

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

CONSOLIDATED REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: Bridge Point Tacoma, LLC, a Delaware limited liability company licensed to do business in the state of Washington.

FILE NOS: HEX2022-022 (Street Vacation No. 124.1432) and HEX2022-023 (Street Vacation No. 124.1442), collectively herein the “Vacations.”

SUMMARY OF REQUEST:

A petition by Bridge Point Tacoma, LLC (“Petitioner”) to vacate a portion of South Madison Street, lying southerly of South 40th Street consolidated by the Hearing Examiner with a second petition to vacate a portion of South 50th Street, lying westerly of South Madison Street, both intended to facilitate development of an industrial park and associated storm ponds, utility extensions, and parking facilities.

RECOMMENDATION OF THE HEARING EXAMINER:

The vacation petitions are hereby recommended for approval, subject to conditions, as set forth herein.

PUBLIC HEARINGS:

1. After reviewing Real Property Services’ Preliminary Report (separately the “First Report”— Exhibit C-1 for the First Hearing), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition assigned case number HEX2022-022 on January 12, 2023 (separately the “First Hearing”).¹ Senior Real Estate Specialist, Troy Stevens, of Real Property Services (“RPS”) represented the City. Attorneys John C. McCullough and David P. Carpman, of McCullough Hill PLLC, appeared on the Petitioner’s behalf at the First Hearing. The Examiner left the record open in the First Hearing until January 20, 2023, for the

¹ Both hearings were conducted with in-person participation in the City Council Chambers and also participation over Zoom at no cost to any participant with video, internet audio, and telephonic access. The Petitioner’s legal representatives and the City were present in the Council Chambers. At the first hearing, Zoom participants noted troublesome audio difficulties, the source of which was unable to be identified.

Petitioner to submit some additional responsive materials intended to address questions the Examiner posed to the Petitioner primarily regarding bodies of water and RCW 35.79.035, and the South Tacoma Groundwater Protection District (hereafter the “STGWPD”).

The following individuals testified at the First Hearing:

For the City:

Troy Stevens, Senior Real Estate Specialist.

For the Petitioner:

Matthew Gladney, of Petitioner Bridge Point Tacoma, LLC.

Jeff Schramm, of Transportation Engineering Northwest.

Cheryl Ebsworth, of Barghausen Consulting Engineers, Inc.

Members of the public (in order or testimony at hearing):

Stacy Oaks

Michelle Mood

Timothy Smith

Heidi Stephens

Janeen Provacek

All of the foregoing also submitted written comments in addition to their oral testimony. Written comments (without appearing to testify) were also submitted for the First Hearing by the Community Group calling itself the “South Tacoma Economic Green Zone.”

2. A second hearing was conducted on the petition assigned case number HEX2022-023 after reviewing Real Property Services’ Preliminary Report for this second petition (separately the “Second Report”— Exhibit C-1), and examining available information on file with the petition. The Hearing Examiner conducted a public hearing on HEX2022-023 on January 19, 2023 (separately the “Second Hearing”). Senior Real Estate Specialist, Troy Stevens, of Real Property Services (“RPS”) represented the City. Attorney David P. Carpmann, of McCullough Hill PLLC, again appeared on the Petitioner’s behalf at the hearing.

The following individuals testified at the Second Hearing:

For the City:

Troy Stevens, Senior Real Estate Specialist.

For the Petitioner:

Jeff Schramm, of Transportation Engineering Northwest.

Cheryl Ebsworth, of Barghausen Consulting Engineers, Inc.

Members of the public (in order or testimony at hearing):

Bill Baarsma

Michelle Mood

Janeen Provacek

Timothy Smith
Heidi Stephens
Stacy Oaks

Of the foregoing, Mood, Smith and Stephens also submitted written comments in addition to their oral testimony. Written comments (without appearing to testify) were submitted for the Second Hearing again by the Community Group calling itself the “South Tacoma Economic Green Zone,” as well as four other individuals, Phil Harty, Kirk Kirkland, Sara Kiesler, and Cathie Urwin, all of which are available in the record.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

INTRODUCTION: What follows is the Hearing Examiner’s findings, conclusions and analysis of consolidated petitions requesting the vacation of two right-of-way areas that are not opened or improved for public traversal. There are public utilities in the Vacation Areas (defined below), and maintaining these utilities is addressed herein as is appropriate under RCW 35.79.030 and TMC 9.22.080. Different from most public hearings addressing a requested street vacation, there was significant public opposition to the requested vacations expressed at the hearings and in written submissions. The City Council should take note, however, that virtually none of that opposition was truly aimed at the issue of whether the City should retain the Vacation Areas as right-of-way, but rather was focused on whether the City should permit/allow the vacation Petitioner’s intended subsequent development of the greater area of real property that encompasses the Vacation Areas. That issue is mostly beyond the scope of what the Hearing Examiner is empowered to do in his role as the City Council’s hearing officer in a street vacation proceeding, as will be addressed further below. Whether the City Council has the authority and discretion, in its vacation decision, to consider development and permitting considerations, along with all the reasons offered in public testimony as grounds for delaying or denying these vacations, is for the Council to decide.

FINDINGS:

1. The Petitioner, Bridge Point Tacoma, LLC, a Delaware limited liability company, registered to do business in the state of Washington (the “Petitioner”), has requested the vacation of 1) a portion of the South Madison Street public right-of-way, lying southerly of South 40th Street, and 2) a portion of the South 50th Street right-of-way, lying westerly of South Madison Street (collectively the “Vacation Areas”) as those areas are described and depicted in the First Report and Second Report, both submitted as Exhibit C-1 for their respective hearings.² The Vacation Areas are legally described as follows:

MADISON VACATION AREA

A 60 FOOT WIDE STRIP LYING WITHIN A PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24 AND THE EAST HALF OF SECTION 13, ALL IN TOWNSHIP 20 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON, WHICH INCLUDES A PORTION OF THE EASTERLY 60 FEET OF TRACT 19 AND THE EAST 60 FEET OF TRACTS 20 THROUGH 25, INCLUSIVE, OF EXCELSIOR PARK TRACTS, ACCORDING TO

² Where it is necessary to refer to one of the Vacation Areas separately, they shall be referred to as the “Madison Vacation Area” and the “S. 50th Vacation Area.”

