

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: METROPOLITAN PARK DISTRICT OF TACOMA

FILE NO: HEX2019-035 (124.1406)

SUMMARY OF REQUEST

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition to vacate all those portions of publicly dedicated right-of-way (“ROW”), lying between East 48th Street and the northerly margin of East 52nd Street, within the Swan Creek Park boundaries. The vacated areas of ROW will be able to be incorporated more fully into the park property for recreational enhancements and improvements free of the City’s ROW interest.

RECOMMENDATION OF THE HEARING EXAMINER

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

PUBLIC HEARING

After reviewing RPS’ 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 January 30, 2020. Susie Rogers, a Senior Real Estate Officer with RPS, represented the City. Kristi Evans, Capital Program Manager, represented the Petitioner. Testimony was taken, exhibits were admitted, and the record closed at the conclusion of the hearing.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION

FINDINGS

1. Petitioner, the Metropolitan Park District of Tacoma (the "Petitioner"), submitted a petition for vacation of multiple public ROW areas, described generally as all those portions of publicly dedicated streets lying between East 48th Street and the northerly margin of East 52nd Street within the Swan Creek Park boundaries (collectively the "Vacation Area"). *Evans Testimony; Ex. C-1.*

2. The City's Report provides the following metes and bounds legal description for the Vacation Area:

All those portions of East 48th Street, East 50th Street, East "R" Street (also known as East "T" Street per City of Tacoma Ordinance No. 10398, passed February 13, 1930), East "S" Street (also known as Homestead Avenue per City of Tacoma Ordinance No. 10398, passed February 13, 1930), East "T" Street (also known as Roosevelt Avenue per City of Tacoma Ordinance No. 10398, passed February 13, 1930) and all alleys therein lying between the northerly margin of East 48th Street and the northerly margin of East 52nd Street, all as dedicated by Plat filing of Homestead Park, Pierce County, Washington according to the Plat thereof recorded in Book 6, Page 112, records of Pierce County, Washington, all lying east and south of Tract "M", as shown Plat filing of Salishan Division 2, according to the Plat recorded under Auditor's File number 200806245003, records of Pierce County, Washington, and lying east of Tract "K", as shown on Plat filing of Salishan Division 4, according to the Plat recorded under Auditor's File number 201007155004, records of Pierce County, Washington

Together with that portion of unrecorded East "T" Street lying south of the North margin of East 48th Street and North of East 52nd Street depicted outside of the plat of Portland Avenue First Addition, according to the Plat thereof recorded in Book 17, Page 82, records of Pierce County, Washington, more particularly described as follows:

Commencing at the Southeast corner of Tract 'J' as per said plat, thence South 88°03'57" East along the easterly projection of the south line of said Tract "J", 86.91 feet to a line perpendicularly 73 feet East and parallel to the East line of said Tract "J";

Thence North 30°56'07" West along said parallel line a distance of 159.46 feet to a point of tangency with a 633.30 foot radius curve to the right;

Thence parallel Northwesterly along said curve through a central angle 12°57'53" an arc distance of 143.30 feet to an angle point;

Thence North 89°40'58" West a distance of 76.45 feet more or less to a point on a non-tangent curve to the right having a radius of 706.30 feet, from which point the center bears North 73°58'33" East, said point being on the East line of said Tract "J";

Thence Northwesterly along said curved East line through a central angle of $1^{\circ}13'59''$ an arc distance of 15.20 feet;

Thence continuing along said East line North $14^{\circ}47'27''$ West a distance of 57.35 feet to an angle point;

Thence departing said East line South $89^{\circ}40'58''$ East a distance of 75.61 feet to a line that is 73 feet perpendicularly East and parallel to said East line of Tract "J";

Thence North $14^{\circ}47'27''$ West along said parallel line a distance of 243.75 feet to a point of tangency with a 464.40 foot radius curve to the right;

Thence Northeasterly along said parallel curve through a central angle of $21^{\circ}04'31''$ an arc distance of 170.82 feet to an angle point;

Thence North $69^{\circ}36'40''$ West a distance of 74.95 feet more or less to a point on the East line of said Tract "J", said point being on a non-tangent curve to the right having a radius of 537.40 feet, from which the center bears South $81^{\circ}46'04''$ East;

Thence Northeasterly along said curve and said East line through a central angle of $5^{\circ}24'22''$ an arc distance of 50.71 feet to an angle point;

Thence departing said East line South $69^{\circ}36'40''$ East a distance of 73.59 feet to a point on a line that is 73 feet perpendicularly East and parallel to the East line of said Tract "J", said point being a non-tangent curve to the right having a radius of 464.40 feet, from which point the center bears South $77^{\circ}25'44''$ East;

Thence Northeasterly along said parallel curve through a central angle of $22^{\circ}03'07''$ an arc distance of 178.74 feet;

