



City of Tacoma
Hearing Examiner

February 23, 2017

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Re: HEX 2016-043 (Vacation Petition No. 124.1375) Petitioner: Alma Mater, LLC

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 February 16, 2017.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) – Findings, Conclusions, and Recommendation

Cc: Transmitted via Electronic Mail Delivery

Pierce County Assessor-Treasurer (Darci Brandvold)

Puget Sound Energy (Marilynn Danby)

Clerk's Office, City of Tacoma (Nicole Emery)

Legal (Jeff Capell)

Tacoma Water, Water Supply (Stuart Vaughan, P.E.)

Tacoma Water, Water Distribution (Jesse Angel)

Tacoma Power/T&D (Rich Barrutia)

Tacoma Public Utilities, Real Estate (Greg Muller)

Tacoma Fire Department (Chris Seaman, P.E.)

Solid Waste Management, City of Tacoma (Joseph Breer/Lyle Hauenstein)

Public Works, City of Tacoma (Sue Simpson)

Environmental Services Department, Science & Engineering, City of Tacoma
(Merita Trohimovich, P.E., Rod Rossi, PMP)

Planning and Development Services Department, City of Tacoma (Jana Magoon)

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OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: Alma Mater, LLC

FILE NO.: HEX 2016-043 (124.1375)

SUMMARY OF REQUEST:

Real Property Services has received a petition to vacate a sub-surface portion of Court E, lying between South 13th and South 15th Streets, to accommodate the Petitioner's existing building wall.

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 vacation request on February 16, 2017. Subsequent to the hearing, the Hearing Examiner completed a site visit.

ORIGINAL

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. Alma Mater, LLC (Alma Mater) has petitioned the City to vacate a sub-surface portion of Court E, lying between South 13th and South 15th Streets to accommodate the Petitioner's existing building wall. The property to be vacated is more particularly described below:

THAT PORTION OF THE PUBLIC ALLEY LYING BETWEEN BLOCKS 1310 AND 1311 OF THE MAP OF NEW TACOMA, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 3, 1875, AND AS SHOWN ON SURVEY RECORDED NOVEMBER 16, 2015 UNDER AUDITOR'S FEE No. 201511165001, ALL RECORDS OF PIERCE COUNTY, WASHINGTON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 13, SAID BLOCK 1310; THENCE SOUTH 82°37'54" WEST ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT A DISTANCE OF 5.00 FEET; THENCE NORTH 07°23'27" WEST A DISTANCE OF 104.92 FEET; THENCE NORTH 82°36'33" EAST A DISTANCE OF 5.00 FEET TO THE WEST LINE OF SAID BLOCK 1310; THENCE SOUTH 07°23'27" EAST ALONG SAID LINE A DISTANCE OF 104.92 FEET TO THE POINT OF BEGINNING, AND LYING BETWEEN ELEVATION 188.39 FEET NGVD29 (LOWEST ELEVATION OF FOOTING) AND ELEVATION 207.00 FEET NGVD (ELEVATION OF COURT E).

CONTAINING 524.6 SQUARE FEET, MORE OR LESS.

2. The Petitioner Alma Mater is engaged in a renovation and redevelopment project at the site, which contains an existing structure known as the Carpenters Building. Tenant improvements will be constructed to create a multi-use arts center including a 500 person performance venue, restaurant, bar, community meeting space, artists' studio space, and nine living units. The current building footprint encroaches a short distance into the sub-surface area of Court E. The existing building has been in place since 1954 and extends under the right-of-way by approximately five feet. The requested right-of-way vacation will cure this encroachment. *Ex. 1; Heminger Testimony.*

3. The City of Tacoma acquired the Court E street right-of-way in the Map of New Tacoma, according to the plat thereof recorded February 3, 1875, records of Pierce County, Washington. The Carpenters Building at 1322 Fawcett Street was permitted and constructed in 1954. *Ex. 1; Stevens Testimony; Heminger Testimony.*

4. Court E is 40 feet wide, mostly level, and paved with concrete and limited curbing. The street slopes slightly downward from north to south. The west side of Court E has office buildings and parking lots and the east side of Court E is a combination of multi-story commercial buildings, office space, parking lots, and residential uses. *Ex. 1; Stevens Testimony.*

5. Vacating the proposed sub-surface right-of-way area will not adversely affect the street pattern or circulation of the immediate area or the community as a whole. *Ex. 1; Stevens Testimony.* The area being vacated is below a sidewalk and free movement on the sidewalk will be retained. The vacation being requested is solely designed to cure a sub-surface building wall encroachment. *Heminger Testimony.*

