

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONER:** Bradken, Inc., a Delaware corporation licensed to do business in the state of Washington, a/k/a Atlas Foundry and Machine Co. and Bradken-Atlas and Atlas Foundry Limited Partnership (hereafter “Bradken” or the “Petitioner”).<sup>1</sup>

**FILE NO:** HEX2024-012 (124.1453)

**SUMMARY OF REQUEST:**

A petition by Bradken to vacate a portion of a 16-foot-wide alley lying southerly of vacated South 30th Street and northerly of South Tacoma Way and lying between South Wilkeson Street and vacated South Ash Street. The requested vacation is intended to address and eliminate existing building and industrial storage use encroachments.

**RECOMMENDATION OF THE HEARING EXAMINER:**

The vacation petition is hereby recommended for approval, subject to any conditions set forth herein.

**PUBLIC HEARING:**

After reviewing Real Property Services’ Preliminary Report (the “Report”—Exhibit C-1), and examining available information on file with the petition, the Hearing Examiner conducted a public hearing on the petition on August 22, 2024.<sup>2</sup> Senior Real Estate Specialist, Troy Stevens, of Real Property Services (“RPS”) represented the City of Tacoma (the “City”). Larry Lindell, Principal, Sitts & Hill Engineers, Inc., appeared on behalf of the Petitioner. Testimony was taken, exhibits were admitted, and the record closed on September 9, 2024.<sup>3</sup>

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<sup>1</sup> Bradken, Inc. is registered with the Washington Secretary of State. Atlas Foundry and Machine Co. is listed as the taxpayer for Parcel No. 2855001150 that is adjacent to the proposed alley vacation area address and includes real property addressed as 2321 S. Wilkeson Street and 1753 South Tacoma Way, both in the City of Tacoma.

<sup>2</sup> This hearing was conducted with in-person participation available in the Tacoma Municipal Building, Conference Room 243, together with participation access over Zoom at no cost with video, internet audio, and telephonic access all available. The Petitioner’s and the City’s representatives were present in the conference room. No members of the public joined the hearing over the internet.

<sup>3</sup> At the conclusion of the hearing, the evidentiary record was held open to allow the Petitioner and the City to execute and record documents converting the public sewer main into a private sewer main that lies within the alley right-of-way area

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

**FINDINGS:**

1. The Petitioner, Bradken, Inc., a Delaware corporation licensed to do business in the state of Washington (again, the “Petitioner” or “Bradken”), and successor in interest by merger to Atlas Foundry and Machine Co., has requested the vacation of a 16-foot-wide alley lying southerly of vacated South 30th Street and northerly of South Tacoma Way, and lying between South Wilkeson Street and vacated South Ash Street (collectively the “Vacation Area”). The Vacation Area is legally described as follows:

THAT PORTION OF ALLEY BETWEEN BLOCKS 22 AND 23, CARROLL & HANNAH'S ADDITION TO TACOMA, AS PER PLAT RECORDED IN BOOK 2, PAGE 7, RECORDS OF PIERCE COUNTY AUDITOR, LYING NORTHERLY OF THAT RIGHT OF WAY AREA ACQUIRED BY PIERCE COUNTY SUPERIOR COURT CAUSE NO. 34214, AND SOUTHERLY OF SOUTH 30TH STREET AS VACATED BY CITY OF TACOMA ORDINANCE NUMBER 6449, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A THEORETICAL INTERSECTION OF STATE HIGHWAY 99 (ALSO KNOWN AS SOUTH TACOMA WAY) CENTERLINE WITH THE CENTERLINE OF SOUTH WILKESON STREET FROM WHICH ANOTHER ANGLE POINT IN SAID STATE HIGHWAY CENTERLINE BEARS NORTH 82°04'17" WEST, A DISTANCE OF 436.27 FEET;

THENCE ALONG SAID HIGHWAY CENTERLINE, NORTH 82°04 17 WEST, A DISTANCE OF 149.92 FEET;

