

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: M & A Investments Three, LLC, a Washington limited liability company.

FILE NO: HEX2022-016 (124.1427)

SUMMARY OF REQUEST:

A petition by M & A Investments Three, LLC (“Petitioner”) to vacate two separate portions of East N Street on opposite sides in the same block, lying north of East 25th Street, to facilitate expanded future use of the Petitioner’s abutting property.

RECOMMENDATION OF THE HEARING EXAMINER:

The vacation petition is hereby recommended for approval, subject to conditions, as 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 November 10, 2022.¹ Senior Real Estate Specialist, Troy Stevens, of Real Property Services (“RPS”) represented the City. Alexx Bacon, the Petitioner’s listed business governor, appeared on behalf of the Petitioner, M & A Investments Three, LLC.² Testimony was taken, exhibits were admitted, and the record closed at the conclusion of the hearing.

¹ This hearing was 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 and City’s representatives participated over Zoom. One member of the public joined in the hearing over the internet.

² Neither party representative called additional witnesses.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The Petitioner, M & A Investments Three, LLC, a Washington limited liability company (the “Petitioner”), has requested the vacation of two portions of East N Street, lying north of East 25th Street (collectively the “Vacation Area”). The Vacation Area is legally described as follows:

THAT PORTION OF THE EAST N STREET AND BEING A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 20 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON; SAID PORTION BEING DESCRIBED AS FOLLOWS:

EASTERLY VACATION AREA

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL A AS SHOWN ON RECORD OF SURVEY, RECORDED UNDER AUDITOR’S FILE NUMBER 9003010095 OF SAID COUNTY;
THENCE ALONG THE NORTH RIGHT-OF-WAY MARGIN OF EAST 25TH STREET, SOUTH 82°39’39” WEST, 12.00 FEET;
THENCE LEAVING SAID MARGIN, NORTH 7°17’29” WEST, 129.67 FEET MORE OR LESS TO THE SOUTH LINE OF A 20.00 FOOT WIDE PUBLIC ALLEY LYING BETWEEN BLOCKS 7442 AND 7541 AS SHOWN ON A PLAT ENTITLED “INDIAN ADDITION TO THE CITY OF TACOMA”, RECORDED IN VOLUME 7 OF PLATS AT PAGES 30 AND 31, RECORDS OF PIERCE COUNTY;
THENCE ALONG SAID SOUTH LINE, NORTH 82°39’40” EAST, 12.00 FEET MORE OR LESS TO THE WESTERLY LINE OF SAID PARCEL A;
THENCE ALONG SAID WESTERLY LINE OF SAID PARCEL, SOUTH 7°17’29” EAST, 129.68 FEET TO THE POINT OF BEGINNING.

AND

WESTERLY VACATION AREA

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL A AS SHOWN ON RECORD OF SURVEY, RECORDED UNDER AUDITOR’S FILE NUMBER 9003010095 OF SAID COUNTY;
THENCE ALONG THE NORTH RIGHT-OF-WAY MARGIN OF EAST 25TH STREET, SOUTH 82°39’39” WEST, 71.50 FEET TO THE SOUTHEAST CORNER OF THE PROPERTY DESCRIBED IN STATUTORY WARRANTY DEED, RECORDED UNDER AUDITOR’S FILE NUMBER 201102040259 OF SAID COUNTY (PROPERTY SHOWN ON A RECORD OF SURVEY, RECORDED UNDER AUDITOR’S FILE NUMBER 201102255003 OF SAID COUNTY) AND POINT OF BEGINNING;
THENCE LEAVING SAID MARGIN, NORTH 7°17’29” WEST, 129.68 FEET MORE OR LESS TO THE SOUTH LINE OF A 20.00 FOOT WIDE PUBLIC ALLEY LYING BETWEEN BLOCKS 7442 AND 7541 AS SHOWN ON A PLAT ENTITLED “INDIAN

ADDITION TO THE CITY OF TACOMA”, RECORDED IN VOLUME 7 OF PLATS AT PAGES 30 AND 31, RECORDS OF PIERCE COUNTY;
THENCE ALONG SAID SOUTH LINE, NORTH 82°39’40” EAST, 6.49 FEET;
THENCE LEAVING SAID SOUTH LINE, SOUTH 50°40’48” EAST, 24.77 FEET;
THENCE SOUTH 7°17’29” EAST, 111.66 FEET MORE OR LESS TO AFORESAID NORTH MARGIN OF EAST 25TH STREET;
THENCE ALONG SAID MARGIN, SOUTH 82°39’39” WEST, 23.50 FEET TO THE POINT OF BEGINNING.

