



City of Tacoma
Hearing Examiner

February 23, 2016

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Re: File No. HEX 2015-44 (Vacation Petition File No. 124.1357)
Petitioner: Jagpal Basra

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 February 18, 2016.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) – HEX Report and Recommendation

cc: Jagpal Basra, P.O. Box 2127, Kirkland, WA 98083
Also See Transmittal Lists on 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 February 23, 2016, at Tacoma, WA.

Louisa Legg

February 23, 2016

Page 2

HEX 2015-044 (124.1357 Basra)

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

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Comcast Communications (Aaron Cantrel)

Pierce Transit (Monica Adams)

Puget Sound Energy (Marilynn Danby)

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

Legal (Jeff Capell)

Tacoma Water (Gloria Fletcher)

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

Solid Waste Collection, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Tony Lindgren)

Environmental Services Department, City of Tacoma (Merita Trohimovich-Pollard, P.E.)

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

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

Public Works, Site and Building Division, City of Tacoma (Stephanie Brock, P.E.)

Planning and Development Services Department, Production and Delivery Center Division
(Larry Criswell)

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: Jagpal Basra

FILE NO.: HEX 2015-044 (124.1357)

SUMMARY OF REQUEST:

Petitioner Jagpal Basra requests to vacate the south 200 feet of the alley between Martin Luther King Jr. Way and South J Street, lying between South 10th and 11th Streets, for a 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 conducted a public hearing on the petition on February 18, 2016.

ORIGINAL

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. Petitioner Jagpal Basra, has petitioned to vacate the alley between Martin Luther King Jr. Way and South J Street, lying between South 10th and 11th Streets. The area to be vacated is more particularly described below:

That portion of the Southwest quarter of the Northeast quarter of Section 05, Township 20 North, Range 03 East, W.M. more particularly described as follows:

The alley abutting Lots 5 through 12, inclusive, Blocks 1020 and 1021, Map of New Tacoma, Washington Territory as recorded February 3, 1875, records of Pierce County Auditor;

Excepting therefrom that portion previously vacated by City of Tacoma Ordinance No. 2130.

Ex. 1.

2. The petitioner Jagpal Basra is planning development of a mixed-use community in the area of Martin Luther King Jr. Way and South 11th Street. The project will include small, high quality, affordable residential units oriented toward the anticipated light rail stop in the area. The mixed-use community is designed to function as a center for the Martin Luther King Jr. Way area and, to that end, will include restaurants and coffee houses. The project will hopefully energize the neighborhood and enhance the emerging medical, education, and transit oriented focus in the area. The alley vacation will allow Mr. Basra to utilize the site more effectively for the planned development. *Ex.1; Graves Testimony.*

3. The City of Tacoma acquired the right-of-way proposed to be vacated within the Map of New Tacoma, Washington Territory as recorded February 3, 1875, records of the Pierce County Auditor. A 10-foot section of the alley on each side was previously vacated in July 1904 by City of Tacoma Ordinance No. 2130. *Ex. 1; Stevens Testimony.*

4. The proposed area to be vacated is a paved alley 20 feet wide in quite poor condition. A portion of the existing alley running between South 10th and South 11th Streets will be vacated for the mixed-use development and the remaining portion of the alley will be retained for use by adjacent properties. The addition of a turnaround will facilitate ongoing use of the alley. *Ex.1; Stevens Testimony; Graves 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 a turn-around will be dedicated to facilitate use of the remaining driveway by adjacent property owners. The alley is not used as an element of general traffic circulation in the area. *Stevens Testimony; Ex. 5.*

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

6. The public would benefit from the proposed alley right-of-way vacation because a largely unused alley that is in disrepair will be incorporated into a mixed-use project designed to increase economic development in the area. The property will also be added to the tax rolls. *Stevens Testimony; Graves Testimony; Ex.1.*

7. There is no evidence the alley right-of-way segment proposed for vacation would be needed for an additional or different public use in the future. *Stevens Testimony; 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. 2.*

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. No members of the public or nearby property owners submitted written objections to the street vacation or appeared at the hearing to oppose the project. *Stevens Testimony.*

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 if conditions are included that protect utility easements. *Stevens Testimony; Exs. 6 through 14.*

12. Petitioner Basra concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Graves 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 February 18, 2016, hearing, was posted at the site on January 13, 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. *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 a significant private development designed to enhance amenities and increase urban style, transit oriented housing in the area. 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 and the turnaround 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.

