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**THE HEARING EXAMINER OF THE CITY OF BELLINGHAM  
WHATCOM COUNTY, WASHINGTON**

<b>IN RE:</b>	<b>HE-20-PL-016</b>
<b>21<sup>ST</sup> AND TAYLOR LLC, Petitioner</b>	<b>FINDINGS, CONCLUSIONS, AND RECOMMENDATION</b>
<b>Full width of Douglas Avenue, between 21<sup>st</sup> Street and an alley to the west</b>	
<b>VAC2020-0001 / Street Vacation</b>	<b>SHARON RICE, HEARING EXAMINER</b>

**SUMMARY OF RECOMMENDATION**

The Hearing Examiner recommends to the City Council that the requested vacation of the full width of Douglas Avenue abutting Lot 19, Block 8, Lysle’s 1<sup>st</sup> Add to Fairhaven and Lot 2, Block 010, Fairhaven Land Co’s 1<sup>st</sup> Add to Fairhaven, Bellingham, should be **GRANTED**.

**SUMMARY OF RECORD**

**Request:**

Ali Taysi, AVT Consulting LLC, on behalf of 21<sup>st</sup> and Taylor, LLC (Applicant) requested vacation of the full width of Douglas Avenue abutting Lot 19, Block 8, Lysle’s 1<sup>st</sup> Add to Fairhaven and Lot 2, Block 010, Fairhaven Land Co’s 1<sup>st</sup> Add to Fairhaven in Bellingham, Washington. The Applicant desires to use the proposed vacation area to expand the available density on the property, provide driveway access and create some open space.

**Hearing Date:**

The Bellingham Hearing Examiner conducted a virtual open record hearing on the request on July 8, 2020. The record was held open two business days to allow for public comment, with additional days for responses by the parties. No post-hearing public comment was submitted, and the record closed on July 10, 2020.

1 **Testimony:**

2 At the hearing, the following individuals presented testimony under oath:

3 Steve Sundin, Senior Planner  
4 Ali Taysi, AVT Consulting LLC, Applicant's Representative  
5 John Miller, 1005 20th Street

6 **Exhibits:**

7 At the open record hearing, the following exhibits were admitted in evidence:

8 Exhibit 1 Staff Report to the Examiner with the following attachments:

- 9 A. Vacation Area / Aerial / Public Utilities  
10 B. Zoning Map  
11 C. Project Narrative  
12 D. Technical Review Committee letter to Applicant  
13 E. Vacation Petition  
14 F. Appraisal Summary  
15 G. Draft Ordinance<sup>1</sup>  
16 H. Notice of Public Hearing

17 Exhibit 2 Public Comments

- 18 A. Email from Jon Miller, dated July 6, 2020  
19 B. Email from Jon Miller, dated July 7, 2020  
20 C. Email from Anneka Deacon, dated July 8, 2020  
21 D. Email from Kimberli Scott, dated July 8, 2020  
22 E. Email from Jeffrey Counts, dated July 8, 2020  
23 F. Email from Kate LaSpina, dated July 8, 2020  
24 G. Email from Clara Cunningham, dated July 8, 2020  
25 H. Email from Pamela Fuller, dated July 8, 2020  
26 I. Email from Katie Robison, dated July 8, 2020  
27 J. Email from Elli Smith, dated July 8, 2020  
28 K. Email from Rebekah Green, Melissa Turner, and Summer Graef,

28 <sup>1</sup> Please note during testimony, Planner Steve Sundin first offered a revised Draft Ordinance intended to  
29 replace Attachment G to the staff report, but through the course of the hearing, he reversed this plan and  
withdrew the revised draft ordinance. *Steve Sundin Testimony.*

1 dated July 8, 2020

2 L. Email from Michael Reynolds, dated July 8, 2020

3 Upon consideration of the testimony and exhibits submitted, the Hearing Examiner  
4 enters the following findings and conclusions:

