

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** Lee Pate

**FILE NO:** HEX2020-026 (124.1415)

**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 the undeveloped north side of South 62nd Street right-of-way (the “Vacation Area”). The Vacation Area will be incorporated into the adjacent residential parcel to cure an encroachment by a part of the existing residence.

**RECOMMENDATION OF THE HEARING EXAMINER**

The vacation petition is hereby recommended for approval, subject to conditions, as set forth 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 October 1, 2020.<sup>1</sup> Teague Pasco of RPS represented the City. Petitioner Lee Pate appeared *pro se*. Testimony was taken, exhibits were admitted, and the record closed at the conclusion of the hearing.

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

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION:**

**FINDINGS:**

1. Petitioner Lee Pate (the “Petitioner”), as the owner of the real property located at 6047 South Junett Street, which is adjacent to and underlying the South 62nd Street right-of-way, submitted a petition to vacate a portion of the undeveloped north side of that same right-of-way. The Vacation Area extends around the encroaching portion of a building, measuring approximately 2 feet by 12 feet along the northern edge of the right-of-way and will be incorporated into the Petitioner’s adjacent parcel curing the existing encroachment by a part of the existing residence. *Pasco Testimony; Ex. C-1~C-3, Ex. C-5.*

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

A PORTION OF THE NORTH HALF OF SOUTH 62ND STREET SITUATED BETWEEN SOUTH JUNETT STREET AND SOUTH PINE STREET, BEING WITHIN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 20 NORTH, RANGE 03 EAST, WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT A 5/8” REBAR WITH CAP MARKED ‘LS 35980’ DESIGNATING THE INTERSECTION OF THE EASTERLY MARGIN OF SOUTH JUNETT STREET AND THE NORTHERLY MARGIN OF SOUTH 62ND STREET AS DEPICTED ON RECORD OF SURVEY RECORDED UNDER RECORDING NUMBER 202006045005, RECORDS OF PIERCE COUNTY AUDITOR, SAID INTERSECTION ALSO BEING THE SOUTHWEST CORNER OF LOT 24, BLOCK 20 OF MAP OF MONTICELLO PARK ADDITON TO THE CITY OF TACOMA, WASHINGTON TERRITORY AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGES 122 AND 123, RECORDS OF THE PIERCE COUNTY AUDITOR;

THENCE ALONG SAID NORTHERLY MARGIN SOUTH 88°27’07” EAST AS DEPICTED ON SAID RECORD OF SURVEY, A DISTANCE OF 51.16 FEET TO ANOTHER 5/8” REBAR WITH CAP MARKED ‘LS 35980’;  
THENCE CONTINUING ALONG SAID NORTHERLY MARGIN SOUTH 88°27’07” EAST A DISTANCE OF 0.80 FEET A POINT WHICH IS 1.40 FEET WEST OF AN EXISTING BUILDING FACE AND THE TRUE POINT OF BEGINNING;

THENCE DEPARTING SAID NORTHERLY MARGIN SOUTH 00°52’31” WEST 2.22 FEET;

THENCE SOUTH 88°05’05” EAST 12.16 FEET PARALLEL WITH AND 1.3 FEET SOUTH OF AN EXISTING BUILDING FACE;

THENCE NORTH 00°52’32” EAST 2.29 FEET TO A POINT ON SAID NORTHERLY MARGIN BEING 1.40 FEET EAST OF AN EXISTING BUILDING FACE;

THENCE NORTH 88°27'07" WEST ALONG SAID NORTHERLY MARGIN 12.16 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

(CONTAINING ±28 SQUARE FEET) *Ex. C-1.*

3. South 62nd Street is a 60-foot wide residential street right-of-way extending between South Junett Street on the west and South Pine Street on the east. The right-of-way is developed with a 30-foot wide asphalt road in the center; the remaining right-of-way to the north and south of the asphalt road is undeveloped land improved by grass lawn. The Vacation Area and surrounding right-of-way are level. The Petitioner filed the vacation petition for the purpose of remedying the existing encroachment of a portion of his residence into the existing (but unimproved area of) South 62nd Street right-of-way. *Pasco Testimony; Ex. C-1~C-3, Ex. C-5.*

