



City of Tacoma
Hearing Examiner

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 September 10, 2019, at Tacoma, WA.

Louisa Legg

September 10, 2019

ELECTRONIC AND FIRST CLASS MAIL DELIVERY

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Re: HEX2019-017 Street Vacation Petition No. 124.1397
Petitioner: North American Asset Management Group, LLC

Dear Parties:

Concerning the above referenced matter, please find enclosed a copy of the Hearing Examiner's Findings, Conclusions, and Recommendation to the City Council entered on September 10, 2019.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1): Findings/Concs/Recommendation

Transmitted via Electronic Mail Delivery

Dale Roush (mr.dale.roush@gmail.com)

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Public Works/Brennan Kidd, PE, PTOE, Transportation Engineer (bkidd@ci.tacoma.wa.us)

Tacoma Water/Shelly Shaffer, LID Representative (sshaffer@ci.tacoma.wa.us)

Planning & Development Services/Jana Magoon, Planning Manager (JMAGOON@cityoftacoma.org)

CEDD, City of Tacoma/Gloria Fletcher, Business Development Mgr. (Gfletcher@ci.tacoma.wa.us)

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: NORTH AMERICAN ASSET MANAGEMENT GROUP, LLC¹

FILE NO: HEX2019-017 (124.1397)

SUMMARY OF REQUEST

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition to vacate the east 12 feet of Fawcett Avenue, lying between the southerly line of South 21st Street and the northerly line of South 23rd Street (the “Vacation Area,” as described in more detail below), for the purpose of facilitating site improvements and future development.

RECOMMENDATION OF THE HEARING EXAMINER

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

PUBLIC HEARING:

After reviewing RPS’ Preliminary Report (the “Report”—Exhibit 1), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on August 22, 2019. Troy Stevens of RPS represented the City and presented testimony. Albert Sze represented the Petitioner and also testified. Testimony was taken, exhibits were admitted, and the record closed at the conclusion of the hearing.

¹ This entity does not appear to be registered with the Secretary of State to do business in the state of Washington. No entry shows up for it with the Secretary of State’s corporate listings. It is, however, listed by Pierce County as the record owner of all real property abutting the Vacation Area. The registered entity most closely associated with the Petitioner appears to be “North American Asset Management Regional Center, LLC.”

ORIGINAL

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. North American Asset Management Group, LLC (the “Petitioner”), submitted a petition for the vacation of public right-of-way (“ROW”) consisting of the east 12 feet of Fawcett Avenue, lying between the southerly line of South 21st Street and the northerly line of South 23rd Street. Petitioner is the sole abutting property owner to the requested vacation area according to current county records. *Stevens Testimony; Ex. C-1~Ex. C-4.*

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

A portion of the Northeast quarter of the Northeast quarter of Section 8 and of the Northwest quarter of the Northwest quarter of Section 9, all in Township 20 North, Range 3 East, Willamette Meridian, Pierce County, Washington, more particularly described as follows:

The Easterly 12 feet of Fawcett Avenue lying northerly of the northerly margin of South 23rd Street and southerly of the southerly margin of South 21st Street.

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

3. The Petitioner’s stated purpose in requesting the vacation is to facilitate site improvements and future development of its surrounding real property by unencumbering that same property from the above described portion of the City’s currently existing ROW interest. *Stevens Testimony; Ex. C-1.*

4. The City of Tacoma acquired the street ROW proposed to be vacated within the plats of:

Burns and Blinn Map of A Part of the City of Tacoma, Volume 1, at Page 28; Amended Plat of Smith and Denton's Addition to New Tacoma, W.T., as recorded in Volume 2 of Plat, at Pages 38-40, Records of Pierce County Auditor; and The Replat of Spinning’s Addition, and Block 2109 Amendatory Map of Smith and Denton’s Addition Tacoma, Washington filed for record on July 26, 1915.

5. A previous petition to vacate the full width of Fawcett Avenue, between South 21st and 23rd Streets, went before the Hearing Examiner under HEX Report 2016-014 (124.1358), dated June 2, 2016. This prior petition was abandoned by the Petitioner after first reading of Ordinance No. 28368. *Stevens Testimony; Ex. C-1, Ex. C-6, Ex. C-7.*

6. Petitioner testified that the prior vacation petition was abandoned after marketing information indicated that maintaining visibility from vehicular traffic on Fawcett Avenue through the Petitioner’s development would be more beneficial to the planned ground level retail. As a result, design elements of Petitioner’s development were changed to have wider sidewalks for pedestrian traversal and to facilitate shopping, while still maintaining Fawcett Avenue vehicular traffic. *Sze Testimony.*

7. Fawcett Avenue is a non-classified arterial (*See* Tacoma Municipal Code [“TMC”] 11.05.490), mostly level, 80-foot wide fully constructed street ROW with sidewalk, planting strips, and curb and gutter. It is eligible for enhanced streetscape, sidewalks, and intersection controls to further encourage use of the corridor for multi-modal travel as the intended designated Bike Boulevard status by the City’s Transportation Master Plan. *Ex. C-1.*

8. Under ROCC18-0006² as amended, the Petitioner is currently using portions of the ROW for construction staging and access for construction of the building at 409 South 23rd Street under Building Permit Nos. BLDCN17-0031 and BLDCA17-0437. The site is known as Building 2 of Petitioner’s overall development. *Stevens Testimony; Ex. C-1, Ex. C-7.*

9. 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 recommended/requested conditions to RPS. These conditions were incorporated into the Report and referenced in City testimony at the hearing. These comments and requests, where appropriate, have now been incorporated in this Report and Recommendation at Conclusion 8 below. *Stevens Testimony; Ex. C-1, Exs. C-9~C-20.*

10. One member of the public appeared at the hearing to express his concerns regarding the impact the proposed vacation may have on available on-street parking close to his neighborhood.

