

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** Aaron Beckord

**FILE NO:** HEX2021-025 (124.1425)

**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 an alley abutting and lying south of East 30th Street, between East K Street to the west, and Valley View Terrace to the east.

**RECOMMENDATION OF THE HEARING EXAMINER**

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 on January 6, 2022.<sup>1</sup> Susie Rogers of RPS represented the City. Petitioner Aaron Beckord appeared *pro se*. Testimony was taken, exhibits were admitted, and the record closed at the conclusion of the hearing.

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<sup>1</sup> Due to ongoing State and City in-person meeting restrictions, the Office of the Hearing Examiner is continuing to conduct hearings over Zoom. This hearing was conducted over Zoom at no cost to any participant with video, internet audio, and telephonic access.

## **FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

### **FINDINGS:**

1. Petitioner Aaron Beckord (the “Petitioner”), as the owner of the real property located at 3007 East K Street and 3002 Valley View Terrace, submitted a petition to vacate an adjacent City alley right-of-way interest located south of East 30<sup>th</sup> Street, between East K Street to the west and Valley View Terrace to the east (the “Vacation Area”). The Petitioner plans to use the Vacation Area for expanded residential yard use. *Beckord Testimony; Rogers Testimony; Exs. C-1~C-3.*

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

A portion of the Southwest Quarter of the Northwest Quarter of Section 10, Township 20 North, Range 3 East of the Willamette Meridian granted to the City of Tacoma by that certain deed recorded under Auditor’s File No. 356238, records of Pierce County, Washington, being more particularly described as follows:

The easterly 10 feet of lot 5 and the westerly 10 feet of Lot 6, Block 8036, Tacoma Land Company’s First Addition to Tacoma, W.T., according to Plat filed for record July 7, 1884 recorded under Auditor’s File No. 170, records of Pierce County, State of Washington;

Situate in the City of Tacoma, County of Pierce, State of Washington. *Ex. C-1.*

3. The Vacation Area is a 20-foot wide by 130-foot long unopened, unimproved alley right-of-way. It has a steep downward grade descending from the southwestern corner to the northeastern corner. The alley right-of-way abuts two parcels to the west, 3007 East K Street and 3003 East K Street. To the east, it abuts one parcel, 3002 Valley View Terrace. *Beckord Testimony; Rogers Testimony; Ex. C-1~C-3.*

4. An underground sanitary sewer main extends along the length of the Vacation Area, approximately along its center. Immediately to the east of the Vacation Area, on the abutting parcel (3002 Valley View Terrace), there is a City of Tacoma utility easement (City of Tacoma Document # E-3871) in which are located Tacoma Power facilities. *Ex. C-1~C-3, Exs. C-6 and C-7.*

5. The City acquired the subject alley right-of-way by a Deed of Dedication dated January 5, 1912, for public use as an “alley and public highway of the City of Tacoma...” The Deed of Dedication is recorded under Auditor’s File No. 356238, records of Pierce County, State of Washington. *Exs. C-1, C-4 and C-5.*

6. The Petitioner owns two of the three parcels abutting the Vacation Area (3007 East K Street and 3002 Valley View Terrace). The owners of the third abutting parcel (3003 East K Street), Jon Moore and Leslie Boyter, have signed the vacation petition in agreement with the Petitioner. *Beckord Testimony; Rogers Testimony; Exs. C-1~ C-3, Ex. C-16.*

7. The vacation presents at least some public benefit because the Vacation Area will be added to the taxable square footage of the abutting properties, thereby potentially increasing tax revenue. *Ex. C-1.*

8. The public need is not adversely affected by granting the vacation because the Vacation Area is not contemplated or needed for future public use, aside from the utility uses addressed in Conclusion 8 below. The steep slope of the Vacation Area makes it largely unsuitable for use as a traversable right-of-way in any event. *Beckord Testimony; Rogers Testimony; Exs. C-2, C-3, and C-7.*

9. No abutting owner becomes landlocked, nor is any access substantially impaired by granting the vacation. The Vacation Area is currently unopened and unimproved, and is not being used for access or public traversal of any kind. *Id.; Exs. C-1~C-3.*

10. The Vacation Area does not abut, nor is it proximate to a body of water and, therefore, the provisions of RCW 35.79.035 are not implicated. *Rogers Testimony; Exs. C-1~C-3.*

11. 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 requests were incorporated into the Report and referenced at the hearing. Where appropriate, these conditions have been incorporated in this Report and Recommendation at Conclusion 8 below. None of the reviewing agencies, City departments/divisions, or utility providers had any objection to the proposed vacation, provided that the conditions below are imposed. The Petitioner voiced no objections to the recommended conditions of approval. *Ex. C-1, C-6~C-15.*

12. No members of the public attended the hearing nor were any written public comments received.

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

On November 24, 2021-

- 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/page.aspx?nid=596>.
- c. Public notice was advertised in the Daily Index newspaper.
- d. A public notice mailing was mailed to all parties of record within the 300 feet of the Vacation Area.
- e. Public Notice was advertised on Municipal Television Channel 12.

On December 3, 2021-

- f. A yellow public notice sign was posted within the right-of-way along East K Street, south of and facing west towards the intersection of East K and East 30th Streets.
- g. A yellow public notice sign was posted within the East K Street right-of-way, south of 3007 East K Street, angled to face northbound traffic on East K Street. *Ex. C-1.*

14. The Report, which is entered into the record as Exhibit C-1, accurately describes the proposed vacation, general and specific facts about the general location and Vacation Area specifically, as well as applicable laws. 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.

15. 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); *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."<sup>2</sup>

5. Petitions for the vacation of public right-of-way must be consistent with the following criteria:<sup>3</sup>

- 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.

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

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

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 street vacation conforms to the criteria for the vacation of street right-of-way set forth at Conclusion 5 above, provided the condition(s) recommended below are imposed and met. No potential for landlocking an abutting owner exists from granting the petition because the Vacation Area is not opened or improved. It provides no access currently. The Vacation Area is not currently used as traversable right-of-way, nor does the City foresee 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, at least some public benefit accrues through the Vacation Area being added into property tax valuations for the Petitioner' abutting real property while potentially reducing the City's maintenance obligations.

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 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 rights-of-way. *TMC 9.22.010.*

2. TACOMA PUBLIC UTILITIES

TPU has no objections to the requested vacation, provided that a City utility easement be retained by the City over the Vacation Area to support maintenance and access to Tacoma Power facilities which are adjacent to

the Vacation Area. This condition could be met in combination with recommended condition 3 below.

3. ENVIRONMENTAL SERVICES

Environmental Services has no objection to the requested vacation, provided that a City utility easement be retained by the City over the Vacation Area to allow for the continued existence, maintenance, repair and replacement of City utility facilities in the Vacation Area, and for access to the adjacent power facilities.

**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 concerns addressed in 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.
2. An In-Lieu amount of \$1,015.76 that attaches to the Vacation Area is due for sanitary sewer. The Petitioner can clear this item from title through the Public Works Department, Real Property Services division, but is not required to do so as a condition to the vacation being approved. The rate of assessment is updated every few years, and the amount quoted may increase in the future, if not paid now, however.

If the charges are not voluntarily paid at time of compensation for the Vacation Area, the In-Lieu-of-Assessment Charge(s) will likely be required to be paid in conjunction with any future permitting on, or development of the Vacation Area, and again 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 vacation petition is hereby recommended for approval, subject to conditions contained in Conclusion 8 above.

**DATED** this 16th day of February, 2022.



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**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***