THENCE DEPARTING SAID CENTERLINE NORTH 07°55'43" EAST, 35.00 FEET TO THE NORTHERLY LINE OF SAID RIGHT-OF-WAY ACQUIRED BY PIERCE COUNTY SUPERIOR COURT CAUSE NO. 34214, AND THE WESTERLY LINE OF SAID BLOCK 23, BEING THE POINT OF BEGINNING;

THENCE NORTH 01°26'03" EAST, ALONG THE SAID WESTERLY LINE OF SAID BLOCK 23, 213.34 FEET TO THE NORTHWESTERLY CORNER OF SAID BLOCK 23, BEING ON THE SOUTHERLY LINE OF SAID VACATED SOUTH 30TH STREET;

THENCE NORTH 88°38 05 WEST, ALONG SAID SOUTHERLY LINE, 16.00 FEET TO THE NORTHEASTERLY CORNER OF SAID BLOCK 22;

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proposed for vacation. On September 9, 2024, RPS filed a copy of a recorded PARTIAL RELEASE OF EASEMENT regarding A PORTION OF PARCEL No. 2855000691, thereby closing the hearing record. *Ex. C-19.*

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

THENCE SOUTH 01°26'03" WEST, ALONG THE EASTERLY LINE OF SAID BLOCK 22, 211.51 FEET TO THE NORTHERLY LINE OF SAID RIGHT-OF-WAY ACQUIRED BY PIERCE COUNTY SUPERIOR COURT CAUSE;

THENCE SOUTH 82°04'17" EAST, ALONG SAID NORTHERLY LINE, 16.10 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 08, TOWNSHIP 20 NORTH, RANGE 03 EAST, W.M., IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

CONTAINING 3,399± SQ. FT. / 0.078± ACRES. *Exs. C-1~ C-3.*

2. The Petitioner's stated intention in requesting the vacation is to cure existing building and industrial storage use encroachments. *Ex. C-1.*

3. The 16-foot-wide alley, of which the Vacation Area is part, is approximately 211 feet long and runs in a north-south direction. The alleyway is not particularly visible from the closest street or other areas of Bradken's surrounding property. The alley right-of-way dead ends mid-block into the heart of the Bradken's foundry, short of nearby railroad right-of-way. Because the alley right-of-way has virtually no use or connection with the City's street system, the Petitioner is using it as part of its industrial site. Such use includes an existing building and industrial storage being located, at least in part, in the alleyway. *Ex. C-1, Ex. C-2, Ex. C-4.*

4. The City originally acquired the alley right-of-way in the plat of Carroll & Hannah's Addition to Tacoma, on May 16, 1888, as that plat is filed in the Office of the County Auditor. *Ex. C-1, Ex. C-5.*

5. The requested vacation has been reviewed by outside quasi-governmental agencies, City departments/divisions, and utility providers. Reviewing agencies indicated that they have no concerns or objections to the proposed vacation, with the exception of the question of either reserving an easement for, or privatizing the utility line in question, currently located in the Easement Area, as further addressed below. *Exs. C-6 ~ C-18.*

6. At hearing, the Petitioner's representatives indicated that they anticipated completing privatization of the sewer main prior to the hearing before the Hearing Examiner, but that did not happen. The Petitioner further advised that it will pursue privatization of the sewer main prior to the issuance of this Recommendation (which has now happened). The City indicated that unless the line is privatized, the City would require the retention of a sewer easement until privatization of the public sewer main is completed and recorded. *Lindall Testimony, Stevens Testimony.*

7. The City and the Petitioner have now agreed on privatization of the utility line and reservation of a City easement will not be necessary.