11. In its review, the City determined that the vacation would have some public benefit/purpose through the facilitation of the development of long vacant property, and by adding the Vacation Area to the tax rolls. *Stevens Testimony; Ex. C-1.* Sze testified that the Vacation Area, at least in part, will be used for wider-than-usual sidewalks fronting the Petitioner’s development, which serves a dual purpose of driving foot traffic to the development, while also facilitating general pedestrian traversal in the area. The City’s Traffic Engineering division reviewed the petition and determined that the vacation would not adversely affect the street pattern or circulation of the immediate area or the community as a whole, and that the Vacation Area is not contemplated or needed for future public use. Ultimately, the public need is not adversely affected because Fawcett Street remains open for vehicular traversal. *Sze Testimony, Stevens Testimony; Ex. C-1, Ex. C-12.*

12. 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; Exs. C-1~C-4.*

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. Public hearing notices were posted on June 27, 2019, and yellow public notice signs were posted on July 17, 2019. The following summarize the postings and publications of the notices:

² ROCCs are right-of-way occupancy permits.

- a. On July 17, 2019 a yellow public notice sign was placed at the southeast corner of South 21st and Fawcett Avenue;
- b. On July 17, 2019 a yellow public notice sign was placed at the northeast corner of South 23rd and Fawcett Avenue;
- c. On July 27, 2019 a public notice memo was placed into the glass display case located on the First Floor of the Tacoma Municipal Building abutting the Finance Department;
- d. On July 27, 2019 a public notice memo advertised was on the City of Tacoma web site at address: <http://www.cityoftacoma.org/page.aspx?nid=596>;
- e. On July 27, 2019 a public notice was advertised in the Daily Index newspaper;
- f. On July 27, 2019 a public notice was mailed to all parties of record within the 300 feet of vacation request; and
- g. On July 27 2019 a public notice was advertised on Municipal Television Channel 12. *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. 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* 9.22.070.³

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

6. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested street vacation conforms to the criteria for the vacation of street ROW set forth at Conclusion 4 above. The vacation petition has been reviewed by City staff and outside quasi-governmental agencies that responded with recommended conditions of approval. The City's Public Works Traffic Engineering division has been consulted and it does not object to the contemplated street vacation after it re-evaluated the pedestrian ramp/corner design at the southeast corner of Fawcett Avenue and South 21st Street (Ex. C-19). RPS found, and the Examiner agrees, that the proposed vacation is a public benefit because it places the property back on the tax rolls and facilitates private improvements. In any event, Fawcett Street stays open for vehicular traffic, with the Vacation Area, at least in large part, being used for widened pedestrian sidewalks along its length. As a result, vacation of the street ROW comprising the Vacation Area will not adversely affect the public need, nor is it expressly intended for future public use by the City of Tacoma. No potential for landlocking an abutting owner exists by granting of the vacation petition. The provisions of RCW 35.79.035, governing areas close to bodies of water do not apply to this location.

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 CONDITIONS:

1. 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

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

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

management and maintenance of other City owned lands and unimproved ROW. *TMC 9.22.010.*

2. REAL PROPERTY SERVICES - IN LIEU

An In-Lieu amount of \$2,091.97 is due for sanitary sewer. The amount is not required to be paid at this time; however, if the Petitioner chooses not to pay as part of this vacation proceeding, it will remain an obligation on title and the In-lieu amount may increase.

3. TACOMA WATER

Tacoma Water has five existing water services and meters located within the boundaries of the Vacation Area. An easement five feet (5') behind and five feet (5') on either side of each service is required. If the easement is objectionable, the Petitioner can retire each service connection.

4. CENTURY LINK

Although Century Link initially objected to the vacation request (Ex. C-1), it no longer does so. Ultimately, it submitted a requested condition of approval (Ex. C-20) to protect any of its facilities, in the event any are determined to exist in the Vacation Area. If no Century Link facilities are found to exist, granting of any easement is unnecessary. If any Century Link facilities are determined to be located within the Vacation Area, an easement should be granted or the facilities relocated elsewhere, presumably at the Petitioner's expense.

B. USUAL CONDITIONS:

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/or City Council) 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.

C. ADVISORY NOTES:

1. Other than the conditions/concerns already expressly set forth herein, no objection or additional comment was received from the Tacoma Power, Tacoma Fire, City of Tacoma, Environmental Services Department; Comcast; Puget Sound Energy; and City of Tacoma, Community & Economic Development.
2. The Connection Charge In-Lieu-of-Assessment (In-Lieu-of-Assessment Charge[s]) estimates provided by the City's Real Property Services in Exhibit C-1 are advisory comments only, and payment thereof is not a condition to this vacation. The In-Lieu-of-Assessment Charge(s) 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.

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 conditions contained in Conclusion 8 above.

DATED this 10th day of September, 2019.



JEFF H. CAPELLI, 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*