

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** Chandler Investment I, LLC

**FILE NO.:** HEX2021-001 (124.1408)

**SUMMARY OF REQUEST**

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition from Chandler Investment I, LLC, a Washington limited liability company, (referred to herein as the “Petitioner” or “Chandler Investment”), requesting the vacation of a portion of South 37th Street and South Union Avenue off-ramp, lying westerly of South Tacoma Way. The Vacation Area (defined below) will be limited to a maximum vertical distance of twelve feet (12') in height from the existing finished grade and will be incorporated into the abutting property located at 3515 South Tacoma Way.

**RECOMMENDATION OF THE HEARING EXAMINER**

The vacation petition is hereby recommended for approval, subject to the conditions set forth herein 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 via Zoom on January 21, 2021.<sup>1</sup> Ronda Van Allen, a Senior Real Estate Specialist with RPS, represented the City. Aaron Rosen and Devin Rosen appeared as the property owner’s authorized representatives.<sup>2</sup> Testimony was taken; exhibits were reviewed and admitted.

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<sup>1</sup> Due to National, State of Washington (“State”) and City Proclamations of Emergency caused by the COVID-19 virus, the City closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet visual and audio access, as well as separate telephonic (only) access via call in number on Zoom.

<sup>2</sup> See Ex. C-19 Property Owner Free Consent Form.

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

**FINDINGS:**

1. Chandler Investment submitted a petition requesting the vacation of a portion of South 37th Street and South Union Avenue off-ramp right-of-way, lying westerly of South Tacoma Way. The vacated area of right-of-way will be limited to a maximum twelve-foot (12') vertical distance in height from the existing finished grade and will be incorporated into the abutting property assigned Pierce County Tax Number 971000-049-4, and the street address of 3515 South Tacoma Way (the "Vacation Area"). *Van Allen Testimony; Ex. C-1 ~ C-3.*

2. The Report provides the following legal description for the Vacation Area:

That portion of South 37th Street, situated between Block 10 and Block 23 of Wing's Addition to Tacoma, W.T., according to the Plat thereof recorded in Volume 1 of Plats, Page 83, records of Pierce County, Washington, lying northwesterly of the westerly margin of South Tacoma Way and northeasterly of improved Union Avenue South Off-ramp, together with a portion of Lots 49 and 50, Block 23 of said plat, being a portion of described 'Parcel 10' within Pierce County Superior Court Cause No. 2329536, records of Pierce County, more particularly described as follows:

Commencing at a surface brass disk within South Tacoma Way located approximately 68 feet northeast of the intersection of Puget Sound Avenue and South Tacoma Way, from which another surface brass disk within South Tacoma Way bears South 29°34'46" West a distance of 730.94 feet;

Thence South 29°34'46" West along said monument line a distance of 233.83 feet;

Thence North 60°25'14" West a distance of 37.30 feet to the intersection of the North margin of said South 37th Street with the Westerly margin of South Tacoma Way and **True** Point of Beginning;

Thence North 88°41'11" West along the north margin of South 37th Street, a distance of 169.94 feet to intersect a 6-foot tall chain link fence;

Thence following said chain link fence South 20°55'15" East a distance of 8.79 feet to an angle point;

Thence following said chain link fence South 29°50'37" East a distance of 27.06 feet to an angle point;

Thence following said chain link fence South 34°06'24" East a distance of 33.45 feet to an angle point;

Thence following said chain link fence South 44°57'58" East a distance of 48.54 feet to an angle point;

Thence following said chain link fence South 59°25'20" East a distance of 43.28 feet to said westerly margin of South Tacoma Way;

Thence North 29°22'50" East along said Westerly margin a distance of 128.38 feet to the Point of Beginning.

Except the Southeasterly 6 feet.

All situate in the City of Tacoma, County of Pierce, State of Washington; within the Southwest Quarter of the Northwest Quarter of Section 18, Township 20 North, Range 03 East of the Willamette Meridian.