5  
6 **FINDINGS**

- 7 1. 21st and Taylor, LLC (Applicant) requested vacation of the full width of  
8 Douglas Avenue abutting Lot 19, Block 8, Lysle's 1<sup>st</sup> Add to Fairhaven and Lot  
9 2, Block 010, Fairhaven Land Co's 1<sup>st</sup> Add to Fairhaven in Bellingham. *Exhibit*  
10 1.
- 11 2. The subject right-of-way is in Area 1A, Happy Valley Neighborhood and is  
12 zoned Residential Multi, Multiple, lots of 10,000 square feet or greater – 1,000  
13 square feet per unit, lots of less than 10,000 but at least 4,000 square feet – 2,000  
14 square feet per dwelling unit. *Exhibit 1*. The unopened right-of-way in question  
15 is located between 20<sup>th</sup> and 21<sup>st</sup> Streets; it abuts improved 21<sup>st</sup> Street to the east  
16 and a platted alley to the west. East of 21<sup>st</sup> Street, improved Douglas Avenue  
17 extends east; west of 20<sup>th</sup> Street, a segment of Douglas Avenue extends  
18 southwest from 20<sup>th</sup> Street, and farther to the west, the remaining east-west  
19 segment of Douglas Avenue extends to the west from 19<sup>th</sup> Street. Between the  
20 21<sup>st</sup> Street and the platted alley, the unopened Douglas Avenue right-of-way  
21 contains significant topography, sloping steeply down from the alley towards  
22 21<sup>st</sup> Street, resulting in a 35-foot elevation change. Currently it is densely  
23 vegetated and contains an informal east-west pedestrian trail segment. West of  
24 the platted alley, abutting the subject right-of-way, the adjacent unopened  
25 portion of Douglas Avenue is partially developed with a paved area used for  
26 parking and/or vehicle maneuvering room for existing development (Andrea  
27 Ridge) fronting 20<sup>th</sup> Street. *Exhibit 1A; Google Maps Site view; Steve Sundin*  
28 *Testimony*.
- 29 3. The Applicant had applied for and obtained land use approvals to construct a 10-  
30 unit complex in two buildings on the parcel north of the subject right-of-way  
addressed as 936 21<sup>st</sup> Street. A consolidated Type 2 multi-family design review,  
planned development, and critical area permit (DR2018-0003 / PDP2018-0002 /  
CAP2018-0004) was issued by the Planning and Community Development  
Department (Department) on June 7, 2018. Although a building permit  
application was submitted on June 28, 2018, construction was not completed,  
and the building permit expired on January 31, 2020. As of the hearing date, the

1 multi-family design review approval had expired; the planned development and  
2 critical area approvals remain valid through June 7, 2023. *Exhibit 1.*

3 4. The area of right-of-way sought to be vacated comprises approximately 7,000  
4 square feet. Having inquired of the owner abutting the south border of the  
5 unopened right-of-way, the Applicant determined that the owner was not  
6 interested in adding the south half of the subject right-of-way to the parcel  
7 addressed as 1002 21<sup>st</sup> Street, which is developed with a multi-family use.  
8 Therefore, the Applicant seeks to vacate the entire width of the right-of-way to  
9 be added to its parcel at 936 21<sup>st</sup> Street to be incorporated into access and  
10 parking improvement for the future development of that parcel. The additional  
11 area being added to the abutting property would slightly increase the possible  
12 residential density that can be developed on that property, but the only  
13 improvements contemplated within the vacated right-of-way would be vehicle  
14 maneuvering and parking improvements. *Exhibits 1, 1C, and 1E; Ali Taysi*  
15 *Testimony.*

16 5. Puget Sound Energy power lines traverse the north half of the subject right-of-  
17 way. Cascade Natural Gas has a two-inch distribution line within the southern  
18 half of the right-of-way. City water and stormwater mains are also located  
19 within the subject the right-of-way. *Exhibit 1.*

