



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 May 16, 2019, at Tacoma, WA.

Louisa Legg

May 16, 2019

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Re: HEX2019-008 SV Petition No. 124.1395

Petitioner: The University of Puget Sound

Dear Parties:

In regard to the above referenced matter, please find enclosed a copy of the Hearing Examiner's Report and Recommendation to the Tacoma City Council entered on May 16, 2019.

Sincerely,

Louisa Legg
Office Administrator

Attachment (1): Report and Recommendation

Transmitted via Electronic Mail Delivery

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OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: THE UNIVERSITY OF PUGET SOUND **FILE NO:** HEX2019-008 (124.1395)

SUMMARY OF REQUEST:

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition to vacate an area of alley right-of-way lying between North 15th and North 16th Streets, beginning at (now private) North Lawrence Street and running in an easterly direction, to be repurposed for the facilitation of the development of a new Welcome Center for the University.

RECOMMENDATION OF THE HEARING EXAMINER:

The vacation petition is hereby recommended for approval, subject to conditions, as 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 May 9, 2019. Teague Pasco of RPS represented the City. Robert Kief, Petitioner’s Associate VP for Facilities, and Sara Coccia, Petitioner’s Director of Capital Development, were present on behalf of the Petitioner. Testimony was taken, exhibits were admitted, and the record closed at the conclusion of the hearing.

ORIGINAL

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The University of Puget Sound, a Washington nonprofit corporation (the “Petitioner”), submitted a petition for the vacation of an alleyway segment still currently designated as public right-of-way (“ROW”). The subject area does not currently connect to any public ROW and is essentially bounded by property owned by the Petitioner on all sides.

2. The City’s Report generally describes the area petitioned for vacation (the “Vacation Area”) as “[t]he alley right-of-way lying between North 15th and North 16th Streets, adjacent to North Lawrence Street.” The Report legally describes the Vacation Area as follows:

A portion of land in the Northwest Quarter of the Southwest Quarter of Section 31, Township 21 North, Range 3 East, W.M., in Pierce County, Washington described as follows:

The Westerly prolongation of the alleyway lying between Blocks 8 and 12 within the Plat of Baker’s First Addition to Tacoma, W.T., filed for record on February 2, 1889, in Volume 2, at Page 118, records of Pierce County, Washington as vacated by City of Tacoma Ordinance No. 27479 recorded under recording number 200607120955, records of Pierce County, Washington, and lying Easterly of North Lawrence Street as vacated by City of Tacoma Ordinance No. 24336, recorded under recording number 8905080070, records of Pierce County, Washington.

Pasco Testimony; Exhibits 1~4.

3. The Vacation Area is a 20-foot-wide improved alley ROW with sidewalk on the west boundary that empties onto North Lawrence Street. The Vacation Area is mostly level and runs in an east/west direction. As already referenced, the west end of the Vacation Area tees up with what was North Lawrence Street (vacated by Ordinance No. 24336 in 1989, now a private drive serving the University of Puget Sound campus). The east end of the Vacation Area terminates at what was previously the continuation of this alley ROW (vacated by Ordinance No. 27479 in 2006). *Pasco Testimony; Exhibits 1~4, Exhibit 17.*

4. The City acquired the subject alley right of way by a “warranty deed” dated May 7, 1926, from the College of Puget Sound, recorded under Pierce County Auditor File Number 89389.¹ The alley was improved as a ROW by the order of City of Tacoma Council in Resolution No. 8964 (1926), approving Local Improvement District No. 4223. *Pasco Testimony; Exhibit 1, Exhibits 8 and 9, Exhibit 18.*

¹ Although the document used to convey the ROW interest was titled “warranty deed,” under controlling case law, it is apparent that the conveyance was intended to be, and functioned as, a ROW dedication. *See Kiely v. Graves*, 173 Wn.2d 926, 271 P.3d 226 (2012).

5. In 2006, the eastern ½ of the North 15th Street Alley, which extends between Lawrence Street and Alder Street, was vacated pursuant to a petition filed by Petitioner, the University of Puget Sound (City File No. 124.1259). At the time, due to a mapping error, all parties believed that the western ½ of this alley ROW, now the Vacation Area, had been previously vacated, or was to be included in the then present petition. At this same time, the City granted a waiver to the appraised value charge for the eastern ½ of said alley pursuant to Ordinance No. 27479 and the Hearing Examiner's Report and Recommendation to the City Council bearing File No. 124.1259 and dated March 10, 2006. *Pasco Testimony; Exhibit 1, Exhibit 16, Exhibit 17.*²

6. The Petitioner is again seeking waiver of the appraised value charge for the Vacation Area as contemplated by TMC 9.22.010. It is the Petitioner's contention that it is expending a considerable expense to improve a gateway area to service the public and the university community. This request is consistent with previous requests received from other similarly situated institutions offering similar services to the community as a whole; and given the prior Examiner's findings, the present Examiner is not inclined to disagree. *See Exhibit 16 and Exhibit 17.*

7. 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 and these were incorporated into the Report and referenced in City testimony at the hearing. These comments and requests, where appropriate, have been incorporated in this Report and Recommendation at Conclusion 10 below. *Pasco Testimony; Exhibit 1, Exhibits 5~15.*

8. No members of the public appeared at the hearing in opposition to the Petition and no written opposition to the proposed vacation was received in this case.