PLAT RECORDED IN VOLUME 2 OF PLATS AT PAGE(S) 128, RECORDS OF PIERCE COUNTY, WASHINGTON,

DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL A, CITY OF TACOMA BOUNDARY LINE ADJUSTMENT NO. MPD2008-40000112398, UNDER RECORDING NUMBER 200810275003, RECORDS OF PIERCE COUNTY, WASHINGTON;
THENCE NORTH 88°36'33" WEST ALONG THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID PARCEL A, 60.00 FEET;
THENCE NORTH 01°35'59" EAST, 1393.23 FEET MORE OF LESS TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 13;
THENCE NORTH 08°11'10" EAST, 665.35 FEET MORE OF LESS TO THE SOUTH LINE OF THE NORTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 13;
THENCE NORTH 01°40'09" EAST, 629.77 FEET TO THE SOUTHERLY MARGIN OF SOUTH 40TH STREET;
THENCE SOUTH 88°15'36" EAST ALONG SAID SOUTHERLY MARGIN, 60.00 FEET;
THENCE SOUTH 01°40'09" WEST, 633.11 FEET MORE OF LESS TO THE SOUTH LINE OF THE NORTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 13;
THENCE SOUTH 08°11'10" WEST, 665.32 FEET MORE OF LESS TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 13;
THENCE SOUTH 01°35'59" WEST, 1389.56 FEET TO THE POINT OF BEGINNING.

(Containing 161,290 Sq. Ft.) *Ex. C-1~Ex. C-3, Ex. C-5.*

AND

S. 50TH VACATION AREA

A 60-FOOT-WIDE STRIP LYING WITHIN A PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 20 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON, LYING EAST OF THE NORTHERLY EXTENSION OF THE WEST LINE OF THE J. NEISSON DONATION LAND CLAIM NO. 40 AND WEST OF THE WESTERLY MARGIN OF MADISON STREET, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL A, CITY OF TACOMA BOUNDARY LINE ADJUSTMENT NO. MPD2008-40000112398, UNDER RECORDING NUMBER 200810275003, RECORDS OF PIERCE COUNTY, WASHINGTON;
THENCE NORTH 88°36'33" WEST ALONG THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID PARCEL A, 60.00 FEET TO A POINT ON THE WESTERLY MARGIN OF MADISON STREET;
THENCE ALONG SAID WESTERLY MARGIN SOUTH 01°35'59" WEST, 652.30 FEET TO A POINT ON THE SOUTH LINE OF TRACT 17 OF EXCELSIOR PARK TRACTS, ACCORDING TO THE PLAT RECORDED IN VOLUME 2 OF PLATS AT PAGE 128, IN PIERCE COUNTY,

WASHINGTON, BEING 60.00 FEET WEST OF THE SOUTHEAST CORNER OF SAID TRACT 17 AND BEING THE POINT OF BEGINNING;
THENCE CONTINUING ALONG SAID WESTERLY MARGIN SOUTH 01°35'59" WEST, 60.00 FEET TO THE NORTH LINE OF SAID J. NEISSON DONATION LAND CLAIM NO. 40;
THENCE ALONG SAID NORTH LINE NORTH 88°38'31" WEST, 531.30 FEET TO THE NORTHWEST CORNER OF SAID J. NEISSON DONATION LAND CLAIM NO. 40 AND THE EAST LINE OF A PORTION OF SOUTH 50TH STREET VACATED PER RECORDING NUMBER 9408220141, RECORDS OF PIERCE COUNTY, WASHINGTON;
THENCE ALONG THE NORTHERLY EXTENSION OF THE WEST LINE OF SAID J. NEISSON DONATION LAND CLAIM NO. 40 NORTH 01°25'06" EAST, 60.00 FEET TO THE SOUTH LINE OF SAID TRACT 17;
THENCE ALONG SAID SOUTH LINE SOUTH 88°38'31"EAST, 531.49 FEET TO THE POINT OF BEGINNING.

(Containing 31,884 Sq. Ft.) *Ex. C1~C-3H2*.³

2. The Petitioner is the only property owner abutting the Vacation Areas and so the Petitioner alone signed the vacation petitions it submitted to the City.⁴

3. The Petitioner intends to use the Vacation Areas, if unencumbered from the City's right-of-way interest, in the overall development of an industrial park and associated storm ponds, utility extensions, and parking areas. *Stevens Testimony-BH, Schramm Testimony-BH, Ebsworth Testimony-BH; Ex. C-1BH*.

4. The relevant area of South Madison Street begins approximately 600 feet northerly of the South 56th Street right-of-way, and then continues northward. South Madison Street is platted as a 60-foot-wide right-of-way,⁵ but it is currently unopened for public traversal and unimproved. It is blocked at present from public access by a chain link fence and ecology blocks. Down the center of the platted, but unopened ROW, there is a pathway that runs the length of the Madison Vacation Area. RPS was unaware of how that pathway came into existence, but indicated that it should not be presently accessible due to the aforementioned physical barriers in place. At either side of the path there are blackberry bushes. The north end of the Madison Vacation Area terminates at an existing stream/wetland/buffer area. The Madison Vacation Area does not connect to the City's existing street system at any other points at present. *Stevens Testimony-H1; Ex. C-1H1*.