Thence North $34^{\circ}37'23''$ East along said parallel line a distance of 22.24 feet more or less to the North line of the Northeast Quarter of the Northeast Quarter of Section 22, Township 20 North, Range 3 East of Willamette Meridian, said North line being the North margin of East 48th Street;

Thence along said North line South $89^{\circ}16'31''$ East a distance of 65.06 feet;

Thence departing said North line South $34^{\circ}37'23''$ West a distance of 58.52 feet to a point of tangency with a 410.40 foot radius curve to the left;

Thence Southwesterly and Southeasterly along said curve through a central angle $49^{\circ}24'50''$ an arc distance of 353.94 feet;

Thence South $14^{\circ}47'27''$ East a distance of 281.39 feet to a point of tangency with a 579.30 foot radius curve to the left;

Thence Southeasterly along said curve through a central angle 16°08'40" an arc distance of 163.23 feet;

Thence South 30°56'07" East a distance of 194.36 feet more or less to intersect said easterly projection of the south line of Tract "J";

Thence North 88°03'57" West along said projection a distance of 64.29 feet to the Point of Beginning.

All situate in the City of Tacoma, County of Pierce, State of Washington; within the Northeast Quarter of the Northeast Quarter of Section 22, Township 20 North, Range 03 East of the Willamette Meridian. *Ex. C-1.*

3. None of the ROW areas comprising the Vacation Area has been improved with any street or utility infrastructure and all these areas have been historically managed, improved and utilized as park amenities/paths. *Evans Testimony, Ex. C-1.*

4. East 48th Street, East 50th Street, East R Street (also known as East T Street per City of Tacoma Ordinance No. 10398, passed February 13, 1930), East S Street (also known as Homestead Avenue), East T Street (also known as Roosevelt Avenue), and all alleys lying between the northerly margin of East 48th Street and the northerly margin of East 52nd Street, were dedicated, in 1903, in the Plat filing of Homestead Park, Pierce County. As just alluded to, some of the platted, but unopened ROW areas included in the Vacation Area had their names changed in City of Tacoma Ordinance No. 10398. *Ex. C-4~C-6.*

5. Due to the Vacation Area's having never been opened or improved as public ROW, and further due to the Vacation Area's being located entirely within the confines of a public park, approving the vacation will have no adverse effect on the street pattern or circulation of the immediate area or the community as a whole, nor will the public need, as it relates to ROW, be adversely affected. The Vacation Area is not needed for future ROW use, and no property owner becomes landlocked if the vacation is approved. Public benefit accrues through the Vacation Area's being able to be used for park and recreational purposes free of any concern that the City might someday exercise its ROW interests in the middle of this park.¹ *Ex. C-1.*

6. 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. *Id.*

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. These comments and

¹ The City's Report states that the vacation will be a public benefit because "It will reduce the City's maintenance expenditures." No evidence was presented that the City is actually engaging in any maintenance of the Vacation Area, and this statement appears to contradict the earlier City contention that "[a]ll these areas have been historically managed, improved and utilized as park amenities/paths." Luckily for the Petitioner, the intended use of the Vacation Area is a public benefit/public purpose in and of itself.

requests were incorporated into the Report and referenced in City testimony at the hearing, and where appropriate, have been incorporated in this Report and Recommendation at Conclusion 8 below. *Ex. C-1.*

8. No members of the public appeared to testify at the hearing, and no written public comments were received.

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

On November 26, 2019-

- Yellow public notice signs were posted on the existing fencing, fronting both South Tacoma Way and the Union Avenue off-ramp.

On December 19, 2019-

- A public notice memo was placed into the glass display case located on the first floor of the Municipal building next to the Finance Department.
- A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/notices>.
- Public Notice was advertised in the Daily Index newspaper.
- A public notice mailing was mailed to all parties of record within 300 feet of the Vacation Area.
- Public Notice was advertised on Municipal Television Channel 12.

10. 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.

11. 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); *Banchero v. City Council of Seattle*, 2 Wn. App. 519, 468 P.2d 724 (1970); *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. "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." *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799 (1967).

5. 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*.²

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

7. 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 5 above, provided the conditions recommended below are imposed and met. No potential for landlocking an abutting owner exists from granting the

² For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

petition. The Vacation Area is not currently used as ROW, nor does the City perceive any future use of the Vacation Area for that purpose. The provisions of RCW 35.79.035, governing areas close to bodies of water do not apply to this location. Finally, public benefit accrues through the vacation area being able to be used for public recreational purposes free from the City's ROW interest.

8. Given the foregoing, the Hearing Examiner recommends that the requested street vacation be approved subject to the following conditions:

A. SPECIAL CONDITION

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.*

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.

C. 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 provided by RPS/Public Works is an advisory comment only, and payment thereof is not a condition to this vacation. The 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 5th day of February, 2020.



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