

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: 6902 6th Ave LLP

FILE NO.: HEX2021-008 (SV No. 124.1420)

SUMMARY OF REQUEST:

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition from 6902 6th Ave LLP (hereinafter “6902” or “Petitioner”), a Washington state limited liability partnership, requesting a vacation of a 10-foot wide “planting strip” within the southerly portion of the 6th Avenue right-of-way lying between South Howard Street and South Rochester Street. The vacation will facilitate construction of a seven-story apartment building.

RECOMMENDATION:

The vacation petition is hereby recommended for approval, subject to the condition set forth below.

PUBLIC HEARING:

After reviewing RPS’s 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 via Zoom on March 11, 2021.¹ Troy Stevens, a Senior Real Estate Specialist with RPS, represented the City. Aleksey Guyvoronsky appeared as the Petitioner’s representative. Testimony was taken, and exhibits were reviewed and admitted.

¹ Due to National, State of Washington (“State”) and City Proclamations of Emergency caused by the COVID-19 virus, the City closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet visual and audio access, as well as separate telephonic (only) access via call in number on Zoom.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. 6902 has petitioned for the vacation a 10-foot wide right-of-way strip² on the south side of the 6th Avenue right-of-way, lying between South Howard Street and South Rochester Street (the “Vacation Area”), to facilitate construction of a seven-story apartment building. *Stevens Testimony; Ex. C-1~ Ex. C-4.*

2. The Report provides the following legal description for the Vacation Area:

The north 10.00 feet of Lots 1 and 24, Block 3, THE HIGHLANDS ADDITION, Tacoma, Washington, according to the plat recorded in Volume 12 of Plats at Page 54, in Pierce County, Washington;

(Also known as the 10 foot wide Planting Strip as depicted crossing the North 10 feet of Block 3 of said plat of Highlands Addition);

Containing 0.061 acres, more or less.

Situate in Northeast Quarter of the Northeast Quarter of Section 03, Township 20 North, Range 02 East of the Willamette Meridian, in the City of Tacoma, County of Pierce, State of Washington. *Ex. C-1.*

3. 6th Avenue is a 100-foot wide street right-of-way with a 55-foot wide asphalt road in the center. This stretch of right-of-way between South Howard Street and South Rochester Street includes concrete sidewalk curb and gutter, is relatively level, and includes three driveways and asphalt paved and grass planting strips. *Stevens Testimony; Ex. C-1.*

4. The City acquired the 6th Avenue right-of-way by dedication in The Highlands Addition, Tacoma, Washington plat recorded on October 12, 1942. *Id.*

5. As referenced above, the Petitioner intends to incorporate the Vacation Area into a residential construction project. In response to questioning at the hearing, Guyvoronsky indicated that, if the vacation is approved, the earliest construction would start would be the fall of 2021, but that construction was much more likely to commence in the spring of 2022.

6. The proposed vacation provides some public benefit because it will add additional taxable square footage to the Petitioner’s real property and the intended development thereof, thereby potentially increasing City revenue. In addition, the vacation will facilitate adding housing stock to Tacoma’s tight housing market. *Stevens Testimony, Guyvoronsky Testimony; Ex. C-1.*

7. The Vacation Area is not contemplated or needed for future public use as right-of-way, and no abutting property will become landlocked by the vacation, nor will their access be substantially

² RPS submissions characterized the Vacation Area as a “planting strip.”

impaired by the vacation. 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. No City or private utility facilities are located in the Vacation Area. *Stevens Testimony; Ex. C-1.*

8. RPS circulated the petition for review by interested governmental agencies, City departments/divisions, and utility providers. None of the foregoing objected to the requested vacation, nor were material conditions requested in order to approve the vacation. *Stevens Testimony; Exs. C-5 ~ C-14.*

9. The Petitioner did not indicate any objection to the City's sole (requested) condition of approval. *Guyvoronsky Testimony.*

10. Notices of the Public Hearing were posted/published at/in the following locations on January 28, 2021:

- a. A yellow public notice sign was posted at the southeast corner of 6th Avenue and South Howard Street;
- b. A yellow public notice sign was posted at the southwest corner of 6th Avenue and South Rochester Street;
- c. A public notice memo was placed in the glass display case located on the first floor of the Tacoma Municipal Building next to the Finance Department;
- d. A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/page.aspx?nid=596>;
- e. Public notice was advertised in the Daily Index newspaper;
- f. Public notice was mailed to all owners of record within 300 feet of the Vacation Area; and
- g. Public notice was advertised on Municipal Television Channel 12. *Stevens Testimony; Ex. C-1.*

11. RPS's Report, which is entered into the record as Exhibit C-1, accurately describes the proposed vacation, general and specific facts about the surrounding site and the Vacation Area, and lists applicable statutes/regulations, as well as requested specifics regarding the City's requested easement reservation. 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.

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

CONCLUSIONS OF LAW:

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 43.21C, the State Environmental Policy Act (SEPA).

4. Petitions for the vacation of public right-of-way 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.*³

5. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. All evidence in the hearing record is considered in determining whether this burden of proof has been met. *See TMC 1.23.070.*

6. Findings entered herein, based upon the preponderance of evidence in the hearing record, support a conclusion that the requested vacation conforms to the criteria for the vacation of right-of-way set forth at Conclusion 4 above, provided the condition recommended below is imposed and met. No potential for landlocking an abutting owner exists from granting the petition, nor is there any need for,

³ For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

or public right-of-way purpose served by retaining the Vacation Area as right-of-way. The Vacation Area plays no appreciable role in the “[s]treet pattern or circulation of the immediate area or the community as a whole” at present as it is not being used for any right-of-way purpose. Public benefit accrues through the potential for increased tax revenue, and the ultimate increase in available housing that the vacation will facilitate.

7. “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.”⁴

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. 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 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.

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

⁴ *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).

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 set forth in Conclusion 8 above.

DATED this 23rd day of March, 2021.



JEFF H. CAPELL, 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 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*