

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** Tacoma School District No. 10

**FILE NO:** HEX2023-005 (124.1437)

**SUMMARY OF REQUEST:**

A petition by the Tacoma School District No. 10 (“Petitioner” or “TSD”) to vacate a portion of undeveloped South 35th Street, west of South G Street to facilitate expansion of school sports fields and parking.

**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 April 6, 2023.<sup>1</sup> Senior Real Estate Specialist, Kandi Bremer, of Real Property Services (“RPS”) represented the City of Tacoma (the “City”). Joshua Jorgensen, Associate Project Manager Strategic Operations, appeared on behalf of the Petitioner Tacoma School District No. 10.<sup>2</sup> Testimony was taken, exhibits were admitted, and the record closed at the conclusion of the hearing.

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<sup>1</sup> This hearing was conducted with in-person participation available in the City Council Chambers, with an option to participate over Zoom at no cost to any participant with video, internet audio, and telephonic access. The Parties’ representatives (City and TSD) were present in the City Council Chambers. No members of the public joined in the hearing over the internet or appeared in the City Council Chambers.

<sup>2</sup> Joshua Jorgensen indicated under oath that he was given authorization by the Petitioner to represent it at the hearing. Neither party’s representatives called additional witnesses.

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

### **FINDINGS:**

1. The Petitioner, Tacoma School District No. 10 (again “Petitioner” or “TSD”), has requested the vacation of a portion of undeveloped South 35th Street right-of-way,<sup>3</sup> west of South G Street (the “Vacation Area”). The Vacation Area is legally described as follows:

ALL THAT PORTION OF SOUTH 35TH STREET RIGHT-OF-WAY  
ABUTTING BLOCKS 8401 AND 8502, THE TACOMA LAND COMPANY’S  
FIRST ADDITION TO TACOMA, WASHINGTON TERRITORY,  
ACCORDING TO THE PLAT THEREOF FILED FOR RECORD JULY 7,  
1884, IN THE OFFICE OF THE PIERCE COUNTY AUDITOR, FROM THE  
WEST RIGHT-OF-WAY LINE OF “G” STREET TO THE WEST LINE OF  
SAID BLOCKS 8401 AND 8502 AND PLAT. *Exs. C-1~C-3.*

2. The Petitioner’s intention is to use the Vacation Area to facilitate expansion of the Petitioner’s sports fields and parking, if unencumbered from the City’s ROW interest. *Jorgensen Testimony; Ex. C-1.*

3. To the east of the Vacation Area, South 35th Street is a 71-foot-wide residential street right-of-way, improved with a 26-foot-wide concrete road in the center. On either side, this section of the South 35th Street right-of-way is improved with sidewalks, planting strips, curb and gutter, and driveways. The portion of South 35th Street west of South G Street that comprises the Vacation Area remains undeveloped, except for sidewalk running north to south along South G Street. The Vacation Area itself is currently treed and grassy and has never been opened as public ROW or improved with typical street improvements. *Bremer Testimony; Ex. C-1, Ex. C-2.*

4. The City acquired the ROW that comprises the Vacation Area by plat dedication in the Map of Tacoma Land Company’s First Addition to Tacoma, Washington Territory, filed of record July 7, 1884, in the Office of the Pierce County Auditor. *Ex. C-1, Ex. C-3, and Ex. C-4.*

5. 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 beyond easement reservations as addressed below in Conclusion 8.<sup>4</sup> *Exs. C-5~ C-16.*

6. The Petitioner indicated that it has no objection to City staff’s recommended conditions of approval. *Jorgensen Testimony.*

7. No members of the public appeared at the hearing to offer testimony/comments.

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<sup>3</sup> The term “right-of-way” will at times herein be abbreviated as “ROW.”

<sup>4</sup> TSD’s original vacation petition included another area of real property. After some initial due diligence, Tacoma Water discovered that the other area requested for vacation was “...actually Tacoma Water [fee-owned] operational property acquired via Judgment in 1936..., rather than street right-of-way...” and Tacoma Water requested that portion be removed from the Vacation Area. TSD obliged leading to the current composition of the Vacation Area, and as a result, no objection from Tacoma Water. *Exs. 13~15.*

8. City staff determined that “The vacation is a public benefit because it places the property on the tax rolls and facilitates private improvements.”<sup>5</sup> More to the point is the fact that the Vacation Area is intended to facilitate expansion of the Petitioner’s student sports fields and parking, which is beneficial to TSD students and members of the public that utilize TSD’s facilities. *Jorgenson Testimony; Ex. C-1.*

9. Except for the rights to be reserved under a City easement for utilities, the Vacation Area is not needed for future public ROW by the City, and no abutting owner becomes landlocked, nor will anyone’s access be substantially impaired by the vacation. The Vacation Area is currently not used for any public ROW purpose beyond utility placement. *Ex. C-1, Ex. C-9.*

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. *Ex. C-1.*

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

12. RPS’ Preliminary Report, 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.

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

On March 1, 2023-

- a. A yellow public notice sign was posted 16 feet north of the northwesterly corner of South 35th Street and South G Street.
- b. A yellow public notice sign was posted 146 feet south of the southwesterly corner of South 14th Street and Tacoma Avenue South. *Ex. C-1.*

On March 2, 2023-

- a. 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.
- b. A public notice memo was advertised on the City of Tacoma web site at address: <https://cms.cityoftacoma.org/cityclerk/files/notices/Not20230406-SVPH124.1437>.
- c. Public notice was advertised in the Daily Index newspaper.

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<sup>5</sup> It is quite likely that City staff’s determination in this regard is erroneous because, as a public entity, TSD real property may very well be exempt from the payment of property taxes, regardless of any outcome of this vacation petition. Likewise, facilitating *private* improvements, without something more of a tie-in, does not demonstrate a *public* purpose or *public* benefit. Fortunately, the improvements intended here are not private, but rather public.

- d. A public notice mailing was sent to all parties of record within a 300-foot radius of the Vacation Area.
- e. Public Notice was advertised on Municipal Television Channel 12. *Ex. C-1.*

14. 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, but without a final decision), 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 (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.”<sup>6</sup>

5. If they are to be approved, petitions for the vacation of public right-of-way must be consistent with the following criteria:<sup>7</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.
- 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.

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<sup>6</sup> *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).

<sup>7</sup> For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

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 right-of-way set forth at Conclusion 5 above, but subject to the conditions recommended below. The public would experience benefits from the improved sports fields and parking for Tacoma schools, that the requested vacation is intended to facilitate. The requested street vacation will not impair traffic circulation, landlock any abutting owner, or adversely affect the public need, because as unopened, unimproved right-of-way, the Vacation Area is not being used for any sort of public traversal or traditional ROW use in any event. The easement reservations referenced herein will sufficiently protect the need for on-going public utility use.

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. *TMC 9.22.010.*

2. REAL PROPERTY SERVICES

A 50-foot-wide City utility easement, 25 feet on either side of the centerline of existing sewer and storm water lines shall be retained within the Vacation Area.

**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 payment 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 11th day of April, 2023.

  
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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***