5. South 50th Street also exists as a 60-foot-wide unopened, unimproved right-of-way to the west of South Madison Street. It too is currently blocked from public access by a chain link fence and ecology blocks that are located 600 feet north of South 56th Street. Again, there are dirt/grass paths over this area, and as elsewhere, the property is largely vegetated with tall grass and blackberries. The area is

³ From this point forward, when a citation is made that includes reference to that same exhibit for both hearings, it will be denoted as, for example, *Ex. C-1BH*, with BH indicating both hearings. When the reference is to only one hearing's exhibit, the denotation will so indicate, for example, *Ex. C-1H1* ("H1" for hearing one or the First Hearing).

⁴ As a business entity, the pronoun "it" is used in reference to the Petitioner.

⁵ Right-of-way is at times abbreviated herein as "ROW" without any difference in meaning intended.

also known to include existing stream/wetland/critical areas, but there is no authorized public access to these critical areas. *Stevens Testimony-H2, Ebsworth Testimony-H2; Ex. C-1H2.*

6. The City acquired the South Madison Street right-of-way under city deed number D-961, dated September 23, 1929, as conveyed from the Oregon and Washington Railroad Company. The deed was conveyed for “street purposes” and contains reversionary language. *Stevens Testimony-H1; Ex. C-1H1, Ex. C-4H1.*

7. The City acquired the South 50th Street right-of-way in the Excelsior Park Tracts plat, according to its filing of record on February 9, 1889 in the Office of the County Auditor. *Stevens Testimony-H2; Ex. C-1H2, Ex. C-5H2.*

8. Stevens testified in response to questioning from the Examiner that it appears that neither of the ROW areas that comprise the Vacation Areas has ever been opened for public/vehicular traversal and neither has been improved with traditional ROW improvements, e.g., paving, sidewalks, and etc.

9. The Petitioner testified that, as part of its development, it intends to improve and dedicate to the public an “alternative road grid” running along the south end of the Petitioner’s property and then northward all the way to South 35th Street. This proposed “alternative road grid” is shown in green highlight on Exhibit P-4BH and is approximately 2.5 times as large in area as the Vacation Areas. Schramm acknowledged on questioning from the Examiner that the proposed “alternative road grid” really is not an alternative to the Vacation Areas because the Vacation Areas are not in use as public thoroughfares, but instead are more of a replacement for the lost ROW and are part of the proposed development. That said, if constructed, the “alternative road grid” will help vehicular circulation in the area by providing additional connections to existing City streets.⁶ *Schramm Testimony-H1.*

10. The requested vacations have been reviewed by outside quasi-governmental agencies, City departments/divisions, and utility providers. In regard to the Madison Vacation Area, reviewing agencies indicated that they have no concerns or objection to the proposed vacation, provided that the conditions of approval set forth herein are imposed and met. *Stevens Testimony; Ex. C-7H1~Ex. C-17H1.* As to the 50th Street Vacation Area, all but the City’s Traffic Engineering division had no objection to the requested vacation, again, provided that the conditions of approval set forth herein are imposed and met. The City’s Traffic Engineering Division expressed its concerns that 1) the proposed vacation could perpetuate a dead-end roadway segment, which does not align with the Comprehensive Plan’s Transportation Element Goal 3.6 Street System Designs, and 2) is not ideal for emergency services or neighborhood connectivity. Both Stevens and Schramm indicated that this issue would likely be addressed in Petitioner’s forthcoming development design. The City does not use the Vacation Areas for public traversal at present and sees no future need for the same. Again, the evidence presented at the hearings indicates that the Vacation Areas

⁶ The Examiner notes here that some public commenters pointed to the “alternative road grid” as a detriment rather than a benefit because they presume, probably rightly, that the “alternative road grid” coupled with Petitioner’s development will increase traffic in the area. It is also noted that this proceeding is for consideration of *vacating* two areas of City ROW. Opposing the Vacations on grounds that Tacomans do not want more ROW and the additional pavement and traffic such typically brings is counter-intuitive. In other words, imploring the City to not relinquish its ROW interest in the Vacation Areas because we do not want more pavement and traffic makes little logical sense. If retained by the City, the Vacation Areas can only be used as ROW. If the City has no intention of ever using them as public ROW, they should be vacated.

have never been put into use by the City as part of its improved street system. *Stevens Testimony-BH; Exs. C-1BH, Ex. C-7~C-17H1, Exs. C-6~C-15H2.*

11. The Petitioner affirmatively expressed that it has no reservations about or, objections to City staff's recommended conditions of approval for either of the Vacation Areas. *Ebsworth Testimony-H1.*

12. Written comments were received for both hearings. Members of the public appeared at the hearings (as set forth above) both in-person and virtually through Zoom to offer comments/testimony. Comments were uniformly negative and offered in ostensible opposition to the Vacations. In actual content, the comments were not truly directed at the Vacations except insofar as the Vacations are seen as a preliminary step to the Petitioner's intended development of an industrial park in and around the Vacation Areas.

