

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: TRUE VINE SENIOR CITIZENS CENTER

FILE NO.: HEX2021-005 (124.1423)

SUMMARY OF REQUEST:

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition from TRUE VINE SENIOR CITIZENS CENTER, a Washington non-profit corporation, (referred to herein as the “Petitioner” or “True Vine”), requesting the vacation of that certain portion of South Stevens Street and South Mason Avenue extension, lying northerly of South 19th Street and easterly of improved South Stevens Street, as further described below.

RECOMMENDATION:

The vacation petition is hereby recommended for approval, subject to the conditions 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 via Zoom on February 25, 2021.¹ Ronda Van Allen, a Senior Real Estate Specialist with RPS, represented the City. Foxy Davison and Timothy Johnson of Johnson Commercial Properties appeared as the property owner’s authorized representatives.² Testimony was taken; exhibits were reviewed and admitted. After conclusion of the hearing, the record was left open temporarily for RPS to submit a corrected version of its Exhibit C-2, which was received in the Office of the Hearing Examiner on March 1, 2021.

¹ Due to National, State of Washington (“State”) and City Proclamations of Emergency caused by the COVID-19 virus, the City closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet visual and audio access, as well as separate telephonic (only) access via call in number on Zoom.

² See Exhibit P-1.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. True Vine has petitioned for the vacation of that portion of South Stevens Street and the South Mason Avenue extension, lying northerly of South 19th Street and easterly of improved South Stevens Street (the "Vacation Area") to facilitate expanded surface yard uses of True Vine's adjacent property. *Van Allen Testimony, Davison Testimony, Johnson Testimony; Ex. C-1~ Ex. C-3, Ex. C-6.*

2. The Report provides the following legal description for the Vacation Area:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER, ALL IN SECTION 01, TOWNSHIP 20 NORTH, RANGE 02 EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 3.5-INCH DIAMETER SURFACE BRASS DISK MARKING THE INTERSECTION OF SOUTH 19TH STREET AND SOUTH MASON AVENUE AND BEING THE SOUTH QUARTER CORNER OF SAID SECTION 01 FROM WHICH ANOTHER SURFACE BRASS DISK MARKING THE INTERSECTION OF SOUTH MASON AVENUE AND VACATED SOUTH 18TH STREET BEARS NORTH 01°27'01" EAST A DISTANCE OF 453.40 FEET;

THENCE NORTH 01°27'01" EAST ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 01 A DISTANCE OF 45.38 FEET TO THE INTERSECTION WITH THE WESTERLY EXTENSION OF THE SOUTH LINE OF BLOCK 58, RIDGEDALE ADDITION TO TACOMA W.T., AS PER PLAT RECORDED IN BOOK 2, PAGE 74, RECORDS OF PIERCE COUNTY AUDITOR;

THENCE SOUTH 88°02'22" EAST ALONG SAID WESTERLY EXTENSION A DISTANCE OF 18.21 FEET MORE OR LESS TO THE SOUTHWEST CORNER OF SAID BLOCK 58;

THENCE NORTH 02°00'29" EAST ALONG THE WEST LINE OF SAID BLOCK 58 A DISTANCE OF 19.61 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE DEPARTING SAID WEST LINE NORTH 87°54'56" WEST A DISTANCE OF 21.55 FEET;

THENCE NORTH 20°02'11" WEST A DISTANCE OF 64.19 FEET;

THENCE NORTH 66°23'19" EAST A DISTANCE OF 14.30 FEET TO A POINT OF TANGENCY WITH A 43 FOOT RADIUS CURVE TO THE LEFT;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22°51'02" AN ARC DISTANCE OF 17.15 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE HAVING A RADIUS OF 135 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°04'51" AN ARC DISTANCE OF 14.33 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE HAVING A RADIUS OF 36.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°13'44" AN ARC DISTANCE OF 15.85 FEET;

THENCE NORTH 12°13'42" EAST A DISTANCE OF 23.33 FEET TO A POINT ON THE WEST LINE OF SAID BLOCK 58, SAID POINT BEING 5.76 FEET SOUTH OF THE NORTHWEST CORNER OF LOT 10 OF SAID BLOCK;

THENCE SOUTH 02°00'29" WEST ALONG SAID WEST LINE A DISTANCE OF 126.64 FEET TO THE **POINT OF BEGINNING**.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.
(CONTAINING ±2804 SQUARE FEET OR APPROXIMATELY 0.0643 ACRES).
Ex. C-1.

3. Having been advised of the limitations of use due to existing utilities, the Petitioner's representatives indicated that their intention for the Vacation Area is to use it together with the adjacent property for expanded surface yard uses once the Vacation Area is no longer encumbered for surface right-of-way use. *Davison Testimony, Johnson Testimony; Ex. C-1.*

4. The most easterly 20 feet (+-) of South Mason Avenue was dedicated in the Plat filing of Ridgedale Addition to Tacoma, W.T., according to the Plat thereof recorded in Volume 2 of Plats, at Page 74, records of Pierce County, Washington. *Van Allen Testimony; Ex. C-1.*

5. The remainder of the Vacation Area was acquired by the City in that certain Warranty Deed, referenced as D3650, recorded under Auditor's File Number 2273816, which is a correction to previously recorded deeds filed under Auditor's File Numbers 1675507 and 1675505, for the expansion of South Stevens Street. *Id.*

6. In 1973, per approved construction plans referenced as Improvement Number 4991, the City of Tacoma reconfigured the intersection of South 19th Street and South Stevens Street eliminating any direct connection of South Mason Avenue. *Van Allen Testimony; Ex. C-5 ~ C-8.*

