

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**PETITIONERS:** METROPOLITAN PARK DISTRICT OF TACOMA

**FILE NO:** HEX2010-016 (SV 124.1412)

**SUMMARY OF REQUEST**

The Real Property Services division (“RPS”) of the City of Tacoma (“City”) Public Works Department received a petition from the Metropolitan Park District of Tacoma requesting the vacation of that certain dead-end segment of East “T” Street, also referenced as East “R” Street and formerly known as Dayton Street, lying southerly of the existing driveway to Lister Elementary School, as described herein.

**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 June 25, 2020. Ronda Van Allen of RPS represented the City. Kristi Evans, Capital Program Manager, Metropolitan Park District of Tacoma, represented the Petitioner. Testimony was taken; exhibits were admitted. The record closed at the conclusion of the hearing.

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

**FINDINGS OF FACT:**

1. The Metropolitan Park District of Tacoma (the "Petitioner"), submitted a petition requesting the vacation of that certain dead-end segment of East "T" Street, also referenced as East "R" Street and formerly known as Dayton Street, lying southerly of the existing driveway to Lister Elementary School (the "Vacation Area"). The Petitioner intends to incorporate the Vacation Area into the adjacent Park property as a private entrance and for other use with park enhancements and improvements. *Van Allen Testimony; Ex. C-1~Ex. C-3.*

2. The Report and its exhibits contain maps depicting the Vacation Area. *Ex. C-2, Ex. C-3.* The Report legally describes the Vacation Area as follows:

THAT PORTION OF EAST 'T' STREET (FORMERLY KNOW AS DAYTON STREET) ACCORDING TO THE PLAT OF PORTLAND AVENUE FIRST ADDITION, RECORDED IN BOOK 17 OF PLATS, PAGE 82, RECORDS OF THE PIERCE COUNTY AUDITOR, PIERCE COUNTY, WASHINGTON, ABUTTING AND SOUTHEASTERLY OF TRACT 'G' OF SAID PLAT, VACATED BY CITY OF TACOMA ORDINANCE NO. 27229, RECORDED UNDER RECORDING NUMBER 200405190826, RECORDS OF PIERCE COUNTY, SITUATE WITHIN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 20 NORTH, RANGE 03 EAST, WILLAMETTE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP DESCRIPTION 54.0 FEET IN WIDTH, HAVING 27.0 FEET ON EACH SIDE OF THE FOLLOWING CENTERLINE COMMENCING AT A SURFACE BRASS DISK MARKING A POINT OF INTERSECTION MONUMENT FOR A 3,820 FOOT RADIUS CURVE TO THE RIGHT WITHIN EAST 'T' STREET AS SHOWN ON SAID PLAT, APPROXIMATELY 303 FEET SOUTHWEST OF THE INTERSECTION WITH EAST 44<sup>TH</sup> STREET FROM WHICH ANOTHER SURFACE BRASS MONUMENT BEARS SOUTH 20°55'00" WEST A DISTANCE OF 684.10 FEET MARKING A DIFFERENT POINT OF INTERSECTION FOR SAID EAST 'T' STREET;

THENCE SOUTH 20°55'00" WEST A DISTANCE OF 208.07 FEET TO THE POINT OF TANGENCY OF SAID EAST 'T' STREET;

THENCE CONTINUING SOUTH 20°55'00" WEST ALONG THE CENTERLINE OF SAID EAST 'T' STREET A DISTANCE OF 168.25 FEET TO THE TRUE POINT OF BEGINNING OF THIS STRIP DESCRIPTION, SAID POINT BEING NORTH 69°05'00" WEST 27.00 FEET DISTANT FROM A REBAR AND CAP WITH LICENSE #21571 DEMARCATING THE MOST SOUTHERLY CORNER OF PARCEL 'A' AS DEPICTED ON THAT CERTAIN RECORD OF SURVEY RECORDED UNDER RECORDING NUMBER 9410030066, RECORDS OF PIERCE COUNTY, WASHINGTON;

THENCE CONTINUING ALONG SAID CENTERLINE SOUTH 20°55'00" WEST A DISTANCE OF 189.10 FEET TO A POINT OF TANGENCY WITH A 1061.11 FOOT RADIUS CURVE TO THE RIGHT;

THENCE SOUTHWESTERLY ALONG SAID CENTERLINE THROUGH A CENTRAL ANGLE OF 003°46'49" AN ARC DISTANCE OF 70.01 FEET TO THE END OF THIS STRIP DESCRIPTION.

THE SIDELINES SHALL BE LENGTHENED OR SHORTENED ACCORDINGLY TO TERMINATE PERPENDICULAR TO SAID CENTERLINE.

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

ALL SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON; WITHIN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 20 NORTH, RANGE 03 EAST OF THE WILLAMETTE MERIDIAN.

