

Legg, Louisa

From: Hearing Examiner (hearing.examiner@cityoftacoma.org)
Sent: Wednesday, January 22, 2020 12:13 PM
To: Stevens, Troy; 'paul@ethosdevelopmentllc.com'; 'adam@worksarchitecture.net'; 'christina@worksarchitecture.net'
Cc: Marsten, Vicki; Seaman, Chris; Rossi, Rod; Barrutia, Rich; Shaffer, Shelly; 'megan.holt@pse.com'; 'Aaron_Cantrel@cable.comcast.com'; 'Aaron_Cantrel@comcast.com'; Russell, Lee; 'michaelwilliamreynolds@gmail.com'; 'tower@wamail.net'; 'sstormtower@wamail.net'
Subject: HEX2019-034 (SV 124.1401) 1351 Fawcett LLC
Attachments: HEX2019-034_HEX_FindingsConcsRecommendation_1351FawcettLLC(SV124.1401)_01.22.20.pdf

Tracking:	Recipient	Delivery	Read
	Stevens, Troy 'paul@ethosdevelopmentllc.com' 'adam@worksarchitecture.net' 'christina@worksarchitecture.net'	Delivered: 1/22/2020 12:16 PM	
	Marsten, Vicki Seaman, Chris Rossi, Rod Barrutia, Rich Shaffer, Shelly 'megan.holt@pse.com' 'Aaron_Cantrel@cable.comcast.com' 'Aaron_Cantrel@comcast.com'	Delivered: 1/22/2020 12:16 PM Delivered: 1/22/2020 12:16 PM Delivered: 1/22/2020 12:16 PM Delivered: 1/22/2020 12:16 PM Delivered: 1/22/2020 12:16 PM	Read: 1/22/2020 12:40 PM
	Russell, Lee 'michaelwilliamreynolds@gmail.com' 'tower@wamail.net' 'sstormtower@wamail.net'	Delivered: 1/22/2020 12:16 PM	Read: 1/22/2020 12:31 PM

Dear Parties,

Please find attached the Hearing Examiner's Findings of Facts, Conclusions of Law, and Recommendation to the Tacoma City Council.

Sincerely,

Louisa Legg
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OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: 1351 FAWCETT LLC

FILE NO: HEX2019-034 (124.1401)

SUMMARY OF REQUEST

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition to vacate a 5.66 foot width of the air rights running along the north side of South 15th Street for the length of the abutting parcel addressed as 1351 Fawcett Avenue, beginning 16.5 feet above the existing grade at the Southwest corner of another point 73.5 feet directly above, and extend(ing) 16.5 feet above the existing grade at the Southeast corner of another point 91.2 feet directly above the right-of-way (“ROW”) to facilitate future development.

RECOMMENDATION OF THE HEARING EXAMINER

The vacation petition is hereby recommended for approval, subject to conditions, as set forth below.

PUBLIC HEARING

After reviewing RPS’ Preliminary Report (the “Report”—Exhibit C-1), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on January 16, 2020. Troy Stevens of RPS represented the City. Paul Del Vecchio, Founding Principal of ETHOS Development, represented the Petitioner, 1351 Fawcett LLC. Testimony was taken and exhibits were admitted. The hearing record closed at the conclusion of the proceedings on January 16, 2020.

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FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. 1351 Fawcett LLC, a Washington limited liability company (the “Petitioner”), submitted a petition requesting that the City vacate a 5.66 foot width of the air rights running along the north side of South 15th Street for the length of the abutting parcel addressed as 1351 Fawcett Avenue, beginning 16.5 feet above the existing grade at the Southwest corner of another point 73.5 feet directly above, and extend(ing) 16.5 feet above the existing grade at the Southeast corner of another point 91.2 feet directly above the ROW (the “Vacation Area”). *Stevens Testimony; Ex. C-1.*

2. The City’s Staff Report provides the following as the legal description for the Vacation Area:

The northerly 5.66 feet of that portion of South 15th Street lying adjacent to the following:

South one-half of Lot 24, and all of Lots 25 and 26, Block 1309, Map of New Tacoma, W.T., according to plat filed for record February 3, 1875 in the Office of the County Auditor; and lying between the elevations of 195.34 and 268.84 feet at the Southwest corner and between 177.66 and 268.84 feet at the Southeast corner (NGVD29 Vertical datum).