9. No property abutting the Vacation Area becomes landlocked by the proposed vacation, nor will any access be substantially impaired if this vacation is granted since the Vacation Area, as a limited, dead-end alleyway, is not currently being used in any significant manner for traditional public ROW purposes. *Pasco Testimony; Exhibit 1, Exhibit 8.*

10. 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. *Pasco Testimony; Exhibit 1.*

11. RPS' Report, which is entered into the record as Exhibit 1, accurately describes the proposed vacation, general and specific facts about the surrounding 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.

² The Examiner at the time concluded that (a) "[t]he petitioner's proposal would be in the best interest of the City," (b) "The improved entryway to the campus would not only provide improved access to the campus by members of the public but would also provide various amenities which are typically available for public use such as a public plaza way and landscape pedestrian walkways," and (c) "[t]he purposes for the vacation are at least in part to provide direct public benefits..."

12. Public hearing notices were posted on April 4, 2019. On April 3, 2019, yellow public notice signs were posted at a location 180 feet to the east of the easterly boundary of the Vacation Area, in the North Alder Street ROW adjacent to the sidewalk, and at a location 115 feet south of the southeast corner of the Vacation Area, adjacent to North 15th Street (a private street serving as the main entrance to the University of Puget Sound campus). Also on or around April 4, 2019, a public notice memo for the May 9, 2019 hearing was placed into the glass display case in the Tacoma Municipal Building next to the Finance Department. In addition, the Public Notice Memo was advertised on the City of Tacoma's web site and in the Tacoma Daily Index, as well as on Municipal Television Channel 12. Lastly, Public Notice was mailed to all parties of record within 300 feet of the Vacation Area. *Pasco Testimony; Exhibit 1.*

13. 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/testimony 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:³

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.

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

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.

5. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. *See TMC 1.23.070.* In this case, the Petitioner relied almost entirely on the testimony and evidence of the City at the hearing, but also supplied its own reasoning during the application process.

6. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested street vacation meets criteria 1 through 6 above for the vacation of street ROW set forth at Conclusion 4 above, provided the limited conditions recommended below are imposed and met. At present, the Vacation Area does not connect to any other City ROW. Although used for access into Petitioner's campus, the Vacation Area serves no substantial purpose beyond that in the City's transportation system. It is a dead-end alleyway segment, the vacation of which will have no material effect on the street pattern or circulation of traffic, nor will it affect the City's ROW needs or goals.

7. No potential for landlocking any abutting owner exists from granting the petition because the Petitioner is the sole abutting property owner and will presumably not use the Vacation Area in a way that is detrimental to its own access needs.

8. The provisions of RCW 35.79.035, governing areas close to bodies of water do not apply to this location.

9. Finally, it is not difficult to conclude that public benefit accrues through the Vacation Area being added back to the property tax rolls and through the subsequent development of the area in furtherance of Petitioner's goals and policies as an institution of higher learning.

10. 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

Normally it would be recommended that the Petitioner compensate the City in an amount equal to the full appraised value of the area vacated. Petitioner here has requested that this compensation be waived. *See Exhibit 16.* Petitioner's justification for the waiver appears to be the same as it was in

2006, when Petitioner believed the whole alleyway, including the Vacation Area, was to be vacated (or already had been). *Id.* The Examiner's findings at that time justifying the waiver and the vacation as being in the "best interest of the City" are still applicable today. *See Exhibit 17.* Therefore, the present Examiner concludes that there is no barrier to waiving the compensation otherwise required by TMC 9.22.010, and so recommends. If the City Council rejects the Petitioner's waiver request, one-half of any compensation received for the vacation should 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 right-of-way areas. *TMC 9.22.010.*

2. ENVIRONMENTAL SERVICES

City Environmental Services has requested that, as a condition to approving the petition, the Petitioner be required to take ownership of the wastewater sewer pipe located within the Vacation Area, and the Examiner hereby advances that request as part of this Report and Recommendation. The change in ownership, and attendant rights and responsibilities, should be documented in the City's Vacation Ordinance.

3. PUGET SOUND ENERGY

Puget Sound Energy ("PSE") has requested that an easement be reserved for a gas main pipe existing within the Vacation Area. Although this is not a City condition, the City has requested that the Petitioner grant the requested easement to PSE before the vacation is finalized by second reading of a Vacation Ordinance.

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 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.

D. ADVISORY NOTES:

1. Other than the conditions/concerns already expressly set forth herein, no objection or additional comment was received from the governmental agencies, City departments/divisions, and utility providers to whom the City circulated this petition.
2. The Connection Charge In-Lieu-of-Assessment (In-Lieu-of-Assessment Charge[s]) estimates provided by the City's Public Works Department and referenced in Exhibit 1 are advisory comments only, and payment thereof is not a condition to the approval of this vacation. They 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.

11. Accordingly, the Petition should be granted, subject to the conditions set forth in Conclusion 10 above.

12. 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 10 above.

DATED this 16th day of May, 2019.



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*