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

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. PUBLIC WORKS/TRAFFIC ENGINEERING

The petitioner shall dedicate an approved turnaround in the alley to the City, and the area shall be free of obstructions.

Note: Per Exhibit 6, the petitioner may be redesigning his mixed use building; but, the turnaround will still be required.

3. CITY EASEMENT RESERVATIONS

A utility easement shall be reserved over the entire vacate area 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 and Click! Network comments.

4. PLANNING AND DEVELOPMENT SERVICES/SITE REVIEW

Site Review has no objection; however, the following shall be addressed prior to final action on the street vacation:

- a. South 11th Street Sanitary extension.
 - 1) A new manhole shall be dropped in (per diagram) to extend the sanitary west to the South J Street sanitary system.
 - 2) Sanitary extension shall be offset 10-feet from the water line.
 - 3) It may be necessary to add an additional manhole in the South 11th and South J Streets intersection to connect to the South J Street sanitary system – depending on where the existing South J Street manhole is located relative to the waterline and extension crossing.
 - 4) The road (approximately 2 lanes due to the location of the new sanitary line) shall be restored to current standards.

- b. Intersection of South 11th Street and J Street.
 - 1) The sanitary line extension and road restoration impacts ½ of the intersection, so curb ramps shall be removed and replaced at the NW, NW, SE and SW corners of the intersection to current standards.
- c. Alley sanitary line.
 - 1) If the alley is partially vacated, a manhole shall be dropped in the alley (approximately 150-feet from the South 10th Street manhole). The sanitary line in the vacated portion of the alley will need to be abandoned between the new manhole and South 11th Street.
- d. Stormwater requirements per the 2012 SWMM.
- e. Rights-of-Way Restoration per the policy as adopted by Tacoma June 2009
 - 1) For new improvements, 4 feet from face of curb to saw cut line.
 - 2) Saw cut shall not be in wheel path of lane.
 - 3) Paving shall be to current standards.
- f. Side Sewer and Sanitary Sewer Availability Manual.
- g. Copy of Monument Removal Permit from Professional Land Surveyor for any monuments disturbed per WAC 332-120-030(2).
- h. Requirements per the 2004 Design manual.
- i. ADA Compliance shall be in accordance with CFR 28, Part 35 as supplemented by the Public Works Rights-of-Way Accessibility Guidelines (PROWAG).

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. COMCAST

Comcast has no objection; however, Comcast has its facilities attached to TPU poles in this vacation area. Their easement is protected by the Master Pole Agreement with TPU and the Cable Act. Any relocation will be at the developer's/owner's expense.

2. TACOMA FIRE

No objection or additional comment was received from Tacoma Fire.

3. TACOMA WATER

No objection or additional comment was received from Tacoma Water.

4. PIERCE TRANSIT

No objection or additional comment was received from Pierce Transit.

5. PUBLIC WORKS/LID

LID has no objection; however, the petitioner must pay in the In-Lieu assessment of \$1,445.00 at this time or at time of development. If the petitioner chooses to wait, the amount due may increase.

6. PUGET SOUND ENERGY (PSE)

PSE has an existing 4" steel main gas line (in casing) running from South 10th Street southerly along the alley for approximately 93 feet. It appears it stops just before the proposed vacate area (the south property line of 1007 Martin Luther King Jr. Way). Therefore, since PSE has no facilities south of this property line – PSE has no objection to the vacation requested.

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 that 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 23rd day of February, 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.

Notice - No Fee (7/11/00)

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