7. The Vacation Area has remained unimproved and vegetated since the 1973 intersection reconfiguration. It is significantly encumbered by utilities which will prohibit development of the Vacation Area with any permanent improvements unless the existing utilities are relocated. Any such

relocation would likely need to be accomplished at the Petitioner's expense. *Van Allen Testimony; Ex. C-1.*

8. The proposed vacation is a public benefit because it adds potentially taxable square footage to the Petitioner's real property, thereby potentially increasing the City's revenues. In addition, the vacation will reduce the City's maintenance inventory and expenditures, and will enhance the Petitioner's business on the property which also provides benefit to the public. *Davison Testimony, Johnson Testimony, Van Allen Testimony; Ex. C-1.*

9. City staff has determined that the Vacation Area is not contemplated or needed for future public use as traversable right-of-way, and no abutting property will become landlocked nor will their access be substantially impaired by the vacation. 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. The Vacation Area is needed for the continued existence of City and private utility facilities, however, as addressed further below. *Van Allen Testimony; Ex. C-1; see also Conclusion 8 below.*

10. 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 conditions were incorporated into the Report and were referenced in City testimony at the hearing. The conditions, where appropriate, have been incorporated in this Report and Recommendation at Conclusion 8 below. None of the governmental agencies, City departments/divisions, and utility providers objected to the requested vacation, provided that their concerns were addressed through the requested conditions being imposed. *Van Allen Testimony; Exs. C-9 ~ C-14.*

11. The Petitioner did not indicate any objection to the City's requested conditions of approval, but did ask clarifying questions about the extent of the City's requested easement reservations. *Johnson Testimony.*

12. Notices of the Public Hearing were posted at the following location(s) on January 20, 2021:

Yellow public notice signs were posted along the subject right-of-way area at South 19th Street and South Stevens Street.

Public hearing notices were posted or published on January 14 and 15, 2021, as follows:

- a. 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.
- b. A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/notices>.
- c. Public Notice was advertised in the Daily Index newspaper.
- d. Public Notice was mailed to all owners of record within 300 feet of the Vacation Area.

- e. Public Notice was advertised on Municipal Television Channel 12. *Van Allen Testimony; Ex. C-4.*

13. RPS' Report, which is entered into the record as Exhibit C-1, accurately describes the proposed vacation, general and specific facts about the surrounding site and the Vacation Area, and lists applicable statutes/regulations, as well as requested specifics regarding the City's requested easement reservation. 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.

14. Any finding above, which may be more properly deemed or considered a conclusion, is hereby adopted as such.

CONCLUSIONS OF LAW:

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.*

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 43.21C, the State Environmental Policy Act (SEPA).

4. Petitions for the vacation of public right-of-way 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*.³

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

6. Findings entered herein, based upon the preponderance of evidence in the hearing record, support a conclusion that the requested vacation conforms to the criteria for the vacation of right-of-way set forth at Conclusion 4 above, provided the conditions recommended below are imposed and met. No potential for landlocking an abutting owner exists from granting the petition, nor is there any need for, or traditional public right-of-way purpose (i.e., transportation, vehicular and pedestrian traversal) served by retaining the Vacation Area as right-of-way. The Vacation Area plays no appreciable role in the “[s]treet pattern or circulation of the immediate area or the community as a whole.” Public benefit accrues through the potential for increased tax revenue, the reduction of City maintenance costs relative to the Vacation Area, and the enhancement of Petitioner’s non-profit business.

7. “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.”⁴

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 rights-of-way. *TMC 9.22.010*.

2. RESERVATION OF EASEMENT

A City easement for utilities shall be reserved over the whole of the Vacation Area for the purpose of preserving in place, accessing, maintaining, repairing and replacing, at a minimum, the following list of City utilities:

a. ENVIRONMENTAL SERVICES - for protection of existing stormwater and wastewater sewer infrastructure.

b. TACOMA WATER - for existing City water infrastructure. Tacoma Water has requested a specific list of restrictions/conditions be made part of the easement relevant to its usage area within the greater Vacation Area. These conditions are typically made part of easements granted for Tacoma Water facilities and are set

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

⁴ *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).

forth in the Report at section J.4. They should be included in the easement reservation language in the Vacation Ordinance, or alternatively in any separate easement document.

c. TACOMA POWER - for existing overhead infrastructure presently existing over the easterly 20 feet of the Vacation Area. Similar to Tacoma Water, Tacoma Power has included specific conditions/restrictions, similar to its typical easements, be included in the easement to be reserved. These are set forth at section J.5. of the Report and should be included in the easement reservation language in the Vacation Ordinance, or alternatively in any separate easement document.

3. LUMEN (formerly CenturyLink)

LUMEN has requested that an easement be granted as a precursor to the requested vacation for the protection of Lumen's existing underground infrastructure. This easement should be granted concurrent with the finalization of the vacation.

B. ADVISORY CONSIDERATION:

RPS/IN-LIEU

Any LID estimates or other in-lieu amounts referenced in the RPS Report are 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 and the abutting property to which it attaches. Such fees are subject to increase until paid.

C. USUAL CONDITIONS/COMMENTS:

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 compensation condition and easement reservation 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 the conditions set forth in Conclusion 8 above.

DATED this 3rd day of March, 2021.



JEFF H. CAPELL, Hearing Examiner

NOTICE

RECONSIDERATION/APEAL 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*)

APEALS 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*