13. Written and verbal comments were all reviewed by the Examiner and are all available for City Council review in the record submitted from the Office of the Hearing Examiner ("OHEX"). Given that, they will not be restated in detail here, but rather are summarized as part of the overall narrative of this Consolidated Recommendation. They are included here because the Examiner can find, as a fact, that members of the public expressed the following, among others, as comments/concerns:

a. There is great concern over the potential effects of Petitioner's intended industrial development of the real property in and around the Vacation Areas (the "Project").⁷

b. Several testified that the public purpose/public benefit criteria for ROW vacations cannot be met because they believe the potential deleterious effects of *the Project* should outweigh any public purpose/public benefit that could be found in *the Vacations*. *See CoL 16.*⁸

c. Many commenters argued that the Vacations should be denied because the Project will lead to adverse impacts, and therefore they argue cannot meet the criterion found at TMC 9.22.070.3. *See CoL 16 and 18.*

d. Virtually all commenters expressed concerns over social and racial equity issues relevant to the Project. *See CoL 6.*

e. Virtually all commenters expressed concerns over what effects the Project will have on traffic, pollution and noise, and wildlife in the area. *See CoL 6.*

f. Several commenters argued that any decision on the Vacations should be delayed so that the City Council can "maintain control" over the Project until more information is known regarding the Project especially on the environmental front. How that control would be achieved through an extended street vacation process was not explained, and the Examiner is unaware of any control over the Project the Council would obtain or retain by delaying a vacation decision.⁹ *See CoL 5~8.*

⁷ It should be kept in mind that this defined term does not presuppose any approval of the Project. It is the Examiner's understanding that the Project is *as yet* a *potential* development, and still in the review process.

⁸ "CoL" is the abbreviation for Conclusion of Law and denotes both singular and plural.

⁹ The City Council may determine, through its own deliberations, and in consultation with its advisers, that the Examiner's lack of awareness on this point is only that, and that the Council does benefit from delaying a decision here.

- g. Several commenters expressly argued for delaying any decision on the Vacations until environmental review of the Project is completed, and more information about the Project is generally made available to the public. *See CoL 5~8.*
- h. One commenter questioned why the particular governmental agencies, departments and divisions that reviewed the Vacations were qualified to weigh in when other agencies have expressed opposition to the Project.¹⁰ *See CoL 7~11.*
- i. Several commenters expressed the view that it is impossible to separate the Vacations from the Project.
- j. As referenced in footnote 6 above, some commenters believe that the Petitioner’s proposed alternative road grid is a detriment, rather than a public benefit because it will serve the Project and create more traffic. They indicated that additional streets are not needed in the area. *See CoL 16.*
- k. One commenter expressed concerns that the Vacations were not in compliance with EPA covenants in effect on Petitioner’s surrounding property, and that the Vacations would in effect be a “stolen land access swap.” *See CoL 9 and 10.*
- l. Virtually all commenters expressed concerns about the Project’s potential effects on the South Tacoma Groundwater Protection District (“STGWPD”). These concerns encompassed the on-going effects of climate change, drought, and pollution, among others. *See CoL 6 and 7.*
- m. More than one commenter argued that the Vacations could not meet the criterion set forth in TMC 9.22.070.6, claiming that the Vacations Areas abut bodies of water (creek, wetland and the STGWPD), and therefore cannot be vacated. *See CoL 21.*
- n. One commenter pointed out that the Vacations might allow the Petitioner—in the course of developing the Project—to claim greater areas of owned, unencumbered square footage for the purpose of wetland buffer averaging, and thereby become able to build closer to protected critical areas present in the Vacation Areas and elsewhere on the Petitioner’s property. *See CoL 8.*
- o. One commenter astutely noted that the Project has “potentially profound policy implications” for the City. On the policy front another commenter queried “What is going to happen when we pave over the last remaining trees and green spaces available to people in South Tacoma?” *See CoL 6, 9 and 10. See also Fn 6 above.*
- p. At least two commenters expressed the view that both the Petitioner’s and the City’s supplied information and answers seemed too formulaic and rote and that these particular Vacations need to take into account more than just the usual factors/criteria. *See CoL 6.*

¹⁰ At this point in this summary of comments, the City Council should see the well-developed and recurring theme in which statements of opposition begin by referencing the Vacations, but switch very quickly to the Project. This disconnect was never reconciled in any way the Examiner could see.

q. Several commenters complained that information submitted by the parties for the Hearings was not made available to the public well enough in advance of the actual Hearings to inform their comments.

14. Whether the concerns expressed at the hearings are substantively factual only matters in making this Recommendation to the extent that the concerns are relevant to the Vacations themselves and the codified criteria for evaluating them as opposed to being statements in opposition to the Project. Whether those concerns are factual and relevant to the permitting and other decisions on the Petitioner's subsequent development is another matter and is beyond the scope of this Recommendation.

15. Many of the commenters live in the South Tacoma area and some even relatively close to, and abutting a given area of the Petitioner's property, but none of the commenters are an abutting property owner to the Vacation Areas and none of them gain access to properties that they own through the Vacation Areas.

16. None of the commenters explained how the City's retention of the two unopened, unimproved right-of-way areas, of themselves, will protect against the multiple potential adverse effects of the Project. Denying the Vacations does not guarantee that the Project will be prevented. Approving the Vacations does not guarantee that the Project will be approved and built either.

17. For both Vacations, City staff determined that the public would benefit because the proposed Vacations add taxable square footage to the Petitioner's abutting property, and thereby should increase tax revenue. The City also noted that the Vacations may result in greater private investment in adjacent private industrial-zoned property, which is currently in need of environmental remediation and redevelopment. *Ex. C-1BH*.

18. In the First Hearing, Petitioner offered its "alternative road grid" as a public benefit that will help traffic circulation in the area and move it farther away from existing critical areas and adjacent residential areas than the Madison Vacation Area would otherwise provide. The Petitioner also referenced reducing the City's obligation to maintain the Vacation Areas, as well as eliminating the existing Madison Vacation Area from its current close proximity to the critical areas/buffers at the north end, and the replacement and relocation of an outdated sewer line in the Madison Vacation Area. *Schramm Testimony, Ebsworth Testimony*.

19. In the Second Hearing, Petitioner pointed to the South 50th Street Vacation as a public benefit because it removes the right to open a street in an area affected by critical areas that should take precedence over the public ROW interest thereby removing any potential conflict and also removing the possibility of damage to the critical area from its potential use as ROW. In addition, the Petitioner noted that an existing sewer line in the S. 50th Vacation Area will be replaced, thereby reducing the frequency of the need for maintenance that could affect the critical area, and that this benefits the public and is for a public purpose (critical areas preservation/protection) as well.