8. No members of the public appeared at the hearing to offer testimony.

9. City staff determined that the public would benefit from the proposed vacation to the extent that it will add taxable square footage to the Petitioner's property to which it attaches and resolve longstanding building and industrial storage encroachments. *Ex. C-1.*

10. With the privatization of the utility line, the Vacation Area is no longer needed for future public use by the City, and no abutting owner becomes landlocked, nor will their access be substantially impaired by the vacation. Because of its isolation, and with the privatization of the sewer line, the Vacation Area is currently not used for any material public right-of-way purpose. *Ex. C-1, Ex. C-4, Ex. C-7.*

11. The Vacation Area does not abut, nor is it proximate to a body of water and, therefore, the provisions of RCW 35.79.035 are not implicated. *Ex. C-1, Ex. C-4.*

12. No environmental review of the proposed alley vacation was conducted. *See Conclusion of Law 3, below.*

13. RPS's Preliminary Report, as entered into the hearing record as Exhibit C-1 (the "Report"), accurately describes the requested alley vacation, general and specific facts about the abutting properties, and the Vacation Area and applicable codes. The Report is incorporated herein by this reference as though fully set forth. Any conflict between this Recommendation and the Report should be resolved in favor of this Recommendation, however.

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

On July 16, 2024-

- a. A yellow public notice sign was posted 80 feet westerly of the northwest corner of South Wilkeson Street and South Tacoma Way.
- b. A yellow public notice sign was posted approximately 157 feet north of the northwest corner of South Wilkeson Street and South Tacoma Way. *Ex. C-1.*

On July 18, 2024-

- c. A public notice memo was placed into the glass display case located on the First Floor of the Tacoma Municipal Building next to the Finance Department.
- d. A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/cms/one.aspx?objectId=2283>.
- e. Public notice was advertised in the Daily Index newspaper.
- f. A public notice mailing was sent to all owners of record within a 300-foot radius of the Vacation Area.
- g. Public Notice was advertised on Municipal Television Channel 12.

15. Any conclusion hereinafter stated which may be more properly deemed a finding 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, but without a final decision), 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 right-of-way, such as the alley here, is exempt from the threshold determination and Environmental Impact Statement requirements of RCW 43.21.C, the State Environmental Policy Act (SEPA).

4. "RCW 35.79.010 gives the legislative authority [of a municipality] -- the city council -- sole discretion as to whether a petition to vacate shall be granted or denied."<sup>4</sup>

5. If they are to be approved, petitions for the vacation of public right-of-way must be consistent with the following criteria:<sup>5</sup>

1. The vacation will provide a public benefit, and/or will be for a public purpose.
2. The [petitioned-for] right-of-way vacation shall not adversely affect the street pattern or circulation of the immediate area or the community as a whole.
3. The public need shall not be adversely affected.
4. The petitioned-for right-of-way is not contemplated or needed for future public use.
5. No abutting owner becomes landlocked or access will not be substantially impaired; i.e., there must be an alternative mode of ingress and egress, even if less convenient.
6. The petitioned-for vacation of right-of-way shall not be in violation of RCW 35.79.035. *TMC 9.22.070.*

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

<sup>5</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 alley vacation petition meets 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.

7. Findings entered herein, based upon substantial evidence in the hearing record, support a conclusion that the requested alley vacation conforms to the criteria for the vacation of right-of-way set forth at Conclusion 5 above, provided the condition(s) recommended below are met. The public would experience nominal benefits from the tax revenue. The requested alley vacation would not impair traffic circulation, landlock any abutting owner, or adversely affect the public need, because the alley right-of-way is not being used for any material public traversal in any event. The sewer main privatization referenced herein will sufficiently eliminate any on-going sewer utility maintenance costs for the existing line.

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

**A. SPECIAL CONDITIONS:**

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*.

**B. ADVISORY NOTE:**

RPS/IN-LIEU

Any LID estimates or other in-lieu amounts referenced in the Report 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 Area. Such fees are subject to increase until paid.

Beyond the condition set forth above, and with the privatization of the existing utility line, no other objections or additional comments were received from the governmental agencies, City departments/divisions, and utility providers to whom the City circulated this petition.

**C. 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.

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 the condition contained in Conclusion 8 above.

**DATED** this 18th day of September, 2024.

  
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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*.**