

## Legg, Louisa

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**From:** Legg, Louisa on behalf of Hearing Examiner  
**Sent:** Tuesday, December 31, 2019 11:21 AM  
**To:** 'RCABODES@gmail.com'; 'mikemusica@hotmail.com'; Pasco, Teague  
**Cc:** Russell, Lee; Victor, Steve(Legal); Krupa, Angie (Legal); Darci Brandvold (dbrandv@co.pierce.wa.us); Wung, Lihuang; Magoon, Jana; Jenkins, Jessica  
**Subject:** HEX2019-027 (124.1402) Northwest Vintage Homes LLC  
**Attachments:** HEX2019-027\_NWVintageHomesLLC\_HEX\_FindingsConcsRecommendation.12.31.19.pdf  
**Importance:** High

| Tracking: | Recipient                                    | Delivery                       | Read                      |
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|           | 'RCABODES@gmail.com'                         |                                |                           |
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|           | Pasco, Teague                                | Delivered: 12/31/2019 11:23 AM |                           |
|           | Russell, Lee                                 | Delivered: 12/31/2019 11:23 AM |                           |
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|           | Krupa, Angie (Legal)                         | Delivered: 12/31/2019 11:23 AM |                           |
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|           | Wung, Lihuang                                | Delivered: 12/31/2019 11:23 AM |                           |
|           | Magoon, Jana                                 | Delivered: 12/31/2019 11:23 AM | Read: 12/31/2019 11:31 AM |
|           | Jenkins, Jessica                             | Delivered: 12/31/2019 11:23 AM |                           |

Dear Parties,

Please find attached 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  
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ORIGINAL

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** NORTHWEST VINTAGE HOMES LLC    **FILE NO:** HEX2019-027 (124.1402)

**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 East 51st Street unimproved right-of-way (“ROW”), to facilitate a new residential subdivision development, which was approved subject to the conditions in Preliminary Plat Decision file no. HEX2019-019 (LU19-0053 Cook’s Landing). This portion of East 51st Street ROW is a remainder constituting the south 40.95 feet of what was originally platted as a 70-foot wide street. An earlier vacation of the north 29.05 feet of East 51st Street per City of Tacoma Ordinance No. 27421 was granted to facilitate an earlier residential development.

**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 December 5, 2019. Teague Pasco of RPS represented the City. Michael Musica represented the Petitioner, accompanied by Ralph Cook, project manager for the petitioner. Testimony was taken; exhibits were admitted. The record was initially held open until December 13, 2019 at the request of RPS to allow for submission of a statement from the one remaining property owner abutting the Vacation Area (defined below). The record closed on December 11, 2019 upon submission of that statement, which is addressed further below.

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**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

**FINDINGS:**

1. Northwest Vintage Homes LLC, a Washington limited liability company (the “Petitioner”), submitted a petition requesting the vacation of a segment of unimproved public ROW originally platted as North 2nd Street, but now referenced as East 51st Street. *Pasco Testimony; Ex. C-1.*

2. The City’s Report provides the following as the legal description for the vacation area:

A portion of the Northwest Quarter of the Northeast Quarter of Section 22, Township 20 North, Range 3 East, Willamette Meridian, Pierce County, Washington, more particularly described as follows:

The southerly 40.05 feet of East 51st Street abutting Lots 14, 15, and 16, Block 4, Central Park Addition to the City of Tacoma, according to the Plat thereof recorded in Volume 2 of Plats, Page 111, records of Pierce County, Washington, lying southerly of the south line of that portion of vacated East 51st Street, per City Of Tacoma Ordinance No. 27421 and westerly of East ‘N’ Street.

Situate in the City of Tacoma, County of Pierce, State of Washington (the “Vacation Area”). *Ex. C-1, Ex. C-2.*

3. The Vacation Area is a sloping, unopened, unimproved ROW covered with grasses, shrubs and trees. East N Street, improved with an 18-foot wide gravel surface, abuts the Vacation Area on the east. Vacant undeveloped land that will become part of the planned Cook’s Landing subdivision abuts the Vacation Area on the south and west. On the north, the Vacation Area is abutted by two lots developed with homes within the Rehe Plat. The Petitioner intends to incorporate the Vacation Area into a private access way that will facilitate its development of the new residential subdivision dubbed Cook’s Landing. *Pasco Testimony; Exs. C-1~C-3.*

4. Pasco testified, and the Report indicates that, the Vacation Area “is a remainder, [consisting of] the south 40.95 feet of the originally platted street, following an earlier vacation of the north 29.05 feet of the same per City Of Tacoma Ordinance No. 27421.” The Vacation Area does not connect with any open, improved section of East 51st Street or any other improved City ROW. *Id.*

5. The petition was signed onto by both the Petitioner, who owns two of the four parcels that abut the Vacation Area for a total of 120 lineal feet of frontage (west and south boundary), and Bich-Hiep T. Nguyen and Tam Nguyen, owners of property located at 1360 East 51st Street (Pierce County Tax Parcel No. 5004410210), which abuts the westerly 17.52 feet of the north boundary of the Vacation Area. *Id.* The remaining north easterly abutting property owner at 1364 East 51st Street (Pierce County Tax Parcel No. 5004410200) is listed as “Harold Davis.” Although the Petitioner (Ralph Cook) testified at the hearing that the owner of the Davis parcel was now in approval of the vacation, one Frankie J Davis submitted a letter dated “this 11th day of December 2019” stating that she is “[a]gainst this Petition...” This letter was made a part of the record for this matter. In her letter, Ms. Davis offered no reason for her opposition, nor did she appear at the hearing to testify.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

