

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: LBA LVF VII-Company XXIII, LLC, a Delaware limited liability company registered to do business in the state of Washington.

FILE NO: HEX2022-018 (124.1438)

SUMMARY OF REQUEST:

A petition by LBA LVF VII-Company XXIII, LLC (“Petitioner”) to vacate a portion of South Pine Street public right-of-way, for extended property area and potential expansion of the existing business use.

RECOMMENDATION OF THE HEARING EXAMINER:

The vacation petition is hereby recommended for approval, subject to conditions, as set forth herein.

PUBLIC HEARING:

After reviewing Real Property Services’ Preliminary Report (the “Report”—Exhibit C-1), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on November 17, 2022.¹ Senior Real Estate Specialist, Britany Avila, of Real Property Services (“RPS”) represented the City. Attorney Erin Park, of Seyfarth Shaw LLP, upon the designation of the Petitioner, LBA LVF VII-Company XXIII, LLC, appeared on its behalf at the hearing.²

¹ This hearing was conducted with in-person participation in the City Council Chambers, and also participation over Zoom at no cost to any participant with video, internet audio, and telephonic access. The Petitioner’s representatives participated over Zoom. The City was present in the Council Chambers.

² *Park Testimony.*

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The Petitioner, LBA LVF VII-Company XXIII, LLC, a Delaware limited liability company registered to do business in the state of Washington (the "Petitioner"), has requested the vacation of a portion of the South Pine Street public right-of-way (the "Vacation Area"). The Vacation Area is legally described as follows:

CITY OF TACOMA DEEDS RECORDED UNDER THOSE PORTIONS OF THAT CERTAIN REAL PROPERTY DESCRIBED IN RECORDING NO. 1271836 AND RECORDING NO. 2307652, RECORDS OF PIERCE COUNTY AUDITOR, WASHINGTON, LOCATED IN THE SOUTHWEST AND SOUTHEAST QUARTERS OF SECTION 7, TOWNSHIP 20 NORTH, RANGE 3 EAST OF THE W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY MARGIN OF SOUTH PINE STREET, SAID POINT ALSO BEING THE SOUTHWESTERLY CORNER OF LOT 1 PER CITY OF TACOMA SHORT PLAT NO. 77-154, RECORDS OF PIERCE COUNTY AUDITOR, DENOTED BY A NO. 4 REBAR AND RED PLASTIC CAP; THENCE SOUTHEASTERLY ALONG THE PROLONGATION OF A CURVE TO THE RIGHT WITH A RADIUS OF 1,185.37 FEET, THROUGH A CENTRAL ANGLE OF 09°06'04", AN ARC DISTANCE OF 188.29 FEET (THE LONG CHORD OF WHICH BEARS SOUTH 14°45'36" EAST 188.09') TO AN ANGLE POINT; THENCE LEAVING SAID CURVE SOUTH 88°38'41" EAST A DISTANCE OF 23.46 FEET TO THE EAST MARGIN LINE OF SOUTH PINE STREET AS LAID OUT BY THE CITY OF TACOMA PER SAID DEED RECORDING NO. 1271836, BEING A LINE PARALLEL WITH AND 40 FEET EAST OF THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 7; THENCE NORTH 01°21'19" EAST A DISTANCE OF 156.89 FEET TO THE NORTHEASTERLY CORNER OF SAID DEED RECORDING NO. 1271836 AND THE SOUTHEASTERLY CORNER OF SAID DEED RECORDING NO. 2307652; THENCE CONTINUING ALONG SAID EAST MARGIN OF SOUTH PINE STREET PER SAID RECORDING NO. 2307652, NORTH 01°21'19" EAST A DISTANCE OF 56.21 FEET TO A POINT OF INTERSECTION OF THE EAST MARGIN OF SOUTH PINE STREET PER SAID RECORDING NO. 2307652 AND THE SOUTHERLY LOT LINE OF SAID LOT 1; THENCE SOUTH 78°12'16" WEST ALONG SAID SOUTHERLY LINE OF SAID LOT 1 A DISTANCE OF 40.92 FEET TO AN ANGLE POINT OF SAID LOT 1 THEREIN, DENOTED BY A 'PK' NAIL WITH WASHER; THENCE SOUTH 58°35'16" WEST A DISTANCE OF 42.70 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.
Ex. C-1, Ex. C-2.