*Ex. C-1.*

3. East "T" Street was dedicated to the public on May 23, 1956, as a 54-foot wide public right-of-way ("ROW"), in the Plat filing of Portland Avenue First Addition as recorded under Auditor's File Number 1756574, records of Pierce County. As dedicated, East "T" Street terminates at the boundary line of the Portland Avenue First Addition Plat. *Van Allen Testimony; Ex. C-5, Ex. C-6.*
4. East "T" Street, lying south of the Lister Elementary driveway, exhibits a mixture of deteriorated oil mat and asphalt with no standard pedestrian or street improvements such as curb, gutter, sidewalk or lighting. All improvements currently on-site are private park entrance improvements. *Ex. C-1.*
5. The Petitioner is the sole property owner abutting the Vacation Area. *Van Allen Testimony.*
6. RPS circulated the petition for review by interested governmental agencies, City departments/divisions, and utility providers. These various agencies, departments and divisions provided relevant comments and recommended/requested conditions to RPS, where applicable, and these were incorporated into the Report and the City's presentation/testimony at the hearing. *Van Allen Testimony; Ex. C-1, Exs. C-7, Ex. C-8.* These comments and requests were minimal, but where appropriate, they have been incorporated in this Report and Recommendation at Conclusion 8 below. *Id.* The Petitioner expressed no objection to, or disagreement with the City's recommended conditions of approval.
7. No formal written public comments were submitted<sup>1</sup> and no members of the public appeared at the hearing to testify.

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<sup>1</sup> An informal comment expressing general disinterest was tagged on one of the City's yellow notice signs. *Ex. C-9.*

8. The vacation presents public benefit in the form of reduced City maintenance obligations and related savings, as well as in providing an enhancement to the Petitioner's overall function of providing parks and recreation opportunities to the public at this location. *Van Allen Testimony; Ex. C-1.*

9. The Vacation Area is not needed for future public use, nor does it currently add any material utility to the City's public transportation system. The City of Tacoma's Traffic Engineering division has been consulted regarding this petition and it does not object to vacating the ROW, provided the existing turnaround across from the Lister Elementary School driveway remains or a new turnaround is made available/dedicated. No property owner becomes landlocked as a result of approving the present petition. *Van Allen Testimony; Ex. C-1; Ex. C-7.*

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. Public hearing notices were posted/advertised on May 14, 2020<sup>2</sup>, at the following locations:

- 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.
- A public notice memo was advertised on the City of Tacoma web site at address: <http://www.cityoftacoma.org/notices>
- Public notice was advertised in the Daily Index newspaper.
- Public notice was mailed to all parties of record within 1,000 feet of Vacation Area.
- Public notice was advertised on Municipal Television Channel 12.

In addition to the foregoing, on May 18, 2020, yellow public notice signs were posted along the Vacation Area at the intersection of East 44<sup>th</sup> Street and at the above referenced driveway. *Van Allen Testimony; Exhibit C-1.*

12. RPS' Report, which is entered into the record as Exhibit C-1, accurately describes the proposed vacation, general and specific facts about the site and Vacation Area, and applicable codes. 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.

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

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<sup>2</sup> At hearing, Ms. Van Allen stated the actual date was May 14, 2020, not May 13, 2020, the date reflected in the Report. *Ex. C-1.*

## **CONCLUSIONS OF LAW:**

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 ultimately to a legislative determination by the City Council that is enacted by ordinance.<sup>3</sup>

3. "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>

4. 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).

5. Petitions for the vacation of public ROW 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>5</sup>

6. The Petitioner must demonstrate, by a preponderance of the evidence, that its vacation petition meets the foregoing criteria. *See TMC 1.23.070.* Here, the Petitioner relied heavily on the City staff presentation and submissions in meeting this burden.

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<sup>3</sup> *State ex rel. Myhre v. City of Spokane*, 70 Wn.2d 207, 218, 442 P.2d 790 (1967); *TMC 9.22.070.*

<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.

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 ROW set forth at Conclusion 5 above, provided the conditions 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 for any material public ROW purpose that benefits the street pattern or circulation of the immediate area or the community as a whole, nor does the City perceive any future use of the Vacation Area for significant ROW purposes such that it should be retained. 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 removed from the City's maintenance obligations and by benefitting the Petitioner's overall provision of parks and recreations services to the public.

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. PUBLIC WORKS TRAFFIC

The existing vehicular turnaround at this location must either be retained, or an appropriate replacement turnaround acceptable to the City be dedicated by Right-of-Way Deed concurrently with final adoption of any vacation ordinance.

**B. ADVISORY COMMENTS**

REAL PROPERTY SERVICES (RPS)/IN-LIEU

The Vacation Area has not been assessed for sanitary sewers and is subject to a Connection Charge In-Lieu-of-Assessment per TMC 12.08.350. At present, the Assessment is provided as an Advisory Comment only and not a condition of this Recommendation. Should the Petitioner wish to clear this item from title, the Assessment can be paid in connection with this vacation action or will become due and payable at such time as future permitting at the site takes place. Please note that the ordinance establishing the rate of assessment is updated every few years, and/or as the infrastructure is replaced, and the amount quoted may increase in the future. As such, should the Petitioner elect to wait to pay, the In-Lieu Assessment should be recalculated at time of such development to ensure current rates.

The amount presently owed is \$2,931.63.

**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.

**D. ADDITIONAL ADVISORY NOTE:**

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.

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

**DATED** this 1st day of July, 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***