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From: Hearing Examiner (hearing.examiner@cityoftacoma.org)
Sent: Tuesday, January 14, 2020 3:09 PM
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Subject: HEX2019-029 (SV 124.1400) Claire and Gabriel Van Guse
Attachments: HEX2019-029_(124.1400)_VanGuse_FindingsConcsRecommendation_01.14.20.doc.pdf

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Tracking:

Recipient

Delivery

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Stevens, Troy

Delivered: 1/14/2020 3:11 PM

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Magoon, Jana

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Wung, Lihuang

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Russell, Lee

Delivered: 1/14/2020 3:11 PM

Dear Parties,

Please find attached a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation to the Tacoma City Council.

Sincerely,

Louisa Legg

Office Administrator

Tacoma Hearing Examiner Office

Ph: 253-591-5195 | Fax: 253.591.2003

Hearing.examiner@cityoftacoma.org

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONERS: CLAIRE and GABRIEL VAN GUSE **FILE NO:** HEX2019-029 (SV 124.1400)

SUMMARY OF REQUEST

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition to vacate a portion of North Visscher Street, lying between North Park Way and North Park Avenue, to facilitate private improvements and landscaping.

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 C-1), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on January 9, 2020. Troy Stevens of RPS represented the City. Claire Van Guse represented the Petitioners. Testimony was taken, exhibits were admitted, and the record closed at the conclusion of the hearing.

ORIGINAL

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. Claire and Gabriel Van Guse (the "Petitioners" or "Van Guse"), submitted a petition for the vacation of a portion of North Visscher Street, lying between North Park Way and North Park Avenue. If the Petitioners' request is approved, they plan to use the newly unencumbered (by the City's right-of-way interest) portion of their property (formerly North Visscher Street right-of-way ["ROW"]) to facilitate private improvements and landscaping. *Stevens Testimony; Ex. C-1, Ex. C-2.*

2. The Report and its exhibits show the area petitioned for as being the easternmost five feet (5') of the overall seventy-foot (70') width of North Visscher Street, as platted, running for a north-south length of one hundred thirty-six feet (136') along the front of Petitioners' residential real property at 5918 North Park Avenue (the "Vacation Area"). The Report legally describes the Vacation Area as follows:

A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M. DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS SURFACE MONUMENT AT THE NORTH QUARTER CORNER OF SAID SECTION 23;
THENCE ALONG THE NORTH LINE OF SAID SECTION, NORTH 88°36'20" WEST, 287.62 FEET TO ITS INTERSECTION WITH THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 3 OF BLOCK 2 OF REPLAT OF POINT DEFIANCE PARK ADDITION TO TACOMA, WASHINGTON, VOLUME 10 OF PLATS, PAGE 78, RECORDS OF PIERCE COUNTY AUDITOR'S OFFICE;
THENCE ALONG SAID WEST LINE EXTENDED, SOUTH 01°54'00" WEST, 35.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 3 AND THE TRUE POINT OF BEGINNING;
THENCE CONTINUING SOUTH 01°54'00" WEST, 135.80 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3,
THENCE ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 3, SOUTH 58°00'39" WEST, 6.02 FEET;
THENCE PARALLEL WITH SAID WEST LINE, NORTH 01°54'00" EAST, 139.11 FEET TO THE INTERSECTION WITH WESTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 3;
THENCE ALONG SAID WESTERLY EXTENSION SOUTH 88°36'20" EAST, 5.00 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 687 SQ. FT. (0.0158 ACRES), MORE OR LESS.

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

3. The City acquired the North Visscher Street ROW in the Replat of Point Defiance Park Addition to Tacoma, Washington, according to the plat thereof recorded February 28, 1912, records of Pierce County, Washington. *Ex. C-1, Ex. C-3.*

4. As referenced above, North Visscher Street is a 70-foot wide residential street ROW, currently improved with an approximately 24-foot wide asphalt road. The remaining ROW has a rolled curb and does not include sidewalk. The street slopes downward in a northerly direction toward North Park Avenue. The Vacation Area is well outside the presently improved portions of North Visscher Street. *Ex. C-1.*

5. 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 incorporated in the City's presentation/testimony at the hearing. *Stevens Testimony; Ex. C-1, Exs. C-4~C-13.* These comments and requests, where appropriate, have been incorporated in this Report and Recommendation at Conclusion 8 below. The Petitioners indicated that they are in agreement with the City's recommended conditions of approval. *Van Guse Testimony.*

6. No written public comments were submitted and no members of the public appeared at the hearing.

7. The vacation presents at least some public benefit because it adds the Vacation Area into the Petitioners' abutting real property for property tax purposes and facilitates private improvements which further add to the value of the Petitioners' real property and to the enhancement of the neighborhood. *Ex. C-1.*

8. The Vacation Area is not needed for future public use. The City of Tacoma's Traffic Engineering division has been consulted regarding this petition and it does not object to vacating the ROW, signifying that there is no perceived future need of the Vacation Area for ROW purposes. No existing property access points will be affected by the requested vacation. *Stevens Testimony; Ex. C-1; Ex. C-6.*

9. 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.*

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. Public hearing notices were posted at the following locations on November 20, 2019.

- A yellow public notice sign was placed at the southeast corner of North Park Avenue and North Visscher Street.

- A yellow public notice sign was placed 136 feet south of the southeast corner of North Park Avenue and North Visscher Street.

Notices of the upcoming Public Hearing were posted/published at the following locations on November 14, 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/page.aspx?nid=596>
- A public notice was advertised in the Daily Index newspaper.
- A public notice mailing was sent to all parties of record within the 300 feet of the Vacation Area.
- Public Notice was advertised on Municipal Television Channel 12. *Exhibit C-1; Stevens Testimony.*

12. 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 ultimately 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. "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."¹

4. 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).

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.

¹ *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).

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 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 added into property tax valuations for the Petitioners' abutting real property.

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

2. TACOMA WATER

Tacoma Water had no objection to the vacation, nor did it request conditions on its own behalf; however, Tacoma Water did point out the need for private third party easements that must be negotiated between the Petitioner and a neighboring property owner for private water facilities that are in the Vacation Area. The City suggested that this easement should be concluded prior to second reading of the ordinance. RPS will hold the easement in quasi-escrow and send the easement to the Petitioner once the street vacation is complete for recording with the Pierce County Auditor.

Note: The Petitioner shall be responsible for locating the private lines and creating legal descriptions and exhibits.

B. ADVISORY COMMENTS

REAL PROPERTY SERVICES (RPS)/IN-LIEU

An In-Lieu amount of \$384.85 is due for sanitary sewer.

Note: The amount is not required to be paid at this time; however, if the Petitioner chooses not to pay, it will be an obligation on title and the In-lieu amount may increase.

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.

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 in Exhibit C-4 are advisory comments only, and payment thereof is not a condition to 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.

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 14th day of January, 2020.



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*