

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONERS:** Matt Shrader and Karen Fierro

**FILE NO:** HEX2022-008 (124.1435)

**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 North 24th Street and North Cedar Street, to cure residential building encroachments.

**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 on August 25, 2022.<sup>1</sup> Troy Stevens of RPS represented the City. Petitioners Matt Schrader and Karen Fierro appeared *pro se*.<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 over Zoom at no cost to any participant with video, internet audio, and telephonic access.

<sup>2</sup> Neither party called additional witnesses.

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

**FINDINGS:**

1. Petitioners Matt Shrader and Karen Fierro (the "Petitioners"), as the owners of the real property located at 2402 North Cedar Street, submitted a petition to vacate a portion of North 24th Street and North Cedar Street (the "Vacation Area"). *Exs. C-1~C-4.*

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

THAT PORTION OF NORTH CEDAR STREET AND NORTH 24TH STREET MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 13, BLOCK 11 OF WINTERMUTE'S PART OF TACOMA, W.T., AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 15, RECORDS OF PIERCE COUNTY AUDITOR; THENCE NORTH 01°55'26" EAST ALONG THE EAST LINE OF SAID LOT 13 A DISTANCE OF 60.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 60.00 FEET OF SAID LOT 13; THENCE SOUTH 88°04'34" EAST ALONG THE EASTERLY EXTENSION OF SAID NORTH LINE 4.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 36.00 FEET WEST OF THE CENTERLINE OF SAID NORTH CEDAR STREET;

THENCE SOUTH 01°55'26" WEST ALONG SAID PARALLEL LINE 63.99 FEET TO A POINT ON A LINE PARALLEL WITH AND 36.00 FEET NORTH OF THE CENTERLINE OF SAID NORTH 24TH STREET; THENCE NORTH 88°15'32" WEST ALONG SAID PARALLEL LINE 76.48 FEET TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST LINE OF THE EAST 22.50 FEET OF LOT 15 OF SAID BLOCK 11; THENCE NORTH 01°54'51" EAST ALONG SAID EXTENSION 4.00 FEET TO A POINT ON THE SOUTH LINE OF BLOCK 11; THENCE SOUTH 88°15'32" EAST ALONG THE SOUTH LINE OF SAID BLOCK 11 A DISTANCE OF 72.48 FEET TO THE POINT OF BEGINNING. CONTAINING ±546 SQUARE FEET.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON. *Ex. C-1~Ex. C-3.*

3. The Petitioners requested the vacation in order to eliminate the encroachment of residential improvements extending from their property at 2402 North Cedar Street into the platted right-of-way.<sup>3</sup> 2402 North Cedar Street (Pierce County Tax Parcel No. 9730000750) is a corner lot at the northeast corner of the intersection of North Cedar Street and North 24th Street. The encroaching improvements

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<sup>3</sup> "Right-of-way" may be shortened hereafter as "ROW."

face both south into the North 24th Street ROW and east into the North Cedar Street ROW. The encroachments only intrude into these two ROW areas in peripheral locations that are currently (and historically) not being used for any public traversal or other public ROW purpose. *Id.*

4. The City acquired the North 24th Street and North Cedar Street ROW by plat filing in Wintermute's Part, W.T., filed of record June 5, 1888, in the Office of the County Auditor. *Ex. C-1, Ex. C-4.*

5. North 24th Street and North Cedar Street are both 80-foot wide residential street ROWs with a 34-foot wide asphalt road in the center. Both are level and are improved at the sides with sidewalk curb and gutter, planting strips, and parallel street parking. *Ex. C-1.*

6. The vacation satisfies public benefit/purpose criteria because the Vacation Area will be added to the taxable square footage of the Petitioners' property, thereby potentially increasing tax revenue, and eliminating the building encroachments resolves potential ambiguities over maintenance obligations and other potential liabilities. *Ex. C-1.*

7. The public need is not adversely affected by granting the vacation because the Vacation Area is not contemplated or needed for future public use, being at the extreme periphery of the 80-foot wide platted ROW on each street side. *Ex. C-1.*

8. No abutting owner becomes landlocked, nor is any access substantially impaired by granting the vacation. In fact, there is no impact to any access whatsoever. *Ex. C-1, Ex. C-2, Ex. C-4.*

9. 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. *Exs. C-1~C-2.*

10. 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 Petitioners voiced no objections to the recommended conditions of approval. *Shrader Testimony; Exs. C-1, C-5~C-16.*

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

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

On July 20 and July 21, 2022-

- 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. Public notice was advertised on the City of Tacoma web site at address: <https://www.cityoftacoma.org/cms/one.aspx?objectId=2283>.
- c. Public notice was advertised in the Daily Index newspaper.
- d. A public notice mailing was sent to all owners of record within a 300-foot radius of the Vacation Area.
- e. Public Notice was advertised on Municipal Television Channel 12.

On July 22, 2022-

- f. A yellow public notice sign was posted approximately 64 feet north of the northwest corner of North Cedar Street and North 24th Street.
- g. A yellow public notice sign was posted approximately 76 feet west of the northwest corner of North Cedar Street and North 24th Street. *Ex. C-1*.

13. 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 conflicts with this Report and Recommendation, the provisions of this Report and Recommendation shall control.

14. 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>4</sup>

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

5. In order to be approved, petitions for the vacation of public right-of-way must be consistent with the following criteria:<sup>5</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.
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 Petitioners must demonstrate, by a preponderance of the evidence, that their vacation petition meets the foregoing criteria. *See TMC 1.23.070*. The Petitioners are entitled to rely on all evidence made part of the record, whatever the source of that evidence. In this petition, the Petitioners relied heavily on the City's submissions into the record.

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 used for access. 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 Petitioners' abutting real property while clarifying the City's maintenance obligations and potential liabilities for an encroached upon ROW area.

8. Given the foregoing, the Hearing Examiner recommends that the requested street vacation be approved subject to the following conditions:

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<sup>5</sup> For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

**A. SPECIAL CONDITION:**

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 ROW. *TMC 9.22.010.*

**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 Petitioners represent 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 Petitioners agree 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 \$428.60 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 payment condition 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 condition set forth in Conclusion 8 above.

**DATED** this 29th day of August, 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***