20. Except for the rights to be reserved under City utility easements, the Vacation Areas are not needed for future public use by the City, and no abutting owner becomes landlocked nor will their access be substantially impaired by the vacation, provided that the conditions set forth herein are imposed and met. These findings are based on the City's analysis, the hearing evidence and the Petitioner's comprehensive analysis of transportation impacts that included analyzing any impacts to the City's

transportation system/public street network from the vacations. The Vacation Areas are not currently used for any authorized public traversal,¹¹ nor has either Vacation Area been improved for any public use, beyond utility line placement, in over a century for the Madison Vacation Area and nearly that long for the S. 50th Vacation Area. *Stevens Testimony-BH; Ex. C-1-BH.*

21. The Vacation Areas neither abut, nor are proximate to a body of water and, therefore, the provisions of RCW 35.79.035 are not implicated.¹² *Id. See also CoL 21.*

22. No environmental review of the Vacation Areas was conducted for purposes of the street vacation petitions.¹³ *See Conclusion of Law 4, below.*

23. RPS' Preliminary Reports, as entered into each hearing record as Exhibit C-1 for both hearings (the "Reports"), accurately describe the Vacations, general and specific facts about the abutting properties, and the Vacation Areas and applicable codes. The Reports are incorporated herein by this reference as though fully set forth. Any conflict between this Recommendation and the Reports should be resolved in favor of this Recommendation, however.

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

On December 8, 2022-

- a. A public notice memo was posted in the glass display case located on the First Floor of the Tacoma 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/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 December 12, 2022-

- f. A yellow public notice sign was posted at the southeast corner of South 40th Street and South Tyler Street.

¹¹ One commenter informed the hearing that the visible pathways/trails on the Petitioner's property are there due to pedestrian foot traffic from the public. There was no evidence at the hearing that the Vacation Areas have ever been opened to the public as pedestrian trails. To the contrary, Stevens testified that to his knowledge the Vacation Areas have never been opened to the public or improved for any public traversal use whether pedestrian or vehicular.

¹² The Madison Vacation Area abuts a critical area buffer, but that does not bring the Madison Vacation Area under the purview of RCW 35.79.035 or TMC 9.22.070.6 as will be addressed further below at CoL 21.

¹³ Many of the public commenters referenced on-going environmental issues and review for the Project, however.

- g. A yellow public notice sign was posted 600 feet north of the northeast corner of South 56th Street and South Madison Street. *Ex. C-1; Stevens Testimony.*
- h. A yellow public notice sign was posted at the southeast corner of South 50th and South Tyler Street.
- i. A yellow public notice sign was posted 600 feet north of the northeast corner of South 56th Street and South Madison Street.

25. Any conclusion hereinafter stated which may be more properly deemed a finding is hereby adopted as such.

CONCLUSIONS:

1. “The ‘vacation’ of streets is an exclusive method by which the owners of properties abutting a street may petition the legislative authority of a city to extinguish the public's easement for public travel on a street’s right-of-way and allow title to the underlying street property to be vested in the abutting property owners.”¹⁴

2. 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.*

3. Hearing Examiner Rule of Procedure 1.07 gives the Examiner the “discretion to consolidate related matters for hearing whenever the interests of justice and efficient procedure will be served by such action.” Although not consolidated into a single hearing, consolidating the Vacations into a single recommendation serves the interests of justice and efficient procedure because of several factors, including (a) there being a single petitioner, (b) the close proximity of the Vacation Areas to each other, (c) the fact that both Vacation Areas have apparently never been opened and used as public ROW, (d) the unity of Petitioner’s intended use, and (e) the numerous common facts, together with the overlapping, restated grounds for opposition. The Examiner concludes that consolidating the two petitions into one Recommendation was proper. The parties offered no objection at the close of the Second Hearing when the Examiner made his intention to consolidate known. The foregoing notwithstanding, the City Council could, in its discretion, make separate and different decisions regarding the Vacation Areas.

4. The Hearing Examiner’s role in street vacation proceedings is somewhat quasi-judicial in nature, making findings and conclusions based on evidence presented, but without a final decision. The Examiner’s recommendation leads to a legislative determination by the City Council that is enacted by ordinance.¹⁵

¹⁴ *Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267, 270, 937 P.2d 1082 (1997) (citing RCW Ch. 35.79). It is more common and perhaps more correct to refer to the vacation process as unencumbering the underlying fee ownership from the ROW easement interest rather than vesting or conveying it to the abutting owners.

¹⁵ *State ex rel. Myhre v. City of Spokane*, 70 Wn.2d 207, 218, 442 P.2d 790 (1967); *TMC 9.22.070.*

5. “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.”¹⁶ Long-standing case law in Washington has held that the vacation of right-of-way is a legislative/political function that belongs to municipal authorities.¹⁷

6. The Hearing Examiner is not the City’s legislative body, the City Council is. Rather, the Hearing Examiner, in a street vacation proceeding, is simply the City Council’s hearing officer appointed under RCW 35.79.030 to conduct the required public hearing and make a recommendation to the City Council within the confines of applicable, existing laws and ordinances. The OHEX is not empowered with any role in the creation and/or passage of City legislation, nor does the OHEX have a role in creating City policy.¹⁸

7. Pursuant to WAC 197-11-800(2)(i), the vacation of streets or roads (right-of-way) is exempt from the threshold determination and Environmental Impact Statement requirements of RCW 43.21.C, the State Environmental Policy Act (SEPA). As noted above at Finding of Fact (“FoF”) 13, many commenters would like a decision on the Vacations postponed until environmental review of the Project is complete. In the Examiner’s view, making such a postponement part of this Recommendation could, in effect, be a circumvention (or at least an ignoring) of the state laws and regulations just cited that have determined that ROW vacations are categorically exempt from environmental review. The subsequent use of the Vacation Areas is, perhaps, another question.