Situate in the City of Tacoma, County of Pierce, State of Washington. *Ex. C-1, Ex. C-3.*

3. The City acquired the South 15th Street ROW by dedication in Map of Tacoma, W.T., according to the plat filed for record February 3, 1875, records of Pierce County, Washington. *Stevens Testimony; Ex. C-1.*

4. The Petitioner is the sole property owner abutting the Vacation Area. *Ex. C-1, Ex. C-2.*

5. South 15th Street is an 80-foot wide, fully built street ROW with sidewalk, curb, and gutter. At the intersection of South 15th and Fawcett Avenue, there is a downward grade from west to east with a significant elevation change. The Petitioner intends to acquire the designated air rights to facilitate residential, multi-family development. *Stevens Testimony; Ex. C-1.*

6. The proposed vacation of air rights 16.5 feet above the existing grade and higher would not interfere with the use of Fawcett Avenue and South 15th Street for vehicular or pedestrian travel. The requested 5.66 foot width of air rights does not extend over the full width of the existing sidewalk, but once developed, the intended overhang may provide some cover to pedestrians on rainy days. *Del Vecchio Testimony, West Testimony, Stevens Testimony; Ex. C-1, Exs. P-1~P-3, Ex. P-5.* Accordingly, the vacation of air rights would not adversely affect the street pattern or circulation in the area or the community.

7. The City’s traffic engineers have indicated that they perceive of no future use for the Vacation Area, and therefore lodged no objection to approving the petition. No abutting property owner

would become landlocked by the granting of the petition, nor does the requested vacation otherwise substantially impair any access to abutting properties. *Stevens Testimony; Ex. C-1.*

8. RPS offered its opinion that the vacation would provide some public benefit from potentially increased property taxes as a result of the expansion of the Petitioner's real property by the square footage of the Vacation Area, and by facilitating the development of additional residential property in the Tacoma market. *Id.* The Petitioner added that the vacation area will allow for a more aesthetically pleasing design for its ultimate development, making the neighborhood more attractive, and posited that the resulting overhangs may provide some cover from weather for people on the adjacent sidewalk. *Del Vecchio Testimony.*

9. The Vacation Area neither abuts, nor is proximate to a body of water and, therefore, the provisions of RCW 35.79.035 are not implicated. *Stevens Testimony; Ex. C-1, Ex. C-2.*

10. RPS circulated the petition for review by interested governmental agencies, City departments/divisions, and utility providers. These various agencies, departments and divisions provided comments and had the opportunity to recommend/request conditions to RPS. No significant requests were received, and none of the governmental agencies, City departments/divisions, and utility providers objected to the requested vacation. *Stevens Testimony; Ex. C-1, Exs. C-4~C-13.*

11. A comment letter from Charlotte B. Brown was received by the Hearing Examiner's Office prior to the hearing. Ms. Brown's home is in close proximity to the Vacation Area and she is concerned the proposed development will "totally obscure" her current view of Mt. Rainier. Ms. Brown also believes the proposed development will negatively impact her neighborhood by making it even more difficult to find residential parking.

12. Sarah Storm-Tower and Sam Tower, whose residence is located across from the Vacation Area, appeared at the hearing and separately voiced their concerns primarily regarding view and parking impacts of the Petitioner's intended development.

13. RPS' Report, which is entered into the record as Exhibit C-1, accurately describes the proposed vacation, general and specific facts about the site and Vacation Area, and applicable codes. The Report is incorporated herein by reference as though fully set forth. To the extent that any content of the Report is in conflict with this Report and Recommendation, the provisions of this Report and Recommendation shall control.

14. Notices of the Public Hearing were posted/published at the following locations on December 5, and 6, 2019:

- A public notice memo was placed into the glass display case located on the first floor of the Municipal building next to the Finance Department.
- A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/page.aspx?nid=596>.
- Public Notice was advertised in the Daily Index newspaper.