20 6. After reviewing the right-of-way vacation petition, the City's technical review  
21 committee (TRC) determined that the subject right-of-way is not needed for  
22 future circulation or other beneficial uses of the City on November 6, 2019.  
23 Primarily due to topography, the TRC determined that the subject right-of-way  
24 would not be needed for existing or future vehicular or pedestrian circulation  
25 purposes within the immediate vicinity. The TRC also recommended that an  
26 appraisal be conducted in order to determine fair market value in order to  
27 determine appropriate compensation. *Exhibit 1D.*

28 7. On April 22, 2020, Department Staff sent notice of the vacation petition to the  
29 private utility providers, which were asked to respond by May 8, 2020 to inform  
30 the City whether they had facilities in the subject right-of-way. Puget Sound  
Energy, Comcast Cable, and Cascade Natural Gas all indicated that they have  
facilities within the subject right-of-way. Prior to publication of the staff report,  
an easement had been executed with Puget Sound Energy and recorded under  
Auditor's File AF#2020-0603747. The Applicant is coordinating with Comcast  
Cable and Cascade Natural Gas to execute similar easements. No other private  
utility companies informed the City of any affected facilities. Retention of  
public and private utility easements across the full width of the right-of-way

1 would preclude construction of buildings within the area. *Exhibit 1; Steve*  
2 *Sundin Testimony.*

3 8. The Applicant commissioned a professionally prepared appraisal conducted on  
4 May 15, 2020, which determined that the fair market value of the subject right-  
5 of-way is \$18,000. *Exhibit 1F.* The Applicant submitted the \$18,000.00 to the  
6 City prior to the public hearing. *Exhibit 1; Steve Sundin Testimony.*

7 9. Approval of the vacation would not land lock any parcels. The multi-family  
8 parcel abutting to the south (1002 21<sup>st</sup> Street) has access from the platted alley.  
9 Properties addressed 933, 935, and 939 20<sup>th</sup> Street have direct access from 20<sup>th</sup>  
10 Street via a driveway within the Douglas Avenue right-of-way west of the  
11 portion sought for vacation. *Exhibits 1 and 1B; Google Maps Site view.*

12 10. The subject right-of-way does not abut fresh or saltwater and is not adjacent  
13 to/does not lead to a park, open space, view, natural area, or any other natural or  
14 man-made attraction. *Exhibits 1 and 1A.*

15 11. The Applicant submitted a signature, indicating consent to the proposed  
16 vacation, from the owner of the property abutting the subject right-of-way's  
17 southern boundary (1002 21st Street). *Exhibit 1E.*

18 12. Pursuant to WAC 197-11-800(2)(i) and BMC 16.20.100.A, SEPA review is not  
19 required. *Exhibit 1; BMC 16.20.100.A.*

20 13. The petition for street vacation was submitted on March 18, 2020. On June 8,  
21 2020, Bellingham City Council approved Resolution #2020-0014 setting a date  
22 of July 8, 2020 at 6:00 pm for consideration of the proposed vacation in a public  
23 hearing before the Hearing Examiner. *Exhibit 1.* On June 23, 2020, Department  
24 Staff issued notice of public hearing, which was also published in the  
25 *Bellingham Herald.* The notice of public hearing was mailed to abutting  
26 property owners and posted on site on June 26, 2020. *Exhibits 1 and 1.H.*  
27 Planning Staff testified that at the time notice was issued, he was not yet aware  
28 of the informal pedestrian trail through the subject right-of-way, so the notice of  
29 public hearing was posted where it would be seen by most people in cars passing  
30 the site, which is a typical location for posting notice. *Steve Sundin Testimony.*

14. Numerous public comments were submitted requesting the street vacation be  
denied. Commenters submitted that the trail segment that goes through the  
unopened right-of-way is vital to the community for both people and wildlife,  
describing it as a wildlife corridor that people enjoy and use to bridge between