8. Under WAC 197-11-305(1)(b)(ii), there was no evidence that the City’s relinquishment of its ROW interest over the Vacation Areas would have “a probable significant adverse environmental impact,” or that the Vacations were so inextricably linked with the Project that they should be removed from exempt status. Any environmental review of the Project will be conducted as required by applicable laws and ordinances.

9. Ordinarily, when a governmental entity obtains a right-of-way “the fee [ownership] in [that] public street or highway remains in the owner of the abutting land, and the public acquires only the right of passage, with powers and privileges necessarily implied in the grant of the easement.”¹⁹ Put more plainly, “[t]he interest acquired by the public in land dedicated as a highway is only an easement.”²⁰ Given the

¹⁶ *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).

¹⁷ *Capitol Hill Methodist Church of Seattle v. City of Seattle*, 52 Wn.2d 359, 368, 324 P.2d 1113 (1958); *Fry v. O’Leary*, 141 Wash. 465, 469, 252 P. 111 (1927); *Banchero v. City Council of City of Seattle*, 2 Wn. App. 519, 523, 468 P.2d 724 (1970).

¹⁸ *See generally TMC 1.23*. Several members of the public argued that the Hearing Examiner should be the conscience of the City and make a recommendation that considered criteria far beyond those found in TMC 9.22 and RCW 35.79. No support was provided for where that authority would be derived beyond the general language in TMC 1.23 that requires the Hearing Examiner to be fair, impartial and unbiased. In administrative appeals (in contrast with recommendation hearings), when the law and facts dictate, the Hearing Examiner does disagree with the City and overturn City administrative decisions. Even then, the Examiner is not creating City policy or legislation, but rather is merely interpreting that which already exists in the context of the proven facts.

¹⁹ *Kiely v. Graves*, 173 Wn.2d 926,930~931, 271 P.3d 226 (2012), citing *Finch v. Matthews*, 74 Wn.2d 161, 167-68, 443 P.2d 833 (1968).

²⁰ *State ex rel. York v. Bd. of Comm’rs of Walla Walla County*, 28 Wn.2d 891, 898, 184 P.2d 677 (1947).

foregoing, a street vacation is essentially the mandated process by which the City (in this case) considers relinquishing its easement interest.²¹

10. When a city obtains a right-of-way, “The easement which the public acquires includes every reasonable means of transportation for persons, and commodities, and of transmission of intelligence which the advance of civilization may render suitable for a highway.”²² A city does not obtain the right to use the right-of-way for “Uses beyond those defined as connected with the transportation of persons or commodities...”²³ What this mean then, is that the City’s interest in the Vacation Areas is limited to using them for street ROW purposes. Holding onto that interest when the Vacation Areas have never been opened and improved for public traversal, and City staff has determined (and the Examiner concurs) that “The right of way is not needed for future public use”²⁴ has to be taken into account in evaluating the vacation criteria, at least at the Examiner’s level of review. Holding onto that ROW interest only preserves the City’s right to use it as right-of-way.

11. Traditionally, “[o]nly those whose property abuts the portion of the street being vacated, or whose rights of access would be substantially affected, could challenge a street vacation.”²⁵ No one objecting to the Vacations here meets that test. “More simply stated, those who are not dependent on a street are not injured when it is vacated” and our courts have said that “To enlarge the rights of the general traveling public [to challenge a vacation when they do not rely on the vacation area] would be to restrict unduly the discretion granted to municipalities for the management of streets.”²⁶ The Vacation Areas have never been improved and opened as public right-of-way. The City’s easement interest in both areas has remained inchoate and unused for a century more or less. No one has ever relied on the Vacation Areas for public traversal and/or access to their properties. The potential harms and concerns expressed regarding the Petitioner’s Project may be very real and justified, but they do not tie to the Vacations in any inextricable way. Again, as stated at FoF 16 above, denying the Vacations does not guarantee that the Project will be prevented, and approving the Vacations does not guarantee that the Project will be approved and built.

12. Since at least the time of the court’s decision in *De Weese (1984)*, however, there has been a trend in street vacation proceedings “to permit a broader view of factual interests that will give rise to standing.” Whether any of those broader views apply here is difficult to say because the stated harms all relate to the Project not the potential loss of the Vacation Areas for use as right-of-way. The Examiner is able to conclude that the Vacations can be considered separately from the Project. In order to establish standing then, there must be a concrete cognizable harm that stems from the action challenged (ROW

²¹ The law here regarding ROW may speak to the hearing concerns regarding EPA covenants. Those covenants most likely apply when *ownership* of encumbered property is being conveyed. That is not the case here. Vacation of ROW simply unencumbers a property from that public easement interest.

²² *Motoramp Garage Co. v. Tacoma*, 136 Wash. 589, 591, 241 P. 16 (1925).

²³ *Id.* In the *Motoramp* case, the City of Tacoma was prevented by the underlying fee owner of the ROW in question from placing a public restroom in the ROW because a restroom is not an allowed ROW use.

²⁴ *FoF 8, 10 and 20, Ex. C-1BH.*

²⁵ *De Weese v. Port Townsend*, 39 Wn. App. 369, 373, 693 P.2d 726 (1984), citing *Ponischil v. Hoquiam Sash & Door Co.*, 41 Wash. 303, 83 P. 316 (1906) and *Taft v. Washington Mut. Sav. Bank*, 127 Wash. 503, 221 P. 604 (1923).

