OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION

TO THE CITY COUNCIL

PETITIONERS: M & A Investments Three, LLC, M & A Investments Five, LLC, CCW Investments, LLC, and ITR Properties, LLC (hereafter collectively the "Petitioners").

FILE NO: HEX2026-002 (Street Vacation No. 124.1454)

SUMMARY OF REQUEST:
A petition requesting the vacation of a portion of the alley between East M Street and East N Street, and a portion of East N Street, both between Puyallup Avenue and East 25th Street, for expanded business use and to help alleviate public safety concerns.

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 February 5, 2026.[1] Senior Real Estate Specialist, Troy Stevens, of Real Property Services ("RPS") represented the City of Tacoma (the "City"). As the state registered governor with decision-making authority for M & A Investments Three, LLC, M & A Investments Five, LLC, and CCW Investments, LLC, Alexx Bacon appeared on behalf of the Petitioners.[2] Testimony was taken, exhibits were admitted, and the record closed formally on February 11, 2026, after some additional post-hearing submittals from the parties at the Examiner's request.

[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] Under oath Mr. Bacon testified he has been given acting authority to represent ITR Properties, LLC as well.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The Petitioners, M & A Investments Three, LLC et al. (again, collectively the "Petitioners") have requested the vacation of a portion of the alley between East M Street and East N Street, and a portion of East N Street, both between Puyallup Avenue and East 25th Street (the "Vacation Area") which is legally described as follows:

> ALL THAT PORTION OF THE 20.00 FOOT ALLEY LYING SOUTHERLY OF BLOCK 7442, AND NORTHERLY OF BLOCK 7541 LYING WESTERLY OF THE WESTERLY LIM ITS OF VACATION ORDINANCE 20744, AND THAT PORTION LYING SOUTHERLY OF BLOCK 7440 AND NORTHERLY OF BLOCK 7539 LYING EASTERLY OF THE EXTENSION OF WEST LINE OF LOT 7 IN BLOCKS 7440 AND 7539. ALL IN THE MAP OF INDIAN ADDITION TO THE CITY OF TACOMA, AS RECORDED IN VOLUME 7 OF PLATS AT PAGES 30 AND 31, RECORDS OF PIERCE COUNTY AUDITOR.
>
> TOGETHER WITH THAT PORTION OF EAST N STREET LYING BETWEEN THE NORTHERLY LINE OF EAST 25TH STREET AND THE SOUTHERLY LINE OFTHE 20.00 FOOT ALLEY LYING BETWEEN SAID BLOCKS 7442 AND 7541; EXCEPT THAT PORTION VACATED BY VACATION ORDINANCE 28863,
> RECORDED UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 202302210373.
>
> SITUATE IN THE NE QUARTER OF THE NW QUARTER OF SECTION 10, TOWNSHIP 20 NORTH, RANGE 03 EAST, W.M., CITY OF TACOMA, PIERCE COUNTY, WASHINGTON.
>
> CONTAINING 14,806 SQUARE FEET+/-
> *Exs. C-1~ C-4, C-9, C-25.*

2. The Petitioner's stated intention in requesting the proposed vacation is to expand its business use and to help alleviate public safety concerns arising from transient and unlawful uses that take place in the Vacation Area presently. *Bacon Testimony; Ex. C-1.*

3. East N Street, lying northerly of East 25th Street, and the alley between East M and East N Streets are compact dirt and gravel. The street and alley abut commercial properties with chain link fencing having barbed wire and/or razor wire on the top of the chain link fencing. The right-of-way (ROW) is mostly level, except the alley has a slight downward slope running east to west. *Ex. C-1~Ex. C-3*.

4. The City acquired the alley, of which the Vacation Area is a part, and a portion of East N Street ROW in the plat map of "The Indian Addition to the City of Tacoma," which was filed of record May 1, 1896 in the Office of the County Auditor. *Ex. C-1, Ex. C-3*.

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, Ex. C-1R, C-11~C-23.*

6. No members of the public appeared at the hearing in person or remotely. The City submitted an email from Time Medved, U-COOL Refrigeration, LLC. Mr. Medved expressed concerns about chronic criminal activity associated with 1302 Puyallup Avenue.