2. All interested persons and abutting property owners have agreed to the petition. The Petitioner owns two of the three parcels abutting the Vacation Area (3101 South Pine Street/ Parcel Number 0320074043 and 2603 South Hood Street/ Parcel Number 0320074057). The owner of the third

abutting parcel to the north, 3003 South Pine Street LLC (3003 South Pine Street/ Parcel No. 0320078001), has signed/joined in the vacation petition with the Petitioner. *Avila Testimony; Ex. C-1.*

3. The Petitioner plans to use the Vacation Area to extended the usable square footage of its existing property area and potentially expand its current business use. *Ex. C-1.*

4. The Vacation Area is approximately 10,007 square feet. The Vacation Area abuts two parcels to the west, 3101 South Pine Street and 2601 South Hood Street, and one parcel to the north, 3003 South Pine Street. The Vacation Area is paved and provides access from South Pine Street to existing paved parking lots that serve abutting property owner businesses. These access points are addressed in the conditions of approval below. *Ex. C-1.*

5. The City acquired the subject right-of-way by a County Treasurer's Deed, dated August 23, 1940, recorded under Auditor's File No. 1271836 (D-4607) and a Quit Claim Deed to the City of Tacoma for street purposes, dated July 31, 1969, recorded under Auditor's File No. 2307652 (D-5469), records of Pierce County, State of Washington. *Ex. C-1, Ex. C-4, Ex. C-5.*

6. The requested vacation has been reviewed by outside quasi-governmental agencies, City departments/divisions, and utility providers. Reviewing agencies indicated that they have no concerns or objection to the proposed vacation, provided that the conditions of approval set forth herein are imposed and met. The City does not use the Vacation Area for public traversal at present and sees no future need for the same. *Avila Testimony; Exs. C-1, Ex. C-6~C-16.*

7. The Petitioner expressed no reservations regarding the recommended conditions of approval and confirmed that separate and specific detailed easement agreements with Puget Sound Energy and with the owners of the parcel to the north (3003 South Pine Street, Parcel No. 0320078001) are in their final stages. *Park Testimony.*

8. No members from the public appeared at the hearing virtually through Zoom nor in-person to offer comments/testimony.

9. City staff determined that the public would benefit from the proposed vacation to the extent that it adds value to the Petitioner's property to which it attaches, and thereby should increase tax revenue. *Ex. C-1.*

10. Except for the rights to be reserved under a City utility easement(s), the Vacation Area is not needed for future public use by the City, and no abutting owner becomes landlocked nor will their access be substantially impaired by the vacation, provided that the conditions set forth herein are imposed and met. The Vacation Area is currently not used for any public right-of-way purpose beyond utility line placement. *Avila Testimony; Ex. C-1.*

11. 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. *Ex. C-1.*

12. No environmental review of the proposed vacation was conducted. *See Conclusion of Law 3, below.*

13. RPS' Preliminary Report, as entered into the hearing record as Exhibit C-1 (the "Report"), accurately describes the requested vacation, general and specific facts about the abutting properties, and the Vacation Area and applicable codes. The Report is incorporated herein by this reference as though fully set forth. Any conflict between this Recommendation and the Report should be resolved in favor of this Recommendation, however.

14. Public hearing notices were posted/published at the various locations and on the dates indicated below as follows:

On October 12, 2022-

- a. A yellow public notice sign was posted within the right-of-way approx. 225 feet southerly from the southeast corner of South Center Street and South Pine Street intersection.
- b. A yellow public notice sign was posted within the right-of-way approx. 425 feet southerly from the southeast corner of South Center Street and South Pine Street intersection.

On October 13, 2022-

- c. A public notice memo was placed into the glass display case located on the First Floor of the Tacoma Municipal Building next to the Finance Department.
- d. A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/cms/one.aspx?objectId=2283>.
- e. Public notice was advertised in the Daily Index newspaper.
- f. A public notice mailing was sent to all parties of record within a 300-foot radius of the Vacation Area.
- g. Public Notice was advertised on Municipal Television Channel 12. *Ex. C-1*.