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6. The parcels owned by the Petitioner and the Nguyens constitute just under 69% of the lineal frontage of the Vacation Area (68.7678%). *Exs. C-1~C-3.*

7. The City acquired the Vacation Area (originally platted as North 2nd Street) by dedication in the plat of "Central Park Addition to Tacoma" which was filed of record on January 31, 1889, in Volume 2 of Plats, Page 111, records of Pierce County, Washington. The ROW was platted with a 70-foot width extending westerly, a distance of 80 feet as measured from the westerly margin of East N Street (formerly known as G Street) to its westerly terminus. This 80-foot long, westerly terminus of now East 51st Street ROW has never been opened, extended, or improved to provide connection to the surrounding street grid. *Pasco Testimony; Ex. C-1*

8. The current publicly used portion of East 51st Street has been realigned, opened, improved and dedicated during the platting and development of the adjacent Rehe Plat beginning in May 19, 2008. This relocated street provides connectivity to the surrounding street grid. In addition, and as part of the Rehe Plat approval process, the north 29.95 feet of the ROW that makes up the Vacation Area was vacated by City Ordinance No. 27421, and incorporated into residential lots in the Rehe Plat, leaving what is now the remnant 40.05-foot wide ROW that is the Vacation Area. *Ex. C-1.*

9. 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 referenced in City testimony at the hearing. These comments and requests, where appropriate, have been incorporated in this Report and Recommendation at Conclusion 9 below. None of the governmental agencies, City departments/divisions, and utility providers objected to the requested vacation. *Pasco Testimony; Ex. C-1, Exs. C-4~C-14.*

10. No members of the public appeared at the hearing to testify.<sup>1</sup> The Davis written comment in opposition was received after the hearing, but prior to official closing of the record.

11. No improved property currently has its access off the Vacation Area. The Vacation Area's incorporation into the Cook's Landing residential development provides a public benefit by helping to increase the supply of available housing in the Tacoma area, increasing employment opportunities during development of the subdivision, and by putting the Vacation Area back on the property tax rolls. The Vacation Area currently serves no purpose in the City's transportation network, nor is there any perceived future use or need for this small remnant ROW. *Pasco Testimony; Ex. C-1~C-3.*

12. 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, Ex. C-2.*

13. 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

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<sup>1</sup> One member of the public attended part of the hearing and had questions regarding the Petitioner's intended development, but did not elect to testify regarding the vacation.

of the Report is in conflict with this Report and Recommendation, the provisions of this Report and Recommendation shall control.

14. Public hearing notices were posted/published at various locations on November 1, 2019. Notices of the upcoming Public Hearing were posted/published at the following locations:

- a. Yellow public notice sign placed at the northwest corner of the intersection of the unimproved subject portion of East 51st Street and East N Street.
- b. Yellow public notice sign placed at the southwest corner of the intersection of the unimproved subject portion of East 51st Street and East N Street.
- c. Public notice memo placed into the glass display case located on the second floor of the Municipal Building.
- d. Public notice memo placed into the glass display case located on the first floor of the Municipal building next to the Finance Department.
- e. Public notice memo advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/page.aspx?nid=596>
- f. Public Notice advertised in the Daily Index newspaper.
- g. A public notice mailing was mailed to all parties of record within 300 feet of the Vacation Area.
- h. Public Notice advertised on Municipal Television Channel 12. *Ex. C-1.*

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 (FMC) 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 197-1 1-800(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. 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.*<sup>2</sup>

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 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 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 purpose served by retaining the Vacation Area as unimproved, essentially unusable ROW. The Vacation Area is better suited to being incorporated into the private access way proposed by the Cook's Landing development. 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 back to the property tax rolls, and the fact that the vacation facilitates local employment through the development of additional housing.

7. The requirements set forth in RCW 35.79.020 and .030 regarding "the petition [ ] [needing to be] signed by the owners of more than two-thirds of the property abutting upon the part of such street

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

or alley sought to be vacated...”<sup>3</sup> is met here because the owners of nearly 69% of the property abutting the Vacation Area have signed the petition in favor of the vacation. Given the foregoing, and in the absence of any supporting reasons for her opposition, the Examiner sees no reason to deny this vacation request based on the opposition of one of the three abutting property owners without more than unsupported opposition.

8. “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>4</sup>

9. 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 area vacated. Under the circumstances, it makes no sense to require the other abutting owners to pay any part of this cost and it is the Examiner’s recommendation that they not be required to do so. 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. ADVISORY CONSIDERATIONS:**

RPS/IN-LIEU

RPS has noted that an in-lieu of assessment sewer charge of \$1,358.44 is due at this time or at time of development. If the Petitioner chooses to delay payment beyond the vacation process, the amount due may increase.

**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.

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<sup>3</sup> This provision of state street vacation law is ambiguous. It could be read to require more than two-thirds of the owners of the number of parcels abutting the vacation area to sign on, or the more than two-thirds calculation could be based on linear frontage as the Examiner has done here. In this matter, two-thirds of the parcel owners (two out of three) approve. Those owners own three out of four parcels that abut the Vacation Area for 75%, which is more than two-thirds. The linear frontage calculation approach meets the more than two-thirds requirement as well.

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

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 Connection Charge In-Lieu-of-Assessment (In-Lieu-of-Assessment Charge[s]) estimates provided by the City's Public Works in Exhibit 1 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.
3. 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.
4. Other than the conditions/concerns/objections 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.

10. Accordingly, the petition is recommended for approval, subject to the conditions set forth in Conclusion 9 above.

11. 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 9 above.

**DATED** this 31st day of December, 2019.

  
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**JEFF H. CAPELL, Hearing Examiner**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

**ORIGINAL**



## 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**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**