7. City staff finds that the public would benefit from the proposed vacation because the Vacation Area would add to the taxable square footage of the abutting properties, would facilitate expanded business use, and would help to alleviate public safety concerns. *Stevens Testimony, Bacon Testimony*; *Ex. C-1*.

8. The Vacation Area is not being used at present in any materially unalterable way for ROW, nor is it necessarily needed for future public use. It does not contribute in any material fashion to overall circulation in the area. Therefore, granting the vacation petition will not adversely affect the public need. *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 December 10, 2025-

a. A yellow public notice sign was posted 139 feet southeast of the southeast corner of East M Street and Puyallup Avenue;

b. A yellow public notice sign was posted on the northeast corner of East N Street and East 25th Street;

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.tacoma.gov/notices;

e. Public notice was advertised in the Daily Index newspaper; and

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

g. Public Notice was advertised on Municipal Television Channel 12. *Ex. C-1.*

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."[3]

5. Petitions for the vacation of public ROW 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.

[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.

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 vacation conforms to the criteria for the vacation of ROW set forth at Conclusion 5 above, provided the condition recommended below is met. Public benefit may result from potentially greater tax revenue from the increased taxable square footage of the abutting properties, as well as the increased business use by the Petitioners, and closing the Vacation Area to unsafe, non-essential ROW uses may increase safety in the area. The requested vacation would not impair traffic circulation, landlock any abutting owner, or adversely affect the public need.

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

A. <u>SPECIAL CONDITIONS</u>:

1. <u>PAYMENT OF FEES</u>

   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.*

2. <u>ENVIRONMENTAL SERVICES ENGINEERING (ES)/SITE DEVELOPMENT</u>

   a. ES and Site Development are in support of this vacation provided that an easement is reserved in the ordinance for the sanitary sewer easement over the westerly 100 feet of the alley vacation.

   b. Contact Teresa Dressler at (253) 502-2187 regarding ES' comments and Christopher Johnson (253) 502-2164 regarding Site Development's comments.

3. <u>TACOMA WATER</u>

   a. Please contact Greg Muller at (253) 337-3164 regarding Tacoma Water's comments.

b. Tacoma Water requires an easement reservation over the easterly 15 feet of East "N" Street proposed for vacation, together with an easement reservation over that portion of the alley proposed for vacation lying easterly of the northerly production of the west line of the East "N" Street easement reservation.

No permanent structures, retaining walls, fences, or trees are permitted within the easement. Light landscaping with grass and/or small shrubbery is permitted. Tacoma Water facilities must remain accessible at all times; therefore, if a fence is installed along the perimeter, Tacoma Water must be provided keys or codes to allow 24/7 access.

If existing water facilities need to be relocated or adjusted, they will be relocated by Tacoma Water at the developer's expense.

Any damage to Tacoma Water facilities will be repaired by Tacoma Water crews at the expense of the developer.

4. PUBLIC WORKS (PW)/TRAFFIC

a. A public access turnaround easement must be granted over Lots 7 through 9, Block 7539, of the Map of Indian Addition, as shown in the attached exhibit known as "Revised turn around easement 2-4-26;" and

b. PW/Traffic also requests that a public access easement be reserved in the City ordinance for a public access easement over the proposed vacated right of way abutting Lots 7 through 9, Block 7539.

b. Contact Jennifer Kammerzell at jkammerzell@tacoma.gov regarding Traffic comments.

5. ENVIRONMENTAL SERVICES/SITE DEVELOPMENT—ADVISORY

a. Please contact Christoper Johnson at cjohnson@tacoma.gov regarding Site Development's comments.

b. Site Development supports the street vacation; however, the Petitioner is advised, with the approval of this vacation, the currently approved permit under WO21-0039 will need to be revised and turned into a Site Development Permit.

Release of the performance bond for Work Order WO21-0039 shall be contingent upon submittal of the Site Development Permit and completion of the work as approved under the new Site development permit that will replace the Work Order.

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 24th day of February, 2026.

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.