6. Vacation of the street segment would provide a public benefit by returning unused property to the tax rolls. *Ex. 1; Stevens Testimony.* In addition, the vacation would facilitate a building renovation and redevelopment project that will foster a vibrant and diverse economy. The redevelopment project will support economic growth through increasing employment and hosting a small business incubator. The building renovation will establish space for multi-disciplinary performing arts, visual artists; a restaurant/bar music venue; and nine rooftop living units. *Heminger Testimony.*

7. No abutting property would become landlocked or have its access substantially impaired as a result of the proposed right-of-way vacation. *Ex. 1; Stevens Testimony.*

8. The subject street right-of-way does not abut, nor is it proximate to a body of water. The provisions of RCW 35.79.035 are, therefore, not implicated. *Ex. 1; Stevens Testimony.*

9. The proposed vacation has been reviewed by a number of governmental agencies and utility providers. None object to the alley vacation; however, an In-Lieu assessment is due for sanitary sewers. The assessment can be paid at a later date but it would appear as an obligation to the property title and the cost may increase over time. *Ex. 1; Stevens Testimony.*

10. No members of the public appeared at the hearing opposing the proposed vacation.

11. 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.*

12. 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.

13. A Public Hearing Notice for the February 16, 2017, hearing was posted at the Tacoma Municipal Building on January 12, 2017, and yellow public notice signs for the hearing were posted near the site on January 11, 2017, at least 30 days prior to the hearing, as required by Tacoma Municipal Code (TMC) 9.22.060. The yellow public notice signs were placed 170 feet southeasterly of the southeast corner of the intersection at South 13th Street and Court E and at the northwest corner of the intersection of South 15th and Court E. The Public Hearing Notice was also published in the Tacoma Daily Index and mailed to all parties of record within 400 feet of the vacation request. Additionally, the Public Hearing Notice memo was advertised on the City of Tacoma web site and on the Municipal Television Channel 12. All required postings of notices for the hearing have been accomplished. *Ex. 1; Stevens Testimony.*

14. Any conclusion of law hereinafter stated, which may be deemed to be properly considered a finding of fact herein, is hereby adopted as such.

CONCLUSIONS OF LAW:

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 to vacate public right-of-way are reviewed under the TMC for consistency with the following criteria:

1. The vacation will provide a public benefit, and/or will be for a 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 vacation of a sub-surface portion of Court E, lying between South 13th and South 15th Streets conforms to the TMC's criteria for the vacation of street rights-of-way, provided the conditions recommended herein are imposed. The property is not being used for general traffic circulation and vacation of the sub-surface street segment will not adversely affect future public needs. No abutting owner becomes landlocked by the proposed vacation, nor will their access be substantially impaired. The vacated area is not close to a body of water as contemplated under RCW 35.79.035. The proposed street vacation would have public benefits. The right-of-way segment proposed for vacation

would be returned to the tax rolls and the vacation would facilitate a building renovation and redevelopment project that will foster economic development in the downtown area and enhance the arts community in Tacoma.

5. The City is requesting the Petitioner be required to pay the full market value of the proposed vacated area. The provisions of TMC 9.22.010 state:

The City Council shall require the petitioners to compensate the City in an amount which equals one-half of the appraised value of the area vacated; provided that if the street or alley has been a public right-of-way for 25 years or more, the City shall be compensated in an amount equal to the full appraised value of the area vacated...

TMC 9.22.010. The provisions for payment of the full appraised value of the property under TMC 9.22.010 have been met.

6. Approval of the requested vacation of a portion of the sub-surface area under Court E, lying between South 13th and South 15th Streets, should be 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 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.*

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. REAL PROPERTY SERVICES/LID

An In-Lieu amount of \$1,252.85 is due for sanitary sewer. If payment is not made at the time of the vacation, the In-Lieu amount shall be reflected on the property title as an obligation and the amount due may increase over time.

2. NO OBJECTION

No objection or additional comment was received from Tacoma Power & Click! Network; Traffic Engineering; Environmental Services; Tacoma Fire; Comcast; Tacoma Water, Supply; Tacoma Water, Distribution; and Puget Sound Energy.

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

8. Any finding of fact herein, which may be deemed to be properly considered a conclusion of law, is hereby adopted as such.

RECOMMENDATION:

The vacation requested is hereby recommended for approval, subject to the conditions contained in Conclusion 6.

DATED this 23rd day of February, 2017.



PHYLLIS K. MACLEOD, 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 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**