- A public notice mailing was mailed to all parties of record within the 300 feet of the Vacation Area.
- Public Notice was advertised on Municipal Television Channel 12

Public hearing notices were posted at the following locations on December 4, 2019:

- A yellow public notice sign was placed at the northeast corner of South 15th Street and Fawcett Avenue.
- A yellow public notice sign was placed at the northwest corner of South 15th Street and Court D. *Stevens Testimony; Ex. C-1.*

15. Any finding above, which may be more properly deemed or considered a conclusion, is hereby adopted as such.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding to conduct a hearing and make a recommendation to the City Council. *See Tacoma Municipal Code (TMC) 1.23.050.A.5, TMC 9.22.070, RCW 35.79.030.*

2. The Hearing Examiner’s role in street vacation proceedings is quasi-judicial in nature (making findings and conclusions based on evidence presented), leading to a legislative determination by the City Council that is enacted by ordinance. *State ex rel. Myhre v. City of Spokane, 70 Wn.2d 207, 218, 442 P.2d 790 (1967); TMC 9.22.070.*

3. Pursuant to WAC 197-11-800(2)(i), 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 (SEPA).

4. “RCW 35.79.010 gives the legislative authority [of a municipality] -- the city council -- sole discretion as to whether a petition to vacate shall be granted or denied.” *Puget Sound Alumni of Kappa Sigma v. Seattle, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).*

5. Petitions for the vacation of public ROW must be consistent with the following criteria:

1. The vacation will provide a public benefit, and/or will be for a public purpose.
2. The [petitioned-for] right-of-way vacation shall not adversely affect the street pattern or circulation of the immediate area or the community as a whole.
3. The public need shall not be adversely affected.

4. The petitioned-for right-of-way is not contemplated or needed for future public use.
5. No abutting owner becomes landlocked or access will not be substantially impaired; i.e., there must be an alternative mode of ingress and egress, even if less convenient.
6. The petitioned-for vacation of right-of-way shall not be in violation of RCW 35.79.035. *TMC 9.22.070.*¹

6. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. *See TMC 1.23.070.*

7. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested air rights vacation conforms to the criteria for the vacation of street ROW set forth at Conclusion 5 above. No potential for landlocking an abutting owner exists from granting the petition, nor is there any need for, or purpose served by retaining the air rights comprising the Vacation Area. No access is substantially impaired by the vacation. The provisions of RCW 35.79.035, governing areas close to bodies of water do not apply to this location. Finally, public benefit accrues through the fact that the vacation facilitates the development of additional housing, provides for additional aesthetic benefit to the neighborhood, and has the potential to add to the City's property tax revenue, while also possibly adding some weather shelter.

8. Given the foregoing, the Hearing Examiner recommends that the requested street vacation be approved subject to the following conditions:

A. SPECIAL CONDITION:

PAYMENT OF FEES

The Petitioner shall compensate the City in an amount equal to the full appraised value of the Vacation Area. 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.*

B. USUAL CONDITIONS/COMMENTS:

1. The recommendation set forth herein is based upon representations made and exhibits, including any development representations, plans and proposals, submitted at the hearing conducted by the Hearing Examiner.

¹ For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

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Any material change(s) in any such development plans, proposals, or conditions of approval imposed may potentially be subject to the review of the Hearing Examiner and may require additional review and hearings.

2. The Connection Charge In-Lieu-of-Assessment (In-Lieu-of-Assessment Charge[s]) estimates provided by the City's Public Works in Exhibit C-1 are advisory comments only, and payment thereof is not a condition to this vacation. They can be voluntarily paid at time of compensation for the Vacation Area. If not, the In-Lieu-of-Assessment Charge(s) will be required to be paid in conjunction with any future permitting on, or development of the Vacation Area, and may be subject to increase with the passage of time.
3. The approval recommended 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 recommendation herein made, and is a continuing requirement of any resulting approvals. By accepting any resulting approvals, the Petitioner represents that any development or other activities facilitated by the vacation will comply with such laws, regulations, and ordinances. If, during the term of any approval granted, any development or other activities permitted do not comply with such laws, regulations, or ordinances, the Petitioner agrees to promptly bring such development or activities into compliance.
4. Other than the conditions/concerns/objections already expressly set forth herein, no objection or additional comment was received from the governmental agencies, City departments/divisions, and utility providers to whom the City circulated this petition.

9. Accordingly, the petition is recommended for approval, subject to the conditions set forth in Conclusion 8 above.

10. Any above stated conclusion, which may be more properly deemed or considered a finding, is hereby adopted as such.

RECOMMENDATION:

The present vacation petition is hereby recommended for approval, subject to the conditions contained in Conclusion 8 above.

DATED this 22nd day of January, 2020.



JEFF H. CAPELL, Hearing Examiner

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

ORIGINAL

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 issued 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 that 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 may 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