

Legg, Louisa

From: Hearing Examiner on behalf of Hearing Examiner (hearing.examiner@cityoftacoma.org)
Sent: Monday, July 06, 2015 2:39 PM
To: Cornforth, Ronda; 'kristina.guzman@soundtransit.org'; Emery, Nicole; Capell, Jeff (Legal); Van Allen, Rick; Seaman, Chris; Coyne, Richard; Lindgren, Tony; Simpson, Sue; Trohimovich, Merita; Newton, Corey; Spadoni, Lisa; Magoon, Jana; Wung, Lihuang
Cc: Kropelnicki, Tina (Legal)
Subject: HEX2015-019 (124.1355) Petitioner: Central Puget Sound Regional Transit Authority d/b/a Sound Transit

To All:

Please find attached the Hearing Examiner's Report and Recommendation to the Tacoma City Council entered on July 6, 2015.

Sincerely,

Louisa Legg
Office Administrator
Office of the Hearing Examiner
City of Tacoma
P: 253-591-5195
Hearing.examiner@cityoftacoma.org



City of Tacoma
Hearing Examiner

July 6, 2015

FIRST CLASS & ELECTRONIC MAIL DELIVERY

Melissa Flores Saxe, Project Manager
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Ronda Cornforth, Senior Real Estate Specialist
City of Tacoma, Real Property Services
747 Market Street Room 737
Tacoma, WA 98402
(Inter-office Mail Delivery)
(rcornforthc@cityoftacoma.org)

Re: File No. HEX 2015-019 (Vacation Petition File No. 124.1355)

Petitioner: Central Puget Sound Regional Transit Authority d/b/a Sound Transit

To the Parties,

In regard to the above referenced matter please find enclosed a copy of the Tacoma Hearing Examiner's Report and Recommendation to the Tacoma City Council as the result of a public hearing held on July 2, 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 6, 2015, at Tacoma, WA.

Louisa Legg

July 6, 2015

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HEX 2015-019 (124.1355 CPSRTA d/b/a Sound Transit)

Transmitted via Inter-office Mail Delivery

Pierce County Assessor-Treasurer

Transmitted via First Class Mail Delivery

Qwest Corporation d/b/a Century Link QC, ATTN: R. Jeff Lawrey, Manager R-o-W,
Western WA, 1208 NE 64th Street, Room 401, Seattle, WA 98115

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 (Tony Lindgren)

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

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

Environmental Services Department, City of Tacoma (Corey Newton)

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 CITY COUNCIL

PETITIONERS: Central Puget Sound Regional Transit Authority d/b/a Sound Transit

FILE NO.: HEX 2015-019 (124.1355)

SUMMARY OF REQUEST:

Petitioner Central Puget Sound Regional Transit Authority d/b/a Sound Transit requests to vacate all that certain alley lying between East 25th Street and East 26th Street from the easterly margin of East G Street to the westerly margin of East J Street. The vacation of this alley is necessary for the development and construction of the Sound Transit Tacoma Trestle Replacement Project.

RECOMMENDATION OF THE HEARING EXAMINER:

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

PUBLIC HEARING:

After reviewing the report of the Department of Public Works (DPW), Real Property Services Division and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on July 2, 2015

ORIGINAL

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. Central Puget Sound Regional Transit Authority, d/b/a Sound Transit (Sound Transit), has petitioned to vacate all that certain alley lying between East 25th Street and East 26th Street from the easterly margin of East G Street to the westerly margin of East J Street. The vacation of this alley is necessary for the development and construction of the Sound Transit Tacoma Trestle Replacement Project. The area to be vacated lies adjacent to their properties and is more particularly described below:

All that certain alley right of way lying between and abutting Blocks 7627, 7528, 7629, 7530, 7631 and 7532 of The Tacoma Land Company's First Addition to Tacoma, W.T., according to the Plat thereof recorded July 7, 1884, records of Pierce County, Washington.

Also, that certain alley lying between and abutting vacated McKinley Avenue, as vacated by City of Tacoma Ordinance Numbers 3152 and 22436; and that alley lying between and abutting vacated East "T" Street, as vacated by City of Tacoma Ordinance Numbers 3129 and 16428, all records of Pierce County, Washington.

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

2. The Petitioner requests vacation of this alley to accommodate necessary elements of constructing the Sound Transit Tacoma Trestle Replacement Project. The project involves a phased design in which Sound Transit will replace the current 0.65 mile long wood trestle structure with a new double-track bridge over East G Street. The larger project will include crossover tracks, an expanded passenger platform to accommodate Amtrak passenger trains, street repairs, relocation of various utilities, and upgraded railroad signals. *Cornforth Testimony; Flores Saxe Testimony; Ex. 1.*

3. The City of Tacoma acquired the rights-of-way proposed to be vacated on July 7, 1884, by Plat filing of Tacoma Land Company's First Addition to the City of Tacoma. *Exs. 4 and 5.*

4. This segment of alley is level, unimproved, graveled only at the entrances and has been fenced and gated to prevent vehicular travel and transient activities that may damage the existing wooden trestle. *Cornforth Testimony; Ex. 1; Ex. 10.*