CONTAINING 4,450 SQUARE FEET, OR 0.10 ACRES MORE OR LESS. *Exs. C-1~ C-3, Ex. C-5, Ex. C-6.*

]

2. The Petitioner’s intention is to put the unused right-of-way comprising the Vacation Area to productive use in facilitating expanded future use of its abutting property. *Stevens Testimony, Bacon Testimony; Ex. C-1.*

3. The Vacation Area is part of an unimproved section of East N Street in a commercial area. It has a hard pack dirt surface presumably due to vehicular traversal. The center of this section appears to be used for public traversal to a limited degree, but the Vacation Area is far enough to the sides that this traversal will be unaffected by the vacation. *Stevens Testimony; Ex. C-1.*

4. The City of Tacoma acquired the right-of-way, of which the Vacation Area is part, under City deed number D-4183, recorded January 12, 1972, which is recorded as Pierce County recording number 2427641. *Stevens Testimony; Ex. C-1, Ex. C-4.*

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 objection to the proposed vacation. Tacoma Water did, however, request reservation of a City utility easement over the easterly 12 feet of East N Street between East 25th Street and the Puyallup Avenue alley. *Stevens Testimony; Exs. C-1, Ex. C-7.*

6. The Petitioner fully agreed with the recommended conditions of approval. *Bacon Testimony.*

7. One member of the public appeared at the hearing over the internet, but he did not elect to testify.

8. City staff determined that the public would benefit from the proposed vacation to the extent that it adds value to the Petitioner’s property to which it attaches, and thereby might increase tax revenue. The vacation also facilitates greater development/use potential of the abutting property. *Stevens Testimony; Ex. C-1.*

9. Except for the rights to be reserved under a City utility easement, the Vacation Area is 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. The Vacation Area is currently not used for any public right-of-way purpose beyond utility line placement. *Id.*

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

10. 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. *Ex. C-1.*

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

12. RPS' Preliminary Report, as entered into the hearing record as Exhibit C-1 (the "Report"), accurately describes the requested 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.

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

On October 5, 2022-

- a. A yellow public notice sign was posted approximately 129 feet of the northwest corner of the intersection of East N Street and East 25th Street.
- b. A yellow public notice sign was posted at the northeast corner of the intersection of East N Street and East 25th Street.

On October 6, 2022-

- 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>.
- f. Public notice was advertised in the Daily Index newspaper.
- g. A public notice mailing was sent to all parties of record within a 300-foot radius of the Vacation Area.
- h. Public Notice was advertised on Municipal Television Channel 12. *Stevens Testimony; Ex. C-1.*

14. 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.*

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

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 (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).

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."³

5. If they are to be approved, petitions for the vacation of public right-of-way must be consistent with the following criteria:⁴

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

6. The Petitioner must demonstrate, by a preponderance of the evidence, that its 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 partial street vacation conforms to the criteria for the vacation of right-of-way set forth at Conclusion 5 above, provided the conditions recommended below are met. The public would experience benefits from the tax revenue that the requested vacation will facilitate. The requested partial street vacation would not impair traffic circulation, landlock any abutting owner, or adversely affect the public need, and these side portions of the existing right-of-way are not being used for

³ *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).

⁴ For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

informal traversal in any event. The easement reservation referenced herein will sufficiently protect the need for on-going utility use.

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

A. SPECIAL CONDITIONS:

1. PAYMENT OF FEES

The petitioner shall compensate the City in an amount equal to the full appraised value of the Vacation Area. One-half of the revenue received shall be devoted to the acquisition, improvement and maintenance of public open space land and one-half may be devoted to transportation projects and /or management and maintenance of other City owned lands and unimproved rights-of-way.
TMC 9.22.010.

2. TACOMA WATER (DISTRIBUTION)

A City utility easement shall be retained over the easterly portion of the Vacation Area, i.e. the easterly 12' of East "N" Street, between East 25th Street and the Puyallup Avenue alley.

B. ADVISORY NOTE:

RPS/IN-LIEU

Any LID estimates or other in-lieu amounts referenced in the RPS 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 two conditions set forth above, no objections or additional comments were received from the governmental agencies, City departments/ divisions, and utility providers to whom the City circulated this petition.

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 conditions set forth in Conclusion 8 above.

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

RECOMMENDATION:

The vacation petition is hereby recommended for approval, subject the conditions contained in Conclusion 8 above.

DATED this 14th day of November, 2022.



JEFF H. CAPELL, Hearing Examiner

N O T I C E

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*