

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3
4 **STANFORD E. OPDYKE,**

5 **Appellant,**

6 **v.**

7 **CITY OF TACOMA,** a Washington
8 Municipal corporation, through its
9 Neighborhood and Community
Services Department,

10 **Respondent.**

HEX.NCSD.2022-002
(NCS Case No. 60000244438)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

11 Request

12 The City of Tacoma (“City” or “Respondent”), through its Neighborhood and Community
13 Services Department (“NCS”), inspected and found an unopened, unimproved right-of-way area
14 that attaches to the real property assigned Pierce County tax parcel number 7510000270 and is
15 commonly known as 3806 N. Gove Street, Tacoma Washington (the “Subject Property”) to be in a
nuisance condition and therefore in violation of Tacoma Municipal Code (TMC), Chapter 8.30.
Appellant Stanford E. Opdyke challenges the City’s Notice of Violation and asks that it be
rescinded/overted.

16 Hearing

The Hearing Examiner convened a hearing, on December 21, 2022,¹ upon Appellant’s request and
as noticed by the City on November 30, 2022.

17 Testimony/Appearances

- 18 - Debra E. Casparian, Deputy City Attorney, appeared representing the City;
19 - Stanford E. Opdyke (Appellant), appeared *pro se*.

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¹ At the request of Mr. Opdyke this hearing was conducted with in-person participation in the City Council Chambers,
and also with participation available over Zoom at no cost to any participant with video, internet audio, and telephonic
access. The City and Mr. Opdyke were present in the Council Chambers. The City had potential witnesses available
over Zoom.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

1 Exhibits

2 The following exhibits were admitted into the record:

- 3 Exhibit A-1 Appellant’s e-mailed Memorandum and Request for Relief dated November 8,
2022, as received by the Hearing Examiner’s office via email on November 9,
2022.
- 4 Exhibit A-2 Appellant’s Revised (e-mailed) Memorandum dated December 14, 2022, as
received by the Hearing Examiner’s office via email on December 14, 2022.
- 5 Exhibit R-1 Respondent’s Nuisance Notice of Violation dated 10/6/2022 addressed to
Stanford E. Opdyke, 3806 N GOVE ST, TACOMA, WA 98407-4905, Subject:
6 3806 N GOVE ST / Notice of Violation and Abatement / 60000244438.
- 7 Exhibit R-2 Respondent’s Aerial view of Subject Property.
- 8 Exhibit R-3 Respondent’s Plat of Sea-View Addition to Tacoma.
- 9 Exhibit R-4 Respondent’s Color explanatory drawing of plat and right of way at issue 3806
North Gove.

9 The Hearing Examiner enters the following Findings of Fact, Conclusions of Law, and
10 Decision and Order, based on the testimony presented and the exhibits admitted.

11 **FINDINGS OF FACT**

12 1. The Subject Property is located at 3806 North Gove Street in Tacoma, Washington.
13 Immediately to the north of the Subject Property lies an unopened, unimproved² 80-foot-wide
14 right-of-way platted as “McBride Street” (the “Subject ROW”). *Exs. R-1~R-4.*

15 2. Pierce County Assessor public records show that the current record owner of the
16 Subject Property is Appellant Stanford E. Opdyke.

17 3. At the outset of the hearing, Appellant Opdyke stipulated that state law makes him
18 the fee owner of the Subject ROW out to its center line from the boundary of the Subject

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² In other words, although platted, this section of right-of-way is not opened for public traversal and is not improved with pavement, gravel, curb, gutter or sidewalk as would be typical with an opened, improved public right-of-way.

1 Property.³ He also stipulated that the portion of the Subject ROW, of which he is the fee holder,
2 has significant blackberry growth on it.

3 4. Appellant has cleared the portion of the Subject ROW to which he is the underlying
4 fee holder at the City’s direction in the past. *Opdyke Testimony; Ex. A-1, Ex. A-2.*

5 5. Prior to the hearing, Appellant began again to clear the Subject ROW of blackberry
6 overgrowth again, but had not completed that work at the time of the hearing. He was attempting
7 to get the vegetation cleared to non-nuisance levels prior to the weather turning colder and wetter.
8 Appellant expressed his concern about his age and having to continue to clear the Subject ROW
9 every time blackberries, or other vegetation grows back. He also questioned why the City would
10 have no responsibility for the Subject ROW given the extent of its interest as the right-of-way
11 holder. *Opdyke Testimony.*

12 6. The City sent the Notice of Violation contested herein (the “NOV”), regarding
13 conditions on the Subject ROW to the Appellant on or about October 6, 2022. The NOV is dated
14 October 6, 2022. *Ex. R-1.*

15 7. Even with his corrected understanding of the ownership of the Subject ROW,
16 Appellant requested that the Hearing Examiner release him from the obligation to maintain the
17 Subject ROW and overturn the NOV, essentially on equitable grounds, because the City’s
18 presently inchoate right-of-way interest burdens his property (the Subject Property and Subject
19 ROW) and leaves him with little benefit therefrom. *Opdyke Testimony; Ex. A-1, Ex. A-2.*

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³ At some point prior to the hearing, Appellant erroneously believed the Subject ROW to be a parcel of real property owned in fee by the City of Tacoma. *Ex. R-1.*

1 8. Any conclusion of law herein which may be more properly deemed or considered a
2 Finding of Fact is hereby adopted as such.