1 green spaces. Several noted that it is a popular trail for college students and that  
2 many of those students were not in the area at the time of notice due to Covid-  
3 19. One commenter asserted the proposal would not “advance the public good”  
4 in impacting this trail segment. Some comments questioned whether adequate  
5 notice was provided other than letters to certain neighbors. Another person  
6 stated he located the posted notice in some bushes and felt it was not visible to  
7 the public. *Exhibits 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K, and 2L.* One  
8 person testified at hearing expressing a concern that the project would benefit  
the developer at the expense of the neighborhood and that it goes against the  
City’s goal of more greenways. He also felt there was not proper notice to the  
public. *Jon Miller Testimony.*

9 15. In response to public comment, Planning Staff testified that the City became  
10 aware of the informal pedestrian path through the subject right-of-way on  
11 Monday before the Wednesday hearing from public comments. Staff returned to  
12 the site to investigate and found a narrow cleared path through the vegetation in  
13 the southern half of the subject right-of-way, ranging from one to two feet in  
14 width and not quite tall enough for the planner to stand fully upright under the  
15 overhanging vegetation; it is just visible between the vegetation. It veers onto  
16 the Applicant’s property. Staff recommended that in addition to the private  
17 utility easements, the Applicant be required to provide a public path easement  
18 for pedestrian access through the southern half of the subject right-of-way. The  
19 intention is to retain access, not the specific existing path. Dimensions of the  
20 appropriate path easement to be retained had not been determined as of the time  
21 of hearing, because both Staff and the Applicant had just learned of the  
22 existence of the path two days prior to hearing through public comment. Staff  
23 noted that the path might have to take some different alignment if the Applicant  
24 does develop any portion of the southern half of the subject right-of-way for a  
25 driveway. Because most of the significant vegetation in the subject right-of-way  
26 happens to be in the southern half (and the northern half if largely covered with  
27 invasive blackberries), there is a chance to retain some of it surrounding the  
28 pedestrian path easement. The route of the path would have to be realigned so it  
29 no longer trespasses onto the Applicant’s parcel. Planning Staff recommended  
30 that the requirement to retain a public pedestrian access easement in the southern  
part of the right-of-way should be made a condition of vacation approval. *Steve  
Sundin Testimony.*

16. The Applicant agent also responded to public comment, noting that neither the  
Applicant nor the owner of the parcel south of the subject right-of-way had  
known the informal trail existed. Since the Applicant had always anticipated  
that utility easements would need to be retained, there is no plan for a building

1 in the right-of-way, which should contribute to vegetation retention. The  
2 Applicant assented to the public pedestrian path easement recommended by  
3 Planning Staff, submitting that such a condition addresses the concern for public  
4 connectivity. The Applicant's primary concern is liability; however, the City  
5 has standard indemnification and hold-harmless agreements for this type of  
6 situation. Because the final design of the potential driveway, open space, and  
7 parking improvements is not yet developed, the Applicant did not prefer to  
8 specify the location or size of the pathway to be retained at this juncture. Also,  
9 the agent clarified that it is their understanding that the vacation would be  
10 required to retain a pedestrian access easement but that the Applicant would not  
11 be required to construct a trail improvement. The agent also submitted that there  
12 is public benefit to increasing density on the adjacent parcel owned by the  
13 Applicant consistent with underlying zoning, because this would help to address  
14 the housing shortage in our community. *Ali Taysi Testimony.*

- 11 17. After considering all evidence in the record, including public comment,  
12 Planning Staff continued to recommend approval of the right-of-way-vacation  
13 subject to conditions ensuring that market rate compensation is paid to the City  
14 for the land area and that private easements are executed within the vacation  
15 area to ensure retention of existing utility corridors for private utility providers.  
16 *Exhibit 1; Steve Sundin Testimony.* The Applicant waived objection to the  
17 recommended conditions of approval, including an additional condition  
18 requiring retention of a public pedestrian access easement in the southern half of  
19 the right-of-way to be vacated. *Ali Taysi Testimony.*

## