

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** Titus-Will Enterprises, Inc.

**FILE NO.:** HEX2020-015 (124.1411)

**SUMMARY OF REQUEST**

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition from Titus-Will Enterprises Inc., a Washington corporation, (hereinafter referred to as “Titus-Will” or the “Petitioner”), with the cooperation of Costco Wholesale Corporation (hereinafter referred to as “Costco”), requesting the vacation of a dead-end portion of South Oregon Avenue (referenced in the public record also as “South Oregon Street” and “Oregon Avenue”), lying between their respective properties which are bounded by South Pine Street and South Sprague Avenue. If vacated, the right-of-way area will be incorporated into the easterly abutting Titus-Will property pursuant to an agreement between Titus-Will and Costco. Titus-Will intends to use the area for expanded secured parking and related business uses.

**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 May 28, 2020. Ronda Van Allen, a Senior Real Estate Officer with RPS, represented the City. Attorney William T. Lynn appeared as legal counsel to Titus-Will at the hearing, together with Titus-Will’s Auto Group Executive Administrator, Jody Fetters. Testimony was taken; exhibits were reviewed and admitted. At the conclusion of the hearing the Hearing Examiner held the record open until close of business on May 29, 2020, to allow receipt of additional written public comment submissions.

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

**FINDINGS:**

1. Titus-Will submitted a petition requesting the vacation of a dead-end portion of South Oregon Avenue, lying between its real property, bounded by South Sprague Avenue to the east and Costco's real property, bounded by South Pine Street on the west (the "Vacation Area"). *Van Allen Testimony; Ex. C-1~C-3.*

2. RPS's Report provides the following as the legal description for the Vacation Area:

THAT PORTION OF OREGON AVENUE ACCORDING TO THE PLAT OF LINCOLN HEIGHTS, RECORDED IN VOLUME 14, PAGE 61, RECORDS OF THE PIERCE COUNTY AUDITOR, PIERCE COUNTY, WASHINGTON BEING IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 20 NORTH, RANGE 03 EAST, WILLAMETTE MEDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF PARCEL 'A', BEING ON THE EASTERLY MARGIN OF SAID OREGON AVENUE, ACCORDING TO CITY OF TACOMA BOUNDARY LINE ADJUSTMENT MPD2013-40000210143, RECORDED UNDER RECORDING NUMBER 201401225002, RECORDS OF PIERCE COUNTY AUDITOR, WASHINGTON, FROM WHICH THE SOUTHEASTERLY CORNER OF SAID PARCEL BEARS NORTH 88°49'48" EAST 56.01 FEET;

THENCE RADially SOUTH 89°18'01" WEST 50.00 FEET ALONG THE NORTHERLY MARGIN OF VACATED OREGON AVENUE, ACCORDING TO THE CITY OF TACOMA ORDINANCE NO. 26595, RECORDED UNDER RECORDING NUMBER 200003310165, RECORDS OF PIERCE COUNTY, ALSO BEING A PORTION OF LOT 'A', ACCORDING TO CITY OF TACOMA BOUNDARY LINE ADJUSTMENT MPD2000-00018, RECORDED UNDER RECORDING NUMBER 200010175001, RECORDS OF PIERCE COUNTY AUDITOR, WASHINGTON, TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1935.00 FEET, FROM WHICH THE CENTER BEARS NORTH 89°18'01" EAST;

THENCE NORTHERLY ALONG THE CURVED WESTERLY MARGIN OF SAID OREGON AVENUE THROUGH A CENTRAL ANGLE OF 01°20'53" AN ARC DISTANCE OF 45.53 FEET TO AN ANGLE POINT, BEING THE SOUTHEASTERLY CORNER OF THAT ADDITIONAL RIGHT-OF-WAY DEDICATION FOR OREGON AVENUE PER QUIT CLAIM DEED RECORDED UNDER RECORDING NUMBER 200003280346;

THENCE CONTINUING ALONG SAID WESTERLY MARGIN NORTH 89°18'25" WEST 18.00 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1953.00 FEET, FROM WHICH THE CENTER BEARS SOUTH 89°21'04" EAST;

THENCE NORTHERLY ALONG SAID WESTERLY CURVED MARGIN THROUGH A CENTRAL ANGLE OF 00°52'48" AN ARC DISTANCE OF 30.00 FEET TO AN ANGLE POINT;

THENCE ALONG SAID WESTERLY MARGIN SOUTH 89°18'25" EAST 18.00 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1935.00 FEET, FROM WHICH THE CENTER BEARS SOUTH 88°27'48" EAST;

THENCE NORTHERLY ALONG SAID CURVED WESTERLY MARGIN THROUGH A CENTRAL ANGLE OF 00°32'56" AN ARC DISTANCE OF 18.53 FEET;

THENCE ALONG SAID WESTERLY MARGIN NORTH 02°05'08" EAST 71.27 FEET TO A POINT OF TANGENCY WITH A 196.49 FEET RADIUS CURVE TO THE LEFT;

THENCE NORTHWESTERLY ALONG SAID CURVED WESTERLY MARGIN THROUGH A CENTRAL ANGLE OF 04°25'56" AN ARC DISTANCE OF 15.20 FEET TO THE MOST NORTHERLY POINT OF SAID LOT 'A';

THENCE DEPARTING SAID WESTERLY MARGIN SOUTH 85°55'47" EAST 50.25 FEET TO THE NORTHWESTERLY CORNER OF SAID PARCEL 'A', BEING ON SAID EASTERLY MARGIN OF OREGON AVENUE AND A POINT ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 246.49 FEET, FROM WHICH THE CENTER BEARS SOUTH 88°57'32" WEST;

