



City of Tacoma  
Hearing Examiner

January 18, 2017

FIRST CLASS MAIL DELIVERY

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**Re: HEX 2016-038 (Vacation Petition No. 124.1374)**  
**Petitioner: Stadium Apartments, 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 January 5, 2017.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1) – Findings, Conclusions, 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 January 18, 2017, at Tacoma, WA.

**ORIGINAL**

Louisa Legg

**TRANSMITTAL LIST**

Transmitted via First Class Mail Delivery

Grace Harrison, 3319 SW 327<sup>th</sup> Street, Federal Way, WA 98023  
Jenny Portillo, 115 N Yakima Ave Apt 501, Tacoma WA 98403  
Kim Nakamura, President, Steel Panel Supply, Inc., 6021 12<sup>th</sup> Street E #103, Tacoma WA 98424

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

Transmitted via Electronic Mail Delivery

Puget Sound Energy (Marilynn Danby)  
Comcast (Aaron Cantrel)  
CenturyLink (Franklin Bolden)  
Click! Network (Vince Mounivong)  
Clerk's Office, City of Tacoma (Nicole Emery)  
Legal (Jeff Capell)  
Tacoma Water, Water Distribution (Stuart Vaughan/Jesse Angel)  
Tacoma Power/T&D (Rick Van Allen)  
Tacoma Public Utilities (Greg Muller)  
Tacoma Fire Department (Chris Seaman, P.E.)  
Solid Waste Management, City of Tacoma (Richard Coyne)  
Public Works, City of Tacoma (Sue Simpson)  
Public Works Traffic Engineering, City of Tacoma (Jennifer Kammerzell)  
Environmental Services Department, Science & Engineering, City of Tacoma (Rod Rossi PMP & Merita Trohimovich, P.E.)  
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:** Stadium Apartments, LLC

**FILE NO.:** HEX 2016-038 (124.1374)

**SUMMARY OF REQUEST:**

Real Property Services has received a petition to vacate a portion of the southerly 3.5 feet of North G Street, lying between North 1st and North 2nd Streets, to accommodate patios, stairs, and a community room in a new multi-use residential 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 January 5, 2017. Subsequent to the hearing, the Hearing Examiner conducted a site visit to the property.

**ORIGINAL**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

**FINDINGS OF FACT:**

1. Stadium Apartments, LLC has petitioned the City to vacate a portion of the southerly 3.5 feet of North G Street, lying between North 1st and North 2nd Streets. The property to be vacated is more particularly described below:

A portion of land in the Northwest Quarter of the Southeast Quarter of Section 32, Township 21 North, Range 3 East, W.M., in Pierce County, Washington described as follows:

The southerly 3.50 feet in width of the North "G" Street right-of-way adjacent to and abutting Lots 4 to 12, inclusive, Block 3114, Map of New Tacoma, Washington Territory, according to plat filed for record February 3, 1875 in the office of the County Auditor, in Pierce County, Washington, more particularly described as follows:

BEGINNING at the Northeast corner of Lot 12 in said Block 3114, also being a point on the southerly margin of said North "G" Street;  
THENCE North 63°02'14" West, along said southerly margin for a distance of 224.79 feet to the Northwest corner of Lot 4 in said Block 3114;  
THENCE North 26°57'53" East, along the northerly extension of the northwesterly line of said Lot 4 for a distance of 3.50 feet;  
THENCE South 63°02'14" East, parallel with said southerly margin for a distance of 224.79 feet to a point on the northerly extension of the southeasterly line of Lot 12 in said Block 3114;  
THENCE South 26°57'42" West, along said southeasterly line for a distance of 3.50 feet to the POINT OF BEGINNING.

2. The Petitioner Stadium, Apartments LLC is proposing construction of a multi-use residential apartment complex in the Stadium District. The project design includes steps and patio areas that extend a short distance into the existing City right-of-way for North G Street. The project architect indicated that the developer is seeking to engage with the street and bring the area to life. No walls or barriers will be put into place separating the vacated area from the adjacent sidewalk. The sidewalk will be wider than the prior sidewalk and will provide a straight path through the area for pedestrians.  
*Rydman Testimony.*

3. The City of Tacoma acquired the North G Street right-of-way in the Map of New Tacoma, according to the plat thereof recorded February 3, 1875, records of Pierce County, Washington. *Ex. 1; Stevens Testimony.*

4. North G Street is an 80-foot wide residential street right-of-way located in the Stadium Business District and is in an area zoned Neighborhood Commercial Mixed Use. It is a fully built street with sidewalk, curb, and gutter. The improvements show signs of age and heavy use. The roadway is mostly level with a combination of parallel and angle parking. *Ex. 1; Stevens Testimony.*