²⁶ *De Weese 39 Wn. App. at 373-374, citing Hoskins v. Kirkland*, 7 Wn. App. 957, 961, 503 P.2d 1117 (1972), and *Ponischil, 41 Wash. at 308-09.*

vacation) that is addressable in the proceeding challenging that action.²⁷ Again, delaying or denying the Vacations does not necessarily address the harms claimed from the Project.

Regardless of whether the challengers present here have standing to so challenge, the Petitioner must still meet the criteria for vacation set forth in applicable laws.

13. Those criteria are as follows:²⁸

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.

14. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petitions meet the foregoing criteria. *See TMC 1.23.070*. The Petitioner is entitled to rely on all evidence made part of the record, whatever the source of that evidence.

15. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the Vacations conform to the criteria for the vacation of right-of-way set forth at Conclusion 13 above, provided the conditions recommended below are met. These required criteria are now examined in turn.

16. Consistency with TMC 9.22.070.1. *“The vacation will provide a public benefit, and/or will be for a public purpose.”*

Admittedly, this criterion has always struck the Hearing Examiner as odd. As explained above, the vacation of public right-of-way is the process through which an easement interest held in trust by the government for the public is relinquished. It is inherently a process of privatization—giving back full unencumbered ownership of the underlying property to the abutting owner(s). Having to find a public purpose or benefit in a process that is inherently geared toward privatizing a public interest seems very much like brutalizing a square peg into a round hole. That notwithstanding, it is part of the City’s

²⁷ See *KS Tacoma Holdings, LLC v. Shorelines Hearings Bd.*, 166 Wn. App. 117, 272 P.3d 876 (2012).

²⁸ For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

ordinance and applicable case law.²⁹ In case law, and in other interpreting legal opinions, it appears that the threshold for finding public benefit/purpose is not a high hurdle, however.

Public benefit justifying a street vacation may be found in the economic and tax revenue support which the community as a whole derives from the abutting property/petitioner. A direct benefit to a private party petitioner from the vacation does not preclude a finding of public benefit.³⁰

In *Young v. Nichols*, the State Supreme Court offered the following:

The power of a city, in this state at least, to vacate such of its streets or parts of its streets as it chooses, is unquestioned. To illustrate, it may change a street from its use as a highway to a use for another public purpose,³¹ when it is determined that the change will better serve the public good; ***it may vacate a street when it is no longer required for public use***, or when its use as a street is of such little public benefit as not to justify the cost of maintaining it; or when it is desired to substitute a new and different way more useful to the public; ***and, of course, it is within the power of a city to vacate a street where all of the property owners adversely affected*** [generally only abutters] ***consent to the vacation***. *But in all instances, the order of vacation must have within it some element of public use*, and even where the order serves a public use, it cannot be exercised against the will of abutting property owners adversely affected, unless the damages they suffer thereby are in some way compensated. [Bolted emphasis added. Simple italics were in the original.]³²

Here, the facts show by a preponderance that the Vacation Areas are no longer required for public use, and the Vacations are not being pushed “against the will of abutting property owners,” but rather at the sole abutting property owner’s request.

Removing the possibility that a public ROW could be opened, paved, and traversed by automobiles, along with the attendant possibilities that brings for contamination of the critical areas in and around the Vacation Areas is a sufficient public purpose to consider this criterion met. Preservation and protection of critical areas is a well-recognized, and even codified public purpose.³³ Commenters’ argument that a balancing analysis weighing the public purpose/benefit found in ***the Vacations*** with the potential negative impacts of ***the Project*** is not the test here. As long as some public benefit or purpose can be derived from the Vacations, this criterion is met.

Further public benefit can be found in the additional tax revenue from the added, unencumbered square footage to the taxable area of Petitioner’s property. It is likely that jobs will be created by

²⁹ This requirement appears to have arisen in vacation case law in Tacoma as far back as 1929 in *Young v. Nichols*, 152 Wash. 306, 278 P. 159 (1929).

³⁰ *Banchero v. City Council of Seattle*, 2 Wn. App. 519, 520, 468 P.2d 724, 725 (1970).

³¹ Other cases such as *Motoramp supra*, indicate that the changed use must still be within the general purposes of a ROW. In other words, a ROW interest cannot be converted to a park use without some other agreement between the City and the underlying fee owner of the ROW area. One ROW use (e.g., paved street) converted to another (e.g., a pedestrian trail), might be allowed under the language in *Young*.

³² 152 Wash. At 308, cited in *Banchero*, 2 Wn. App. at 523.

³³ See TMC 13.11.110~120, the purpose and intent statements of the City’s Critical Areas Code.

Petitioner's Project and that additional employment in the Tacoma market could be seen as a public benefit, but it seems unfair to consider that aspect here overly much given the general theme here of viewing the Vacations on their own merits and not tying to the Project.

17. Consistency with TMC 9.22.070.2. *“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.”*

As has been repeatedly referenced, neither of the Vacation Areas has been opened or improved as public ROW. They are not part of the City's street pattern or circulation in any way. Their loss cannot be considered to work an adverse effect on a system of which they have never been an active part. This criterion is met.

18. Consistency with TMC 9.22.070.3. *“The public need shall not be adversely affected.”*

It must be noted upfront that this criterion does not assess whether the public will be adversely affected in a broad, general manner by the proposed ROW vacation.³⁴ The question is not whether the public needs the Project. The criterion assesses whether the public's need for the ROW, *as ROW*, will be adversely affected. No evidence was presented that would establish by a preponderance that there is a public need for these ROW areas now, after they have sat dormant for so many years. All reviewing agencies indicated no public need for the Vacation Areas as ROW. Public commenters wanted the City to maintain its ROW interest, but only as leverage against Petitioner's Project, and not for any stated, valid ROW purpose. This criterion is satisfied.

