



TO: T.C. Broadnax, City Manager
FROM: Phyllis Macleod, Hearing Examiner and Troy Stevens, Sr. Real Estate Specialist
COPY: City Council and City Clerk
SUBJECT: Ordinance 14-0127 – Air Rights Vacation – April 1, 2014
DATE: March 13, 2014

SUMMARY:

A petition to vacate a portion of the alleyway air rights west of Proctor Street between North 27th and North 28th Streets, for the development of a mixed use building.

COUNCIL SPONSORS:

N/A

STRATEGIC POLICY PRIORITY:

This action will support the Strategic Policy Priority of fostering neighborhood, community, and economic development vitality and sustainability.

The air rights vacation will result in several benefits to the public including improvement of the existing gravel alleyway, undergrounding of existing utilities, and design enhancements for a mixed use/residential project being proposed in the Proctor District.

BACKGROUND:

28 Proctor Holdings, LLC (28 Proctor) is developing a mixed use building on the west side of Proctor Street between its intersections with North 27th and North 28th Streets. The building would contain commercial space on the first level with residential apartment units above. The six-story structure would include over 140 apartments and associated parking. The proposed design for the complex involves a part of the building extending over the alley between North 27th and North 28th Streets. The extended area would contain portions of eight dwelling units and other features including interior access to the parking structure for residents. In order to utilize this design, 28 Proctor is seeking to vacate the air rights, 16.5 feet above grade and higher, along the portion of the alley that would be occupied by the extension. The alley would remain fully open for public use if the air rights are vacated. The alley would be paved and the surface would be wider than the existing alleyway. Normal traffic using the alley would not be altered by the existence of a structure above the alley.

A number of persons appeared at the hearing before the Hearing Examiner to testify regarding the project and additional parties sent written comments for the record. Many of the neighborhood residents strongly opposed the project. Several people who live in the immediate vicinity strenuously objected to the large size of the proposed development. They think the project is out of scale with the existing structures in the area and will change the very attractive character that drew them to the neighborhood. Members of the public also expressed serious concerns about the impact the project would have on traffic in the vicinity, particularly near an adjacent middle school. Neighbors contend the addition of over 140 dwelling units to this small area would increase traffic congestion and aggravate existing parking problems. Much of the testimony addressed impacts that would result from the mixed use project, rather than changes that would occur strictly as a result of the alley air rights vacation.

Some neighbors and members of the public expressed support for the project and the opportunity it would provide for people, particularly senior citizens, to enjoy a walking lifestyle in a desirable neighborhood. It was pointed out that the air rights vacation would not determine whether the project moves forward and



that it would be a more attractive design if the air rights were obtained. The project's potential to positively impact the economic vitality of the district was also raised.

The Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation to the Council focused on the impacts and benefits of the air rights vacation, rather than the effects of the overall project. The Recommendation concluded that the proposed air rights vacation complies with the criteria governing street vacations contained in Tacoma Municipal Code 9.22.070. The primary controversy centered on whether the air rights vacation would benefit the public. Some neighbors argued that any benefits of the air rights vacation would serve the developer, not the public. However, based upon a number of advantages to the public associated with the air rights vacation, the Recommendation found that the proposal met the public benefit criterion for approval. The benefits included returning unneeded air rights to the tax rolls, upgrading the existing gravel alley surface, increasing the safety and reliability of utility service by undergrounding the utilities in the alley, and facilitating a more beneficial design of the structure's façade including increased modulation and step-back from the street. Based upon the public benefit demonstrated by the evidence and the lack of any detriment to traffic utilizing the alley, the Hearing Examiner recommended approval of the air rights vacation.

One of the participating neighbors moved for the Hearing Examiner to reconsider the Findings of Fact, Conclusions of Law, and Recommendation. 28 Proctor opposed the motion. The Hearing Examiner considered the material submitted on reconsideration and modified the Recommendation to include the alley paving condition as a formal requirement of the air rights vacation approval. In all other respects, the reconsideration was denied and the Recommendation to approve the air rights vacation remains unchanged.

ISSUE:

N/A

ALTERNATIVES:

The Council could choose to deny the petition to vacate air rights and the area above the alley would not be available for use in the project's design.

RECOMMENDATION:

The vacation request is hereby recommended for approval, subject to conditions.