5. The vacation of this alley right-of-way will not adversely affect the street pattern or traffic circulation in the area or in the wider community because the right-of-way being vacated is not being used for vehicular circulation. *Cornforth Testimony; Ex. 1.*

6. The public would benefit from the proposed street right-of-way vacation because it would return unneeded right-of-way property to a useful purpose. The project will increase economic viability of the community and facilitate economic development. Citizens will be benefitted by the transportation and utility improvements being undertaken by Sound Transit. *Cornforth Testimony; Ex. 1.*

7. There is no evidence the alley rights-of-way proposed for vacation would be needed for an additional or different public use in the future. *Cornforth Testimony; Ex. 1.*

8. No abutting property or nearby property would become landlocked or have its access substantially impaired as a result of the proposed vacation of the subject portion of alley right-of-way. *Cornforth Testimony; Ex. 1.*

9. The portion of alley right-of-way proposed for vacation does not abut a body of water and, thus, the provisions of RCW 35.79.035 are not implicated. *Cornforth Testimony; Ex. 1.*

10. The vacation petition has been joined by all owners of property abutting the right-of-way proposed to be vacated. *Cornforth Testimony; Flores Saxe Testimony.* No members of the public appeared at the hearing to oppose the project.

11. The proposed alley vacation has been reviewed by various City departments and outside quasi-governmental agencies. The reviewing entities have no objection to the project, however, some base their position on the inclusion of conditions preserving the right to retain utility easements and installations in the area. *Exs. 6-9; Cornforth Testimony.*

12. Petitioner Sound Transit concurs in the conditions recommended by the commenting agencies and agrees to comply with the same. *Flores Saxe 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. The DPW Preliminary Report, as entered into this record as Exhibit 1, accurately describes the proposed project, general and specific facts about the site and area, and applicable codes. The report is incorporated herein by reference as though fully set forth.

15. A Public Hearing Notice for the July 2, 2015, hearing, was posted at the property on May 28, 2015, at least 30 days prior to the hearing, as required by *Tacoma Municipal Code (TMC) 9.22.060* and all required posting of notices for the hearing have been accomplished. The Public Notice was also published in the Tacoma Daily Index and mailed to all parties of record within 300 feet of the vacation request. *Cornforth Testimony; Ex. 1.*

16. Any conclusion hereinafter stated which may be deemed to be properly considered a finding herein is hereby adopted as such.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding. *See TMC 1.23.050.A.5 and TMC 9.22.*

2. Proceedings that involve 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). The petitioner must demonstrate by a preponderance of the evidence that its vacation request conforms to the applicable criteria. *See TMC 1.23.070*.

3. Petitions for the vacation of public right-of-way are reviewed for consistency with the following criteria:

1. The vacation will provide a public benefit, and/or will be for 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. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested alley right-of-way vacation conforms to the TMC's criteria for the vacation of street rights-of-way, provided the conditions recommended herein are imposed. The public would experience benefits from the requested vacation by returning unused property to a productive use. The overall project will enhance transportation options in the community and support economic development.¹ The requested alley vacation does not involve right-of-way that is being used for traffic circulation and it would not be needed for future public use. The street vacation would not landlock any abutting owner and the provisions of *RCW 35.79.035* are not applicable. The proposed alley right-of-way vacation would not adversely affect the public need so long as provisions for utility easements are included as required conditions.

5. Accordingly, the requested alley right-of-way vacation covering this segment of alleyway should be approved subject to the following conditions:

¹ The term "public benefit" as used in the street vacation context is construed broadly and may include the enrichment of the local economy, the facilitating of the providing of goods and services to the community, and increasing property tax revenues. *Banchero v. City Council of Seattle*, 2 Wn. App. 519, 524, 468 P.2d 724 (1970).

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. ENVIRONMENTAL SERVICES

- a. The existing 8” sanitary sewer main shall be relocated, operational and accepted by the Environmental Services Director, at the Petitioners sole expense, prior to completion of this vacation action.
- b. A 30-foot wide easement shall be reserved within the Ordinance, centered on the existing 12” sanitary sewer main and appurtenances, within the vacated McKinley Avenue alignment.

3. CENTURY LINK

All existing infrastructure shall be protected by either an independent easement and/or relocated, at the Petitioner’s sole expense. An easement shall be negotiated with Century Link to retain existing rights, if any, to place facilities in the area.

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 COMMENTS:

1. PUBLIC WORKS/L.I.D.

The property has not been assessed for sanitary sewer connection and will be re-evaluated at time of development to determine if any In-Lieu Assessments will be applicable.

6. Based upon the facts and the governing law, the vacation petition should be granted, subject to conditions set forth in Conclusion 5 above.

7. Any finding hereinbefore stated which may be deemed to be properly considered a conclusion herein is hereby adopted as such.

RECOMMENDATION:

The vacation request is hereby recommended for approval, subject to the conditions contained in Conclusion 5.

DATED this 6th day of July, 2015.



PHYLLIS K. MACLEOD, 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 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.

Notice - No Fee (7/11/00)

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