15. Any conclusion hereinafter stated which may be more properly deemed a finding 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.*

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

3. Pursuant to WAC 197-11-800(2)(i), the vacation of streets or roads (right-of-way) is exempt from the threshold determination and Environmental Impact Statement requirements of RCW 43.21.C, the State Environmental Policy Act (SEPA).

4. “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.”³

5. If they are to be approved, petitions for the vacation of public right-of-way must be consistent with the following criteria:⁴

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*.

6. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. *See TMC 1.23.070*. The Petitioner is entitled to rely on all evidence made part of the record, whatever the source of that evidence.

7. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested partial street vacation conforms to the criteria for the vacation of right-of-way set forth at Conclusion 5 above, provided the conditions recommended below are met. The public would experience benefits from the potential increased tax revenue that the requested vacation may generate. Additional public benefit may be derived from the Petitioner’s expanded business use of the Vacation Area. The requested partial street vacation would not impair traffic circulation, landlock any abutting owner, or adversely affect the public need, and the Vacation Area is not being used for public traversal. The easement reservations referenced herein will sufficiently protect the need for on-going utility use.

³ *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).

⁴ For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

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 management and maintenance of other City owned lands and unimproved right-of-way areas. *TMC 9.22.010.*

2. ENVIRONMENTAL SERVICES - ENGINEERING

A standard utility easement must be reserved by the City for its existing wastewater and storm water infrastructure.⁵

3. TACOMA WATER

An easement must be reserved over a portion of the proposed Vacation Area as follows: The westerly 25 feet of the proposed area to be vacated, together with the northerly 40 feet of the proposed area to be vacated, for Tacoma Water infrastructure.

4. TACOMA POWER

An easement must be reserved for Tacoma Power infrastructure over two areas of the proposed vacation area as follows:

North Portion: All that area lying north of a line extending between a point 30 feet south of the northwest corner and 30 feet south of the northeast corner of the area proposed for vacation.

South Portion: The south 10 feet of the area proposed for vacation.

5. ENVIRONMENTAL SERVICES – SOLID WASTE

An access easement must be retained by the City over the vacation area for solid waste access to the parcel to the north of the Vacation Area (Parcel No. 0320078001).

⁵ The easement grantee for all City utilities is the Municipal Corporation of the City of Tacoma. To the extent that the various easement interests needed by City departments/divisions can be combined into a single easement document, this avenue should be pursued.

6. PLANNING & DEVELOPMENT SERVICES – LAND USE

Planning & Development Services-Land Use recommends that an access easement be granted to Parcel No. 0320078001 owned by 3003 South Pine Street, LLC or exclude area from proposed vacation area.

7. PUBLIC WORKS TRAFFIC ENGINEERING & SAFETY – TRAFFIC SIGNAL/STREETLIGHTING

Traffic Engineering & Safety- Traffic Signal/Streetlighting recommends that an access easement be granted to Parcel No. 0320078001 owned by 3003 South Pine Street, LLC or that this area be excluded from the Vacation Area.

8. PUGET SOUND ENERGY

Puget Sound Energy has requested that a gas easement be granted to Puget Sound Energy by adjoining property owner for a 2-inch intermediate pressure gas main.

B. ADVISORY NOTE:

RPS/IN-LIEU

Any LID estimates or other in-lieu amounts referenced in the RPS Report are set forth as advisory comments only, and are not included here as a condition of approval; they can be voluntarily paid as part of the vacation process, or they may be required at the time of any subsequent development of the Vacation Area. Such fees are subject to increase until paid.

Beyond the conditions set forth above, no objections or additional comments were received from the governmental agencies, City departments/divisions, and utility providers to whom the City circulated this petition.

C. 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.

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 vacation petition is hereby recommended for approval, subject the conditions contained in Conclusion 8 above.

DATED this 21st day of November, 2022.



JEFF H. CAPELL, Hearing Examiner

N O T I C E

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*