(Containing ±10,339 Square feet or approximately 0.24 Acres). *Ex. C-1, Ex. C-5, Ex. C-6.*

3. The Petitioner intends to absorb the Vacation Area into its adjacent property for future business expansion/development potential. Use of the Vacation Area will be limited to a maximum vertical twelve-foot (12') distance in height from the existing finished grade to ensure clearances necessary for the Union Avenue overpass bridge girders and decking. Use restrictions recommended herein below will further prohibit any traversal, staging, storage and/or parking of any vehicles, equipment or materials exceeding the twelve-foot (12') vertical height limits or of placing/staging/storing of combustible and flammable materials beneath the Union Avenue overpass. *Van Allen Testimony, Carstens Testimony; Ex. C-1, Ex. C-12.*

4. South 37<sup>th</sup> Street, formerly referred to as Columbia Avenue, was dedicated to the public as a 66-foot wide right-of-way in the Plat filing of Wings Addition to Tacoma, W.T., according to the Plat thereof recorded in Volume 1 of Plats at Page 83, records of Pierce County, Washington. *Van Allen Testimony; Ex. C-5, Ex. C-6.*

5. The South Union Avenue off-ramp right-of-way was acquired in December 1970 through condemnation proceedings concluded in that certain Decree of Appropriation filed under Pierce County Superior Court Number 193458, internally referenced as J-353. The Union Avenue off-ramp connects to South Tacoma Way (formerly State Route 1) and is of varying width. The 1970 Union Avenue as-built drawings for South Union Avenue, and the subject off-ramp plan and profile show the off-ramp realigned and reconstructing its connectivity to South Tacoma Way and South Warner Street. In 2002, and in connection with the City's Seismic Retrofit project, the off-ramp was widened and slope and fills were reestablished as necessary for at-grade portions of the off-ramp. *Van Allen Testimony; Ex. C-7 ~ Ex. C-10.*

6. City GIS system aerials and Google Earth time stamped photos show that the Vacation Area was fenced off between 2006 and 2008, effectively preventing any use by the general public since. *Van Allen Testimony; Ex. C-1, Ex. C-2.*

7. The affected segments of South 37th Street have been bisected and are sited between South Tacoma Way (formerly State Route 1), Sound Transit<sup>3</sup> railroad corridor and the South Union Avenue off-ramp, and are excess to the needs of the general public for transportation purposes. The Vacation Area has been enclosed by fencing, and was paved and striped, being used primarily as parking over the years for the Petitioner's business. The Vacation Area has not been a material part of the City's street and transportation system, beyond being the base for the overpass and related infrastructure. *Id.*

8. Based on testimony at the hearing and City staff comments on the petition, easements will need to be reserved over the whole of the Vacation Area to allow for the continued unencumbered access to the South Union Avenue overpass and existing utilities, and for maintenance of roads and slopes. In addition to the height limitation of this vacation action, there is also a need to restrict any traversal, staging, storage and/or parking of vehicles, equipment or materials that exceed the height limit in order to ensure clearances necessary to the South Union Avenue overpass bridge girders and decking. *Van Allen Testimony; Ex. C-1; Ex. C-11~Ex. C-18.*

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. These conditions were incorporated into the Report and were referenced in City testimony at the hearing. These conditions, where appropriate, have been incorporated in this Report and Recommendation at Conclusion 8 below. None of the governmental agencies, City departments/divisions, and utility providers objected to the requested vacation, provided that their concerns were addressed through the requested conditions being imposed. *Van Allen Testimony; Exs. C-11 ~ C-18.*

10. The Petitioner testified that it has no objections to the City's requested conditions of approval. *Aaron Rosen Testimony.*

11. The vacation offers some public benefit because it will add taxable square footage to the abutting real property and reduce the City's maintenance expenditures. Beyond the maintenance issues already referenced herein, the Vacation Area is not currently being used for material right-of-way purposes as a part of the City's transportation system. In addition, the Vacation Area is not contemplated or needed for future public use as public right-of-way beyond access being preserved and the City being able to use the Vacation Area for the maintenance of various City facilities. 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. *Van Allen Testimony; Ex. C-1.*

12. Notice of the Public Hearing was posted at the following locations on December 18th, 2020:

Yellow public notice signs were posted on the existing chain link fencing, along the Union Avenue off-ramp and South Tacoma Way. A Declaration of Posting and sign posting locations delineated on the maps is part of the hearing record as Exhibit C-4a through C-4d.