4. The requested vacation covers only the area extending around the encroaching building outcrop, measuring approximately 2 feet by 12 feet along the northern edge of the right-of-way. Ordinarily, RPS and Public Works' Traffic Engineering Division would require vacation of a strip along the entire parcel. Contrarily here, Traffic Engineering supports a vacation limited to only that amount needed to cure the encroachment, in order to preserve right-of-way at the corners of South Junett and South Pine Streets for possible future development of roadway and pedestrian infrastructure. The City of Tacoma Surveyor provided a drawing of the limited Vacation Area as proposed. *Pasco Testimony; Exs. C-1~C-3, Ex. C-5, FoF 2.*

5. The City acquired the subject South 62nd Street right-of-way by dedication in the Monticello Park Plat in 1889, as recorded in Pierce County Auditor's File No. 14359. *Pasco Testimony; Ex. C-6.*

6. The residence at 6047 South Junett Street was constructed as of the year 1900, per Pierce County Assessor data. A review of historic aerial imagery in City of Tacoma records shows an identical building footprint as of 1950. RPS concluded that the encroachment of this portion of the existing residence is historic, and cannot find any permitting records related to placement of the residence. *Pasco Testimony; Ex. C-1.*

7. There are no other property owners abutting the Vacation Area, and as a result no abutting real property becomes landlocked by the granting of this vacation, nor will the vacation work any substantial impairment of access to abutting properties. The Vacation Area serves no public purpose at present, right-of-way-related or otherwise, and it is not contemplated by the City for future right-of-way use. *Id.*

8. The vacation is a public benefit because unencumbering the Vacation Area from the City's right-of-way interest will add taxable square footage to the Petitioner's real property, and vacating will reduce the City's potential maintenance expenditures. Removing the encumbrance benefits the City as well by establishing a clear delineation between the Petitioner's private property interest and the City public right-of-way interest. *Pasco Testimony; Ex. C-1.*

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

9. 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. *Id.*

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 in City testimony at the hearing, and where appropriate, 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 given its current limited scope. *Pasco Testimony; Ex. C-1, C-7~C-15.*

11. Members of the public did attend the hearing, but did not wish to testify. No written public comments were received.

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

On August 21, 2020-

- a. A public notice memo was placed into the glass display case located on the first floor of the Municipal building next to the Finance Department.
- b. A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/page.aspx?nid=596>.
- c. Public notice was advertised in the Daily Index newspaper.
- d. A public notice mailing was mailed to all parties of record within the 300 feet of the Vacation Area.
- e. Public Notice was advertised on Municipal Television Channel 12.

On August 28, 2020-

- f. A yellow public notice sign was posted at the northeast corner of the intersection of Junett Street and South 62nd Street.
- g. A yellow public notice sign was posted at the northwest corner of the intersection of Pine Street and South 62nd Street. *Pasco Testimony; Ex. C-1, Ex. C-4.*

13. RPS' 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 is in conflict 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>2</sup>

5. 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.
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>3</sup>

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

<sup>3</sup> For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

6. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. *See TMC 1.23.070.*

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. The Vacation Area is not currently used as right-of-way, nor does the City perceive 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, public benefit accrues through the Vacation Area being added into property tax valuations for the Petitioner' abutting real property while potentially reducing the City's maintenance obligations, and curing an existing encroachment.

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

**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 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 rights-of-way. *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 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.

**C. ADVISORY NOTES:**

1. Other than the conditions/concerns 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 this petition.
2. The small area to be vacated has not been assessed for sanitary sewers and is subject to a Connection Charge In-Lieu-of-Assessment per TMC 12.08.350. Should the petitioner wish to clear this item from title, please contact Public Works Department, RPS, for the assessment amount. Please note that the ordinance establishing the rate of assessment is updated every few years, and the amount quoted may increase in the future.

The charges can be voluntarily paid at time of compensation for the Vacation Area. If not, the In-Lieu-of-Assessment Charge(s) will be required to be paid in conjunction with any future permitting on, or development of the Vacation Area, and may be subject to increase with the passage of time.

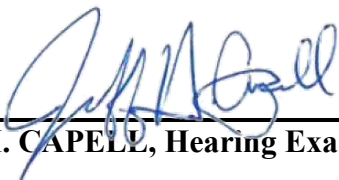
9. Accordingly, the petition is recommended for approval, subject to the condition set forth in Conclusion 8 above.

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 conditions contained in Conclusion 8 above.

**DATED** this 7th day of October, 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***