THENCE SOUTHERLY ALONG SAID CURVED EASTERLY MARGIN THROUGH AN ANGLE OF 03°07'36" AN ARC DISTANCE OF 13.45 FEET;

THENCE SOUTH 02°05'08" WESTERLY ALONG SAID EASTERLY MARGIN 71.27 FEET TO A POINT OF TANGENCY WITH A 1885.00 FOOT RADIUS CURVE TO THE LEFT;

THENCE SOUTHERLY ALONG SAID CURVED EASTERLY MARGIN THROUGH A CENTRAL ANGLE 02°47'07" AN ARC DISTANCE OF 91.63 FEET TO THE POINT OF BEGINNING.

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

3. The Petitioner intends to combine the Vacation Area into its adjacent property to be used for secured parking and other related business uses. It is the Petitioner's intent that the Vacation Area, pursuant to a written agreement between Titus-Will and Costco, and by conveyance instruments in support thereof, will be incorporated into the easterly abutting Titus-Will property for expanded secured parking and business related uses. This agreement pre-authorizes the conveyance of Costco's presumed western half of the Vacation Area to Titus-Will subject to an easement for continued access for maintenance, repair and replacement of landscaping materials and improvements to Costco's adjoining real property. *Van Allen Testimony, Fetters Testimony; Ex. C-1; Ex. A-1, Ex. C-5.*

4. South Oregon Avenue was dedicated as a 50-foot wide public right-of-way by the Plat filing of Lincoln Heights Addition to the City of Tacoma, recorded on August 30, 1948, under Auditor's File Number 1493905, records of Pierce County. *Exs. C-6 and C-7.* South Oregon Avenue presently dead ends at the Vacation Area as the result of a previous vacation action adopted by City of Tacoma Ordinance Number 26595. Previous vacation requirements provided for a public turn around dedicated as public right-of-way by Right of Way Deed Number 6747; both the Ordinance and Deed were recorded under Auditors File Numbers 200003310165 and 200003280346 respectively, in the records of Pierce County. *Van Allen Testimony; Exs. C-8 and C-9.*

5. The Vacated Area has asphalt pavement, curb and gutter with no sidewalk or pedestrian amenities. No portion of the Vacation Area will impact the general public because the Vacation Area provides no access to adjacent properties, nor does it connect in any meaningful way to the City's right-of-way system. *Van Allen Testimony; Exs. C-1~C-3.*

6. 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-10 ~ C-14.*

7. According to the Petitioner, the Vacation Area has become an attractive nuisance. It has become a source of fires, litter, and human waste, a gathering place for people experiencing homelessness, a location for crime, and a facilitation point for break-ins at the Titus-Will property. The Petitioner believes the vacation, together with adding fencing around the area will help eliminate nuisance issues. The Petitioner plans to add lighting and security cameras to the fenced-in area. *Fetter Testimony.*

8. The vacation offers some public benefit because it will add square footage to Titus-Will's adjacent commercial property, thereby potentially increasing the property tax revenue to be derived therefrom. In addition, there is some public benefit to be had through the vacation from transferring the responsibility to address nuisance conditions in the Vacation Area from the City to Titus-Will. The general public is not currently served in any appreciable way by this segment of right-of-way since it is a dead end roadway. As a result the Vacation Area is not contemplated or needed for future public use as public right-of-way. 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.*

9. 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 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.

10. Notice of the Public Hearing was posted at the following locations on April 24, 2020:

- a. Yellow public notice signs were posted at the subject right-of-way of South Oregon Avenue, just north of the Vacation Area, and along South Steele Street at the intersections of South Idaho Street and South California Avenue.

Public hearing notices were posted or published on April 22, 2020, as follows:

- b. 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.
- c. A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/notices>.
- d. Public Notice was advertised in the Daily Index newspaper.
- e. Public Notice was mailed to all parties of record within 1,000 feet of the Vacation Area.
- f. Public Notice was advertised on Municipal Television Channel 12. *Ex. C-1; Ex. C-4; Van Allen Testimony.*

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

12. 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:

1. The vacation will provide a public benefit, and/or will be for a public purpose.

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

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>1</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 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 by increasing Titus-Will’s ability to address nuisance conditions present on the Vacation Area while using the same to enhance its business.

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>2</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 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.*

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<sup>1</sup> For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

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

2. PUBLIC WORKS TRAFFIC/ TACOMA FIRE  
Per Public Works' Traffic division, an appropriate replacement vehicular turnaround must be provided and dedicated by Right-of-Way Deed to the public in concurrence with adoption of the final Vacation Ordinance. The new turnaround will need to be sufficient to accommodate emergency response vehicles.
3. ENVIRONMENTAL SERVICES/ TACOMA WATER  
An easement or easements will need to be reserved in the Vacation Ordinance for existing Environmental Services and Tacoma Water infrastructure. Alternatively, the Petitioner could pay to have the City's infrastructure relocated outside the Vacation Area.

**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.
3. 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 the petition.

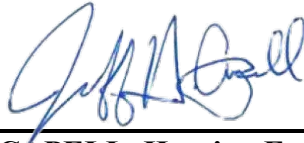
9. Accordingly, the petition is recommended for approval, subject to the conditions set forth in Conclusion 8 above.

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 3rd day of June, 2020.



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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***