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<sup>3</sup> Sound Transit is more formally the Central Puget Sound Regional Transit Authority.

Public hearing notices were posted or published on December 17 and/or 18, 2020, as follows:

- 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/notices>.
- c. Public Notice was advertised in the Daily Index newspaper.
- d. Public Notice was mailed to all parties of record within 300 feet of the Vacation Area.
- e. Public Notice was advertised on Municipal Television Channel 12. *Van Allen Testimony; Ex. C-1; Ex. C-4.*

13. No members of the public appeared at the hearing to testify nor were any written public comments received.

14. RPS' Report, which is entered into the record as Exhibit C-1, accurately describes the proposed vacation, general and specific facts about the surrounding site and the Vacation Area, and lists applicable statutes/regulations. 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 OF LAW:**

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. Petitions for the vacation of public right-of-way must be consistent with the following criteria:

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

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>4</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*. The Petitioner relied primarily on the City’s hearing presentation to establish satisfaction of these criteria.

6. Findings entered herein, based upon the preponderance of 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 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 public purpose served by retaining the Vacation Area as right-of-way. The Vacation Area plays no appreciable role in the “[s]treet pattern or circulation of the immediate area or the community as a whole.” Public benefit accrues through the potential for increased tax revenue, and the reduction of the City’s maintenance obligation.

7. “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>5</sup>

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

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<sup>4</sup> For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

<sup>5</sup> *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).

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. PUBLIC WORKS TRAFFIC

Public Works' Traffic Division ("Traffic") requested that an Easement be reserved over the entire Vacation area for access and maintenance to the bridge overpass, off-ramp, road and slopes. Traffic further requested that existing fencing be removed and relocated to new property line, and chamfered at the intersection of the off-ramp to open sight lines. Alternatively, the Petitioner could obtain a City permit (ROCC) for any portion of the fencing allowed to remain within unvacated right-of-way.

3. PUBLIC WORKS ENGINEERING

Public Works' Engineering Division ("Engineering") echoed the need for an Easement to be reserved, over the entire Vacation Area for access and maintenance to the bridge overpass, off-ramp, road and slopes. Engineering further requested that the easement memorialize the requirement for a joint locking system for any fencing/gating to be determined together with alternative points of access on adjacent property. In addition, for structural safety reasons, Engineering has requested that a negative easement be granted prohibiting the storage of combustible or flammable materials under the South Union Avenue aerial overpass encompassing a 40-foot area from the edges of the bridge deck.

4. PUBLIC WORKS – STREET LIGHT

Access to City street light infrastructure and related in and around the Vacation Area should be made an express part of the easement(s) reserved in this vacation.

5. TACOMA FIRE

Fire access and emergency services access to the bridge overpass, off-ramp and road surfaces should be made an express part of the easement(s) reserved in this vacation.

6. ENVIRONMENTAL SERVICES

Easement rights should be reserved for existing storm water infrastructure in the Vacation Area to stay in place and for the same to be maintained, repaired, restored and/or replaced.

7. TACOMA POWER

Easement rights should be reserved for the overhead service drop, crossing the Vacation Area to the existing billboard on neighboring (BNSF) railroad right-of-way.

8. TACOMA WATER

Easement rights should be reserved over the Easterly 70' of the Vacation Area for existing water infrastructure to be maintained, repaired, restored and/or replaced.

**B. ADVISORY CONSIDERATION:**

RPS/IN-LIEU

Any LID estimates or other in-lieu amounts referenced in the RPS Report are 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 they may be required at the time of any subsequent development of the Vacation Area. Such fees are subject to increase until paid.

**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. 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 present vacation petition is hereby recommended for approval, subject to conditions contained in Conclusion 8 above.

**DATED** this 28th day of January, 2021.



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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***