OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONERS: Michael and Shelly Reed (hereafter the "Petitioners").

FILE NO: HEX2025-103 (124.1465)

SUMMARY OF REQUEST:
A petition by Michael and Shelly Reed to vacate a seven-foot-wide strip of North 44th Street, lying between Waterview Street and an alleyway to the rear of the Reed's property, to cure an existing building encroachment and facilitate future development.

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 November 13, 2025.[1] Real Property Supervisor, Troy Stevens, of Real Property Services ("RPS") represented the City of Tacoma (the "City"). The Petitioners, Michael and Shelly Reed, appeared *pro se*. Testimony was taken, exhibits were admitted, [2] and the record closed at the end of the hearing.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The Petitioners, Michael and Shelly Reed (again, the "Petitioners") have requested the vacation of a portion of North 44th Street, between Waterview Street and the rear alley (collectively the "Vacation Area"). The Vacation Area is legally described as follows:

[1] This hearing was conducted in the City Council Chambers of the Tacoma Municipal Building, together with participation available over Zoom at no cost. Petitioners and the City's representative were both present in person in Council Chambers. No members of the public appeared to testify either in the Council Chambers or over Zoom.

[2] The Petitioners did not submit any exhibits other than the Memo (Exhibit C-3) and the Mud Bay Geotechnical Services, LLC Report (Exhibit C-4) both of which were offered by the City and admitted into the record.

THAT PORTION OF THE SW 1/4 OF THE SE 1/4 SECTION 24, TOWNSHIP 21 NORTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTHEASTERLY 7 FEET OF NORTH 44TH STREET (A.K.A. MEADE STREET) ADJOINING LOT 10, BLOCK 8, MASON'S WATER FRONT ADDITION TO TACOMA, W.T., ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 98, RECORDS OF PIERCE COUNTY, WASHINGTON. EXCEPT THE NORTHEASTERLY 40 FEET THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERNMOST CORNER OF SAID LOT 10;

THENCE NORTH 34°17'53" WEST, ALONG AN EXTENSION OF THE SOUTHWESTERLY LINE OF SAID LOT, A DISTANCE OF 7.00 FEET TO A POINT ON A LINE PARALLEL WITH, AND 7.00 FEET NORTHWESTERLY OF THE NORTHWESTERLY LINE OF SAID LOT 10;

THENCE NORTH 55°50'41" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 81.17 FEET TO A POINT ON A LINE PARALLEL WITH, AND 40 FEET SOUTHWESTERLY OF THE NORTHEASTERLY LINE OF SAID LOT 10;

THENCE SOUTH 34°16'17" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 7.00 FEET TO THE NORTHWESTERLY LINE OF SAID LOT 10;

THENCE SOUTH 55°50'41" WEST, ALONG SAID NORTHWESTERLY LINE, A DISTANCE OF 81.16 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE CITY OF TACOMA, PIERCE COUNTY, STATE OF WASHINGTON. *Exs. C-1~ C-2, and C-5.*

2. The Petitioners' stated intention in requesting the vacation is to cure existing building encroachments and facilitate future development of their abutting property. *Ex. C-1, Ex. C-3.*

3. The North 44th Street right-of-way is an 80-foot-wide, unopened, unimproved residential street that is steeply sloped and heavily vegetated. Where North 44th Street abuts Waterview Street, Waterview Street has oil mat paving with gravel or grass on the edge. *Ex. C-1.*[3]

4. The City acquired the North 44th Street ROW in the plat of Mason's Water Front Addition to Tacoma W.T. filed on June 21, 1886, in the records of Pierce County. *Ex. C-1, Ex. C-5*.

[3] "Right-of-way" may be abbreviated hereafter as "ROW."

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-1, C-6~C-15.*

6. The Petitioners Michael and Shelly Reed were present at the hearing, but did not testify materially, choosing instead to rely on the written record. *Reed Testimony.*

7. No members of the public appeared at the hearing. One email in support of the vacation was received from nearby property owners.

8. City staff determined that the requested Vacation Area would be a public benefit as it would resolve building encroachments and places the property on the tax rolls. The Vacation Area is not being used at present for ROW, nor is it needed future public use. The remaining 44th Street ROW area is sufficient for any future street needs. Therefore, 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. *Stevens Testimony; 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.*

10. No environmental review of the proposed 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 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 October 8, 2025-

a. 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;

b. A public notice memo was advertised on the City of Tacoma web site at address: http://www.tacoma.gov/notices;

c. Public notice was advertised in the Daily Index newspaper;

d. A public notice mailing was sent to all property owners of record within a 300-foot radius of the Vacation Area; and

e. Public Notice was advertised on Municipal Television Channel 12.

On October 10, 2025-

a. A yellow public notice sign was posted at the center of the southerly paved edge of the intersection of North Waterview Street and North 44th Street; and

b. A yellow public notice sign was posted 62 feet southwesterly of the center of the southerly paved edge of the intersection of North Waterview Street and North 44th Street.

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."[4]

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

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.

[4] *Puget Sound Alumni of Kappa Sigma v. Seattle*, 70 Wn.2d 222, 238-239, 422 P.2d 799, 808-809 (1967).
[5] 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 Petitioners must demonstrate, by a preponderance of the evidence, that their vacation petition meets the foregoing criteria. *See TMC 1.23.070*. The Petitioners are 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 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 Petitioners 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 areas. *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 Petitioners represent 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 Petitioners agree 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 to the condition(s) contained in Conclusion 8 above.

DATED this 18th day of November, 2025.

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 l4 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.