

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONER: Dazaifu LLC, Kim D. Marvik, LLC, and Hammer Advantage LLC, all limited liability companies licensed to do business in the state of Washington (hereafter collectively the “Petitioners”).

FILE NO: HEX2025-028 (124.1456)

SUMMARY OF REQUEST:

A petition by Dazaifu LLC, et al. to vacate portions of 6th Avenue and North Prospect Street, to cure building 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 May 15, 2025.¹ Senior Real Estate Specialist, Troy Stevens, of Real Property Services (“RPS”) represented the City of Tacoma (the “City”). Dana Carlisle, governor and registered agent with Dazaifu LLC, appeared on behalf of the Petitioners.² Testimony was taken, exhibits were admitted,³ and the record closed at the end of the hearing.

¹ This hearing was conducted with in-person participation available in the City Council Chambers of the Tacoma Municipal Building, together with participation over Zoom at no cost with video, internet audio, and telephonic access all provided. Petitioners’ representative (from Dazaifu LLC) and the City’s representative were both present remotely over Zoom. Two members of the public were present in person in the Council Chambers but elected not to testify.

² Dazaifu LLC is the majority owner of property abutting the Vacation Area (defined below). *Stevens Testimony*.

³ Dana Carlisle, Dazaifu LLC, noted in the hearing record that the Petitioners did not submit any exhibits other than the Memo that was offered by the City and admitted into the record as Exhibit C-4.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The Petitioners, Dazaifu LLC, Kim D. Marvik LLC, and Hammer Advantage LLC, are licensed to do business in the state of Washington (again, collectively the “Petitioners”) and have requested the vacation of approximately 1.2 feet of the northerly portion on 6th Avenue and approximately .2 of a foot of the easterly portion of North Prospect Street, both of which are slightly encroached upon by the Petitioners’ existing building(s) (collectively the “Vacation Area”). The Vacation Area is legally described as follows:

BEGINNING AT THE NORTHWEST CORNER OF LOT 20, BLOCK 1, HAWKINS ADDITION TO TACOMA W.T., ACCORDING TO PLAT RECORDED IN BOOK 3 OF PLATS AT PAGE 23, RECORDS OF PIERCE COUNTY AUDITOR, SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON, SAID CORNER BEING ON THE EAST MARGIN OF NORTH PROSPECT STREET;

THENCE SOUTH 1°18'27" WEST ALONG THE EAST MARGIN OF NORTH PROSPECT STREET 99.84 FEET TO THE SOUTHWEST CORNER OF LOT 23 OF SAID PLAT AND BEING ON THE NORTH MARGIN OF 6TH AVENUE;

THENCE SOUTH 88°44'53" EAST ALONG SAID NORTH MARGIN 54.74 FEET TO THE SOUTHEAST CORNER OF SAID LOT 23;

THENCE SOUTH 1°20'13" WEST 1.20 FEET;

THENCE NORTH 88°44'53" WEST PARALLEL TO THE SOUTH LINE OF SAID LOT 23 A DISTANCE OF 54.94 FEET;

THENCE NORTH 1°18'27" EAST PARALLEL WITH THE EAST MARGIN OF SAID NORTH PROSPECT STREET A DISTANCE OF 101.04 FEET;

THENCE SOUTH 88°43'03" EAST 0.20 FEET TO SAID EAST MARGIN AND THE TRUE POINT OF BEGINNING. *Stevens Testimony; Exs. C-1~ C-3.*

2. The Petitioners stated intention in requesting the vacation is to cure existing building encroachments. *Ex. C-1.*

3. The 6th Avenue right-of-way is 70 feet wide, as dedicated, and is classified as an arterial street with sidewalk, curb, and gutter along with parallel parking. One of Tacoma’s most vibrant business districts can be found along 6th Avenue. North Prospect Street is a 65-foot-wide residential street right-of-way with sidewalk, curb, gutter, varied planting strips and parallel parking along the street. *Exs. C-1~C-3, Ex. C-5.*⁴

⁴ “Right-of-way” may be abbreviated hereafter as “ROW.”

4. The City acquired the 6th Avenue ROW through Dedication Deed D-1236, filed in the records of Pierce County, Washington, on November 23, 1888, in Vol. 38, Page 96. The North Prospect Street ROW was dedicated in the plat designated Hawkins Addition to Tacoma W.T. filed on May 6, 1889, in the records of Pierce County *Stevens Testimony*; *Ex. C-1*, *Ex. C-6*.

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. *Exs. C-7~C-18*.

6. Petitioners' representative Dana Carlisle was present at the hearing, but aside from answering the Examiner's question regarding representational authority, chose to rely on the written record. *Carlisle Testimony*.

7. Two members of the public appeared at the hearing but offered no testimony.

8. City staff determined that the requested Vacation Area would be a public benefit as it would resolve building encroachments and clean up the ROW boundaries at this location. The Vacation Area is not needed for present or future public use. Granting the vacation petition will not adversely affect the public need. City Traffic Engineering has been consulted and does not object to the requested vacation as it does not adversely affect the street pattern or circulation of the immediate area or community as a whole. *Ex. C-1*.

9. 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*.

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

11. 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 laws and ordinances. 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.

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

On March 26, 2025-

- a. A yellow public notice sign was posted at the southeast corner of 6th Avenue and North Prospect;
- b. A yellow public notice sign was posted approximately 98 feet north of the southeast corner of 6th Avenue and North Prospect;
- 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; and
- g. Public Notice was advertised on Municipal Television Channel 12.

13. 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 ROW, such as the Vacation Area 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."⁵

5. Petitions for the vacation of public ROW must be consistent with the following criteria:⁶

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

⁶ For consistency, outline numbering of the criteria is kept the same as in the original TMC text.

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 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 vacation conforms to the criteria for the vacation of ROW set forth at Conclusion 5 above. The requested vacation would not impair traffic circulation, will not landlock any abutting owner, nor will it adversely affect the public need, because the public ROW that comprises the Vacation Area is not being used for any material public traversal in any event at present, and no future need has been identified.

8. Given the foregoing, the Hearing Examiner recommends that the requested ROW 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. 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 vacation 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 condition contained in Conclusion 8 above.

DATED this 22nd day of May, 2025.



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*.