



City of Tacoma
Hearing Examiner

July 22, 2015

FIRST CLASS & ELECTRONIC MAIL DELIVERY

Steve Novotny, Real Estate Management
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City of Tacoma, Real Property Services
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Tacoma, WA 98402
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Re: File No. HEX2015-022 (Street Vacation Petition File No. 124.1352)
Petitioner: SNR Northwest Properties, 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 the result of a public hearing held on July 16, 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 July 22, 2015, at Tacoma, WA.

July 22, 2015

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HEX 2015-022 (124.1352 – SNR NW Prop., LLC)

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

Transmitted via First Class Mail Delivery

Nancy Mason, 5029 S. Trafton Street, Tacoma, WA 98409-7143

Transmitted via Electronic Mail Delivery

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

Legal (Jeff Capell)

Tacoma Power (Rick Van Allen)

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

Solid Waste Management, City of Tacoma (Richard Coyne)

Tacoma Water, Water Distribution (Jesse Angel)

Public Works Engineering/L.I.D., City of Tacoma (Sue Simpson)

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

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

TACOMA CITY COUNCIL

HEX FILE NO.: HEX 2015-022 (124.1352)

PETITIONER: SNR Northwest Properties, LLC

SUMMARY OF REQUEST:

Real Property Services has received a petition from SNR Northwest Properties, LLC seeking to vacate that portion of South 52nd Street lying easterly of South Trafton Street and westerly of the alley as depicted on the map attached to the Department of Public Works, Real Property Services Division's Staff Report. *Exs. 2 and 3.*

RECOMMENDATION OF THE HEARING EXAMINER:

The requested vacation petition is recommended for approval, subject to the conditions contained herein.

PUBLIC HEARING:

After reviewing the report of the Department of Public Works, Real Property Services Division and examining available information on file with the application, the Hearing Examiner conducted a public hearing on the petition on July 16, 2015.

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

ORIGINAL

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. SNR Northwest Properties, LLC (SNR) is requesting vacation of a portion of South 52nd Street lying easterly of South Trafton Street and westerly of the alley, more particularly described as follows:

That portion of South 52nd Street lying within the Northeast Quarter of Section 19, Township 20 North, Range 03 East, W.M. more particularly described as follows:

Beginning at the intersection of the Easterly margin of South Trafton Street and the Northerly margin of South 52nd Street, said point being the Southwest corner of Lot 21, Block 16, in Barker's Addition to Tacoma, Washington, according to the Plat thereof recording in Volume 7 of Plats at Page 106, in Pierce County, Washington; thence South 01°03'40" West, along the Easterly margin of South Trafton Street, a distance of 66.00 feet to the Northwest Corner of Lot 1, Block 25 of said Barker's Addition; thence South 88°55'16" East, along the north line of said Lot 1, a distance of 115.00 feet; thence North 01°03'40" East 66.00 feet to the Southeast corner of said Lot 21; thence North 88°55'16" West, along the south line of said Lot 21, a distance of 115.00 feet to the True Point of Beginning.

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

2. The vacation petition has been joined by all owners of property abutting the right-of-way proposed to be vacated. *Ex. 1; Cornforth Testimony.*

3. The Petitioner SNR is developing ten single-family residences on adjacent lands already under development. The street vacation would allow currently undeveloped and overgrown property to be put to a useful purpose. *Ex. 1; Cornforth Testimony; Novotny Testimony.*

4. The City acquired the right-of-way proposed to be vacated by plat filing of Barker's Addition to Tacoma, Washington, on January 25, 1905, records of Pierce County, Washington. *Ex.4; Cornforth Testimony.*

5. The vacation of the requested portion of South 52nd Street lying easterly of South Trafton Street will not adversely affect the street pattern or traffic circulation in the area or in the wider community. The area is steeply sloped and overgrown with vegetation. It is not improved with a roadway and is not part of the traffic circulation pattern in the area. *Ex. 1; Cornforth Testimony.*

6. The evidence indicated the public would benefit from the proposed vacation to the extent that it would permit the unneeded right-of-way to be returned to the public tax rolls and

would support economic development and improvement of the neighborhood. *Ex. 1; Cornforth Testimony; Mason Testimony.*

7. There is no evidence the portion of right-of-way being proposed for vacation would be needed for an additional or different public use in the future, so long as easements for utilities are reserved. *Ex. 1; Cornforth Testimony.*

8. No abutting property would become landlocked or have its access substantially impaired as a result of the requested street vacation. *Ex. 1; Cornforth Testimony.*

9. As the right-of-way in question does not abut, nor is it proximate to a body of water, the provisions of RCW 35.79.035 are not implicated. *Ex. 1; Cornforth Testimony.*

10. The street vacation petition has been reviewed by a number of governmental agencies and utility providers. None of the reviewers object to the vacation petition, however, Tacoma Power based its position on the inclusion of a condition reserving rights in the vacated area for utility purposes. *Ex. 5; Cornforth Testimony.* The Department of Public Works submitted an advisory comment concerning payment of an In-Lieu Assessment that can be paid in conjunction with SNR's vacation action or at the time of future development. *Ex. 6; Cornforth Testimony.*

11. The Petitioner SNR concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Novotny Testimony.*

12. Nancy Mason, who resides in the neighborhood, appeared at the hearing and testified in support of SNR's street vacation petition. She indicated the overgrown property in question has been the site of troubling activities and she believes construction of the planned homes will enhance the neighborhood. *Mason 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. All property owners of record within 300 feet of the proposed vacation were notified of the hearing date by mail at least 30 days prior to the hearing, as required by Tacoma Municipal Code (TMC) 9.22.060. The City also provided several additional forms of notice. *Ex. 1; Cornforth Testimony.*

15. Any conclusion of law which is deemed to be properly considered a finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction in the matter pursuant to TMC 1.23.050.A.5 and TMC 9.22.070.

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

2. Proceedings involving the 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). Accordingly, testimony in this matter was taken under oath.

3. Petitions for the vacation of public rights-of-way must be reviewed for consistency with the following criteria:

1. The vacation will provide a public benefit, and/or will be for a 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. The Petitioner SNR bears the burden of proof to establish that its petition for vacation is consistent with the foregoing criteria. *TMC 1.23.070.A.*

5. Findings entered herein, based on substantial evidence, support a conclusion that SNR's vacation petition satisfies the legal standards for approval of right-of-way vacations, provided the conditions recommended herein are imposed. A public benefit would result from the requested vacation by returning unused property to the tax rolls. The improvements being placed on the property will enhance housing options for local residents, support economic development, and eliminate an overgrown area that has attracted troublesome activities. The public interest in the property will be protected by the execution of easements for utilities that are recommended as required conditions of the street vacation.

6. Accordingly, the requested vacation should be approved subject to the following conditions:

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

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 OF TACOMA/TACOMA POWER & CLICK!NETWORK

Tacoma Power has no objection; however, the City of Tacoma shall reserve an easement within the Ordinance over the northerly 10 feet of the easterly 15 feet of the vacated area for City utilities, including, but not limited to poles, down guys, and anchors.

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 COMMENT:

DEPARTMENT OF PUBLIC WORKS/LID

The area to be vacated does have an In-Lieu of Assessment in the amount of \$1,460.92, which can either be paid in connection with this vacation action or by separate payment at time of development.

7. Any finding of fact, which is deemed to be properly considered a conclusion of law herein, is hereby adopted as such.

RECOMMENDATION:

The requested vacation petition is recommended for approval, subject to conditions set forth above.

DATED this 22nd day of July, 2015.


PHYLLIS K. MACLEOD, Hearing Examiner

NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION:

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**