3 **CONCLUSIONS OF LAW**

4 1. The Hearing Examiner has jurisdiction to conduct hearings regarding nuisance
5 notices of violation. *TMC 8.30.100, TMC 1.23.050.B.25.*

6 2. Notice of the hearing in this matter appears to have been properly given.⁴

7 3. The City bears the burden, by a preponderance of the evidence, to show that a
8 nuisance condition exists on real property owned by the Appellant. *TMC 8.30.100.D.*

9 4. As the Appellant acknowledged in his stipulations at the outset of the hearing⁵ “[t]he
10 fee in a public street remains in the owner of the abutting land and the public acquires only the
11 right of passage, along with the powers and privileges necessary to enjoy that right.” *Kiely v.*
12 *Graves*, 173 Wn.2d 926, 930, 271 P.3d 226 (2012) *citing Finch v. Matthews*, 74 Wn.2d 161, 167-
13 68, 443 P.2d 833 (1968).

14 5. TMC 8.30.040.C.2. establishes that “Overgrown, uncultivated, unkempt, or
15 potentially hazardous vegetation of any type, including, but not limited to,...blackberry vines,...
16 poses a threat to public health, safety and welfare,...” Appellant stipulated at the outset of the
17 hearing that the Subject ROW, of which he is the underlying fee owner, had overgrown blackberry
18 vines on it. *FoF 3.*

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⁴ “FoF” stands for Finding of Fact. The Appellant did not challenge the adequacy of the NOV on any front.

⁵ *FoF 3.*

1 6. TMC 8.30.080, titled “Notice of Violation and Abatement” requires property owners
2 who receive a notice of nuisance conditions on their property to properly abate the nuisance
3 condition—as the Appellant has apparently done in the past.

4 7. Given the Appellant’s stipulations, and in the absence of other factually disputed
5 issues, the issue remaining becomes whether the Hearing Examiner has the authority to equitably,
6 or otherwise, relieve the Appellant of his obligation to abate the blackberry nuisance on the
7 Subject ROW and overturn the NOV. Only if the Examiner has that authority would he analyze
8 whether any requirements for obtaining such equitable relief had been met.

9 8. Pursuant to RCW 35.63.130(1), a local “[l]egislative body may vest in a hearing
10 examiner the power to hear and decide those issues it believes should be reviewed and decided by
11 a hearing examiner, including but not limited to: ... (b) Appeals of administrative decisions or
12 determinations; ...” Issuance of the NOV is a City administrative decision and one over which the
13 Examiner has express authority as set forth at Conclusion of Law 1 above.

14 7. Stemming from the foregoing, hearing examiners are creatures of statute and have
15 only the authority they are given by those same statutes.⁶ The Examiner is aware of no authority—
16 either from state statute or local ordinance—that grants him equitable powers.⁷ The parties have
17 provided no such authority either. Case law in Washington actually tends toward the other
18 direction to hold that hearing examiners do not have equitable authority.⁸

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⁶ *Chaussee v. Snohomish Cty. Council*, 38 Wn. App. 630, 640, 689 P.2d 1084 (1984).

⁷ The Examiner also has no role in setting City policy regarding nuisances or anything else.

⁸ *See e.g., Chaussee*, 38 Wn. App. at 640 (*The Superior Court properly determined that the hearing examiner and County Council were without jurisdiction to consider equitable issues.*).

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**

1 8. In the absence of any equitable path to relieving the Appellant of the burden placed
2 on him as the underlying fee owner of the Subject ROW, and in light of his own stipulations, the
3 Examiner cannot overturn the NOV or release the Appellant from the required abatement.

4 9. Any Finding of Fact herein which may be more properly deemed or considered a
5 Conclusion of Law is hereby adopted as such.

6 **DECISION AND ORDER**

7 Based on the foregoing Findings of Fact and Conclusions of Law, the City's Notice of
8 Violation is upheld. The Appellant is hereby ORDERED to abate the nuisance as set forth in the
9 Notice of Violation within 90 days from the issuance of this Decision and Order. The Appellant is
10 given 90 days to abate in order to account for weather conditions and/or the availability of
11 contractors to do the work or to complete it himself.

12 **DATED** this 4th day of January, 2023.

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14 **JEFF H. CAPELL, Hearing Examiner**

1 **NOTICE**

2 **RECONSIDERATION/APPEAL OF EXAMINER'S DECISION**

3 **RECONSIDERATION TO THE OFFICE OF THE HEARING EXAMINER:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or as
5 otherwise provided by law, may file a motion with the Office of the Hearing Examiner
6 requesting reconsideration of a decision or recommendation entered by the Examiner. A motion
7 for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or
8 law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the
9 issuance of the Examiner's decision/recommendation, not counting the day of issuance of the
10 decision/recommendation. If the last day for filing the motion for reconsideration falls on a
11 weekend day or a holiday, the last day for filing shall be the next working day. The
12 requirements set forth herein regarding the time limits for filing of motions for reconsideration
13 and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that
14 are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors
15 shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to
16 determine whether an opportunity shall be given to other parties for response to a motion for
17 reconsideration. The Examiner, after a review of the matter, shall take such further action as
18 he/she deems appropriate, which may include the issuance of a revised
19 decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

20 **NOTICE**

21 **APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:**

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's
decision may be appealable to the Superior Court for the State of Washington. Any court action to
set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner will likely
need to be commenced within 21 days of the entering of the decision by the Examiner, unless
otherwise provided by statute.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**