Sound Avenue, lying north of South 40th Street. The area to be vacated is more particularly described below:

A portion of the Northwest quarter of the Southwest quarter of Section 18, Township 20 North, Range 03 East, W.M. more particularly described as follows:

The alley abutting Lots 1 through 5, inclusive, Blocks 2 and 3, Cascade Park Addition to Tacoma, W.T., according to the Plat recorded in Book 1 of plats, page 120, records of Pierce County, Washington;

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

Ex. 1.

2. Petitioner Active Investment Co., LLC requests vacation of this alley to consolidate its adjoining properties. The company has a long term plan to re-develop the property. Consolidating the adjacent properties will provide more design options for the development and result in more efficient use of the property. *Ex. 1; Stevens Testimony; Lynn Testimony.*

3. The City of Tacoma acquired the alley right-of-way proposed to be vacated in the plat of Cascade Park Addition to Tacoma, W.T., May 15, 1888, records of Pierce County Washington. *Ex.1.*

4. The alley is unimproved and mostly level. It contains a combination of grass and vegetation. The northerly portion of the alley is being used by the Petitioner, and its tenants, for vehicular connectivity between its adjoining parcels. *Ex. 1; Stevens 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 is being used only for access by the Petitioning party. *Ex. 1; Stevens Testimony.*

6. The public would benefit from the proposed alley right-of-way vacation by returning the property to the tax rolls. In addition, consolidation of the Petitioner's parcels will facilitate future economic development that will enhance the community. *Ex. 1; Stevens Testimony; Lynn Testimony.*

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; Stevens Testimony.*

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. Access to one garage on a neighboring parcel would be eliminated. The impacted neighbor signed the petition for vacation and did not submit any opposition to the proposed alley vacation. Apparently, the existing access to the neighboring parcel off South 40th Street will provide suitable ingress and egress from the property. *Ex. 1; Stevens Testimony.*

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. *Ex. 1; Stevens Testimony.*

10. The vacation petition has been joined by all owners of property abutting the right-of-way proposed to be vacated. *Lynn Testimony.* No members of the public submitted written comments contesting the project or 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 or maintain utility easements and installations in the area. *Stevens Testimony; Exs.4 through 15.*

12. Petitioner Active Investment Co., LLC concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Lynn 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. Notice of the Public Hearing on the proposed vacation was accomplished by several methods. A Public Hearing Notice for the March 3, 2016, hearing, was posted 140 feet east of the northeast corner of the intersection of South 40th Street and South Union Avenue and 35 feet north the northeast corner of the intersection of South 40th Street and South Union Avenue on January 27, 2016, 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 500 feet of the vacation request. *Ex. 1; Stevens Testimony.*

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 governing street vacations. *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 rights-of-way, provided the conditions recommended herein are imposed. The public would benefit from the alley vacation because it will help facilitate re-development in the area.¹ The alley vacation will allow productive 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 general traffic circulation and the right-of-way will not be needed for future public use. The proposed vacation would not landlock any abutting owner and

¹ 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. *Banchero v. City Council of Seattle*, 2 Wn. App. 519, 524, 468 P.2d 724 (1970).

the provisions of RCW 35.79.035, relating to vacations of land adjacent to water bodies, 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 over a 5-foot by 5-foot area in the southeast corner of the vacate area shall be reserved for the City of Tacoma for maintenance, repair, construction, and replacement of existing and future above ground and underground utilities.

Note: This reservation is required to cover Tacoma Power comments.

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. PUBLIC WORKS/REAL PROPERTY SERVICES

RPS has no objection; however, the petitioner must pay in the In-Lieu assessment of **\$2,124.98** (Parcel No. 289000-003-0 & 0050, \$1,062.48; Parcel No. 289000-004-0, \$462.50; and Parcel No. 289000-066-1, \$600.00) at this time or at time of development. If the petitioner chooses to wait, the amount due may increase.

2. PLANNING AND DEVELOPMENT SERVICES/LONG RANGE PLANNING

Long Range Planning has no objection to the alley vacation; however, the regulations related to right-of-way vacation requests include a review against the Comprehensive Plan and a determination that the vacation would be in the public interest. Pursuant to that assessment Long Range Planning requested additional information regarding the proposal so they could assess whether vacating the alley would be consistent with those policies and in the public interest. The applicants met with Long Range Planning and explained that the intent is to consolidate two parcels owned by Active Investments for more efficient use, as well as land assembly for future use. Long Range staff stated that these objectives are not inconsistent with the public interest in this case, with the following caveat:

Comprehensive Plan policy direction has increasingly emphasized vehicular access from the rear of development sites in order to minimize vehicular crossings of the public sidewalk and generally to enhance the pedestrian environment. (Policy included in Exhibit 6.)

In conclusion, Long Range Planning staff does not object to the vacation request and appreciate that the applicants have expressed understanding that the City is likely to require vehicular access to the rear of the site as part of future development.

Note: The Petitioner's legal counsel has provided the following response:

"The City is generally interested in vehicular access to the 'rear' of developed property which, in the case of a redevelopment of the Active Investment property, would likely be to South 40th Street. There is no need for that to be a public access though, and Active believes that a public alley in the present location hampers not only its current use but also creates an

impediment to the best design for future access. Active understands this rear access concept and that such access would be consistent with the City's current adopted land use plans. By proposing and accepting this vacation, Active acknowledges and accepts that such 'rear' access will likely be requested by the City in connection with any redevelopment of the property in the future. The current alley would not be available so any future access would either have to be on private property or a new dedicated alley."

3. PLANNING AND DEVELOPMENT SERVICES/SITE REVIEW

Site Review has no objection; however: it believes the vacation of the alley may restrict access to the garage located at the northwest corner of PC Parcel No. 289000-0061.

4. OTHER AGENCIES

No objection or additional comment was received from Public Works/Traffic, Tacoma Fire, Comcast, Tacoma Water Supply, Tacoma Water (Distribution), Click! Network, or Puget Sound Energy.

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 15th day of March, 2016.



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.

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