5. The City's Traffic Engineering Division has been consulted regarding this petition and supports the petition on the condition that the width of the sidewalk along North G Street is maximized for unobstructed pedestrian access and ADA accessibility. The sidewalk must meet minimum Design Manual standards. The tree wells, signs, and utilities shall be placed in locations that will not conflict with steps, bike racks, or building outcrops. *Ex. 1; Ex. 6; Stevens Testimony.*

6. The proposed vacation has been reviewed by a number of other governmental agencies and utility providers. None object to the street vacation although some have recommended conditions of approval. *Ex. 1; Exs. 7-14; Stevens Testimony.* The Petitioner Stadium Apartments LLC agrees to the recommended conditions of approval. *Rydman Testimony.*

7. The street segment proposed for vacation will not reduce the driving surface of South G Street and the strip is not contemplated or needed for future public use as a transportation route. *Ex. 1; Stevens Testimony.*

8. Vacation of the subject street right-of-way would provide a public benefit by returning property to the tax rolls and by facilitating a multiple-use apartment development. *Ex. 1; Stevens Testimony.*

9. No abutting property would become landlocked or have its access substantially impaired as a result of the vacation of the subject street segment. *Ex. 1; Stevens Testimony.*

10. The right-of-way proposed for vacation does not abut, nor is it proximate to a body of water. The provisions of RCW 35.79.035 are therefore not implicated. *Ex. 1; Stevens Testimony.*

11. Members of the public who reside in the immediate area appeared at the hearing and testified that parking at this location is already inadequate and that the development would reduce the number of existing on-street parking stalls. *Harrison Testimony.* Moreover, commercial development of restaurants in the vicinity would further increase competition for limited on-street parking. *Portillo Testimony.* The project proponent indicated that the on-street parking configuration was dictated by the City's parking standards, which require certain size and placement of the stalls. The current on-street parking has 14.5 stalls and the proposed on-street parking would include 12 stalls. Approving the street vacation alone would not impact the number of stalls available for on-street parking because the vacation only involves an area between the building and the sidewalk. *Nakamura Testimony.*

12. 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.*

13. 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.

14. The Public Hearing Notice for the January 5, 2017, hearing was posted 120 feet southwesterly of the southeast corner of the intersection at North 2<sup>nd</sup> and North G Streets, as well as 135

feet southwesterly of the southwest corner of the intersection at North 1<sup>st</sup> and North G Streets between November 30 and December 1, 2016, at least 30 days prior to the hearing, as required by Tacoma Municipal Code (TMC) 9.22.060. A Public Notice memo was placed into the glass display case located on the first floor of the Municipal building abutting the Finance Department, advertised on the City of Tacoma web site, published in the Tacoma Daily Index, advertised on Municipal Television Chapter 12, and mailed to all parties of record within 300 feet of the vacation request. *Ex. 1; Stevens Testimony.*

15. 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 to vacate 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 vacation of a portion of the southerly 3.5 feet of North G Street, lying between North 1<sup>st</sup> and North 2<sup>nd</sup> Streets, conforms to the TMC's criteria for the vacation of rights-of-way, provided the conditions recommended herein are imposed. The limited strip of property is not being used for general traffic circulation and is not situated in a way that would facilitate traffic improvements in the future. Vacation of the right-of-way strip will not adversely affect future public need so long as the improvements are configured to maximize sidewalk width. The street segment proposed for vacation is not being actively used for any public purpose and through vacation, the property would be returned to the tax rolls. The vacation would also benefit the public by facilitating a significant multi-use development that will provide housing and increase economic development. Vacating this strip of property would not cause reduced on-street parking, although the City's separate requirements for the project's design may result in a slight reduction in parking stalls. The proposed vacation of right-of-way will not landlock any property owner or impact areas near waterways. The evidence demonstrates that the proposal meets the standards for approving a street vacation contained in TMC 9.22.070.

5. The requested right-of-way vacation, covering the southerly 3.5 feet of North G Street lying between North 1<sup>st</sup> and North 2<sup>nd</sup> 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. REAL PROPERTY SERVICES/LID

An In-Lieu amount of \$1,254.26 is due for sanitary sewer is due for sanitary sewer.

**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. TRAFFIC ENGINEERING

Traffic Engineering has no objection; however, the sidewalk along North G Street must be maximized in width for unobstructed pedestrian access and ADA accessibility. Minimum Design Manual standards shall be met. The location of tree wells, signs, and utilities shall be placed in a manner that will not conflict with steps, bike racks, or building outcrops.

2. NO OBJECTION

No objection or additional comment was received from Environmental Services, Tacoma Fire, Comcast, CenturyLink, Tacoma Power, Transmission, Tacoma Power/New Services, Tacoma Water/Supply, Tacoma Water/Distribution, Click! Network.

6. Based upon the facts and the governing law, this 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 18<sup>th</sup> day of January, 2017.



**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**