19. Consistency with TMC 9.22.070.4. *“The petitioned-for right-of-way is not contemplated or needed for future public use.”*

The reviewing public agencies and quasi-public agencies found no future need for the Vacation Areas beyond not perpetuating dead end segments in the event of development (*FoF 10*) and maintaining existing utilities, which is accounted for below. No other evidence showed any future need for the Vacation Areas as right-of-way. This criterion is met.

20. Consistency with TMC 9.22.070.5. *“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.”*

There are no abutting owners to the Vacation Areas besides the Petitioner. Given that, and that the Vacation Areas are not open and improved as ROW, not even the Petitioner uses them as a public ROW for access. This criterion is satisfied.

21. Consistency with TMC 9.22.070.6. *“The petitioned-for vacation of right-of-way shall not be in violation of RCW 35.79.035.”*

³⁴ Several public commenters phrased their arguments in this overbroad context rather than in the language actually present in TMC 9.22.071.3.

The Vacation Areas do not “abut[] a body of fresh or salt water” as contemplated by RCW 35.70.035.³⁵ The *De Weese* case is instructive in regard to this criterion given public commenters arguments set forth above.³⁶ In *De Weese*, the court stated that Washington “[h]as long recognized an interest in the public to water access over public streets.”³⁷ According to the *De Weese* court, “[d]edication to the use of the public of a street extending to the shore of a lake will be presumed to have been intended to enable the public to have access to the water for all proper public purposes.”³⁸

The Vacation Areas do not connect to any lake, the shores of the Puget Sound, or any other body of water to which the public is intended to have access for a proper public purpose. The wetlands and streams present on the Petitioner’s property have never had opened authorized public access to them via the Vacation Areas. Critical areas such as those found in and around the Vacation Areas are typically not open for public access, but rather are protected therefrom to further their preservation.

Likewise, the STGWPD, in its subterranean state, is not a body of water which can be accessed via the Vacation Areas and used for the kind of public purposes contemplated and protected by RCW 35.79.035. As such, the TMC 9.22.070.6 / RCW 35.79.035 prohibition on vacating right-of-way that abuts a body of water is not implicated on the facts presented here.

22. Given the foregoing, the Hearing Examiner recommends that the requested street vacations 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 Areas. One-half of the revenue received shall be devoted to the acquisition, improvement and maintenance of public open space land, preferably in the South Tacoma area, and one-half may be devoted to transportation projects and/or management and maintenance of other City owned lands and unimproved right-of-way areas. *TMC 9.22.010*.

2. PUBLIC WORKS/TRAFFIC ENGINEERING - ENGINEERING

Traffic Engineering’s concerns regarding the Vacations’ perpetuation of dead-end roadway segments must be addressed and rectified if the Petitioner’s property is developed. Petitioner’s proposed loop connecting South Burlington Way to Madison Street, which would require a dedication, would address Traffic Engineering’s concerns. Any dead end streets must terminate in a turnaround that meets Tacoma

³⁵ This provision of the state vacation statute was originally enacted as RCW 35.70.030, and is referred to that way in the *De Weese* case.

³⁶ *FoF 13.m*.

³⁷ *39 Wn. App. at 374-375*. The *De Weese* court recognized that the public’s interest in access to the shorelines in a given jurisdiction for public use/recreation is an interest that can expand the pool of those with standing to challenge a proposed vacation beyond just abutting property owners or people who gain access to their property over the vacation area.

³⁸ *Id.*, citing *Albee v. Yarrow Point*, 74 Wn.2d 453, 445 P.2d 340 (1968) and the additional cites therein, which are omitted here.

Right-of-Way Design Manual, which is typically a cul-de-sac wholly in the right-of-way.

3. TACOMA WATER

A City utility easement must be reserved over the southerly 150 feet of the Madison Vacation Area, which easement must include the following requirements:

- a) Petitioner/Property Owner/Developer will need to maintain clearances from Tacoma Water's facilities.
- b) A minimum 10 feet of clearance must be maintained from any mains, and a minimum 5 feet of horizontal clearance and minimum 1-foot of vertical clearance must be maintained from any hydrants.
- c) If existing Tacoma Water facilities need to be relocated or adjusted, they will be relocated by Tacoma Water at the Petitioner/Property Owner/Developer's expense.
- d) Tacoma Water facilities must remain accessible at all times. Any damage to Tacoma Water facilities will be repaired by Tacoma Water crews at the expense of the Petitioner/Property Owner/Developer.

4. ENVIRONMENTAL SERVICES (ES)

MADISON VACATION AREA

A 60-foot-wide City utility easement centered on the existing wastewater pipes will need to be reserved. Specifically, the Madison Vacation Area includes three 48-inch wastewater Segments 6263889, 6264280 and 6264229, that will need to have (an) easement(s) reserved for them and that/those easement(s) must remain in place unless and until the Petitioner/developer reroutes the segments outside the proposed Vacation Area at its own expense.

S. 50TH VACATION AREA

A 25-foot-wide City utility easement will need to be reserved in the street vacation ordinance for ES wastewater assets (6270739 & 6257541) within the S. 50th Vacation Area. The reserved easement must include the right to enter, maintain, replace, and/or repair the wastewater assets.

B. ADVISORY NOTE:

RPS/IN-LIEU

Any LID estimates or other in-lieu amounts referenced in the RPS Reports are set forth as 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 Areas. Such fees are subject to increase until paid.

C. USUAL CONDITIONS:

1. The consolidated 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 if they affect the Vacation Areas.
2. The approvals recommended herein are 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 Vacations 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.

23. Accordingly, the petitions are recommended for approval, subject to the conditions set forth in Conclusion 22 above.

24. Any above stated conclusion, which may be more properly deemed or considered a finding, is hereby adopted as such.

RECOMMENDATION:

The vacation petitions are hereby recommended for approval, subject the conditions contained in Conclusion 22 above.

DATED this 6th day of February, 2023.



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*