

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: St. Nicholas Greek Orthodox Church

FILE NO.: HEX 2016-024 (124.1370)

SUMMARY OF REQUEST:

Real Property Services originally received a petition to vacate the east eight feet of South Yakima Avenue, lying between South 15th and South 16th Streets, to facilitate and accommodate existing and future building improvements by St. Nicholas Greek Orthodox Church. After detailed discussions with the City of Tacoma, Traffic Engineering Division, the Petitioner has revised its requested vacation to include only the easterly six feet of South Yakima Avenue abutting on Lots 7 through 12, inclusive, which is a distance of approximately 150 feet.

RECOMMENDATION OF THE HEARING EXAMINER:

The revised 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 October 20, 2016. The record of the hearing was held open for further information and to allow the Petitioner to confer more fully with the City of Tacoma Traffic Engineering Division. Supplementary material modifying the vacation request was filed as an exhibit on November 15, 2016, and the evidentiary record was then closed.

ORIGINAL

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. St. Nicholas Greek Orthodox Church has petitioned the City to vacate the east six feet of South Yakima Avenue, abutting on Lots 7 through 12, inclusive. The property to be vacated is more particularly described below¹:

The easterly 6 feet of South Yakima Avenue abutting on Lots 7 through 12, inclusive, Block 1515 of New Tacoma, according to the plat thereof recorded February 3, 1875, Book A of Plats, Records of Pierce County, Washington.

Ex. 20.

2. The Petitioner is seeking the street vacation in connection with a project to improve the access to its church entrance. In pursuing the project it was noted that the stairs leading to the entrance, which have been in place for approximately 50 years, encroach around five feet into the right-of-way. An access ramp leading to the entrance similarly encroaches on the right-of way. The ramp has been in place over 20 years. The proposed vacation would cure these small, but long-standing, encroachments into the South Yakima Avenue right-of-way. The vacation would also accommodate future building improvements that would extend no further into the right-of-way. *Ex. 1; Acker Testimony; Mellott Testimony.*

3. The City of Tacoma acquired the South Yakima Avenue right-of-way in the plat of New Tacoma, according to the plat thereof recorded February 3, 1875, Records of Pierce County, Washington. *Ex. 1; Stevens Testimony.*

4. The property proposed for vacation is a part of South Yakima Avenue, which is a 100-foot wide improved street right-of-way with planting strips, trees, curb and gutter, and sidewalks on both the east and west sides of the street. The street is classified as a principal arterial, a protected bicycle facility, and a transit network priority street. *Kammerzell Testimony.* South Yakima Avenue is mostly level and runs in a north/south direction. The St. Nicholas Greek Orthodox Church is located on the east side of South Yakima Avenue. The church building includes a ramp and stairs to the church doorway that encroach slightly onto the public right-of-way. As part of plans to accommodate existing and future building projects at the site, the Petitioner is seeking a street vacation that will cure the existing encroachment. *Ex. 1; Stevens Testimony.* The initial street vacation proposal did not retain enough street right-of-way to ensure a full purpose arterial could be developed consistent with the Transportation Master Plan. *Kammerzell Testimony.* The vacation request has now been modified and the new plan reduces the width and length of the street vacation. This configuration allows room for the public improvements to the South Yakima Avenue arterial that the City is contemplating in the future. *Ex. 20.*

¹ The original Petition included the easterly 8 feet of Lots 1 through 12, inclusive. The revised request, developed after discussions with the City of Tacoma Traffic Engineering Division, has been reduced to the easterly six feet for only the area abutting Lots 7 through 12 inclusive. *Ex. 20.* The revision is in the same location and involves less of the property initially described in the Petition, so new notice of the reduced vacation request is not required.

5. The South Yakima Avenue right-of-way is used for general traffic circulation in the area. The revised proposal would not impair traffic circulation because it accommodates a future street layout that would fulfill the goals of the Transportation Master Plan and support vehicle, bicycle, pedestrian, and transit uses now and in the future. *Ex. 20.*

6. The proposed vacation has been reviewed by a number of governmental agencies and utility providers. None have objected to the street vacation, although City of Tacoma, Traffic Engineering opposed the initial request. The reconfigured request overcomes the problems identified by Traffic Engineering. *Ex. 5; Ex. 20.* Puget Sound Energy has noted possible lines in the area. If the lines need to be relocated, it would be at the Petitioner's expense. *Ex. 7.* A Local Improvement District assessment for sanitary sewer with an In-Lieu amount of \$1,254.05 is due. *Ex. 6.* The Petitioner is in agreement with the conditions outlined in the Real Property Services Report. *Mellott Testimony.*

7. Provided the new configuration for the street vacation is implemented, the public need would not be adversely affected by the proposed vacation. The right-of-way segment at issue is part of a major transportation route; however, the planned vacation would not prejudice the public's need for quality transportation facilities in this area. Pursuant to the revised Petition, use of the right-of-way for a fully developed arterial route will be protected. *Ex. 20.*

8. Vacation of the right-of-way-would provide a public benefit by returning property to the tax rolls and curing a long-standing encroachment onto the right-of-way. *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 right-of-way. *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. No members of the public appeared at the hearing opposing the street vacation.

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 Real Property Services 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. Some of the details in the Report have been modified by the revised proposal as reflected in Exhibit 20.

14. A Public Hearing Notice for the October 20, 2016, hearing was posted at the southeast corner of South Yakima Avenue and South 15th Street and at the northeast corner of South Yakima Avenue and South 16th Street on September 20, 2016. The public notice was also published in the Daily Index newspaper and mailed to all parties of record within 400 feet of the vacation request. All required postings of notices for the hearing have been accomplished. *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 six-foot strip of South Yakima Avenue right-of-way adjacent to a portion of the St. Nicholas Greek Orthodox Church property conforms to the TMC's criteria for the vacation of street rights-of-way, provided the conditions recommended herein are imposed. The newly configured vacation request has been reduced from the original proposal and will not impede current or expected traffic circulation in the area. Likewise, the scaled-back version of the street vacation request will not adversely affect future public needs for transportation. The street vacation would return property to the tax rolls and would cure a very long-standing encroachment.

5. Accordingly, the requested right-of-way vacation covering the easterly six feet of South Yakima Avenue abutting on Lots 7 through 12, inclusive, 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. RPS/LID

An In-Lieu amount of \$1,254.05 is due for sanitary sewer. The Petitioner shall contact Sue Simpson at (253)-591-5529 regarding resolution of this matter.

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. PUGET SOUND ENERGY (PSE)

PSE has an existing gas service to the church which will be located within the proposed vacate area. If the existing gas line needs to be relocated due to the improvements, it will be at the Petitioner's expense. If a building is planned over the gas main, the gas main will need to be relocated.

2. NO OBJECTION

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

6. Based upon the facts and the governing law, the modified 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 modified vacation requested is hereby recommended for approval, subject to the conditions contained in Conclusion 5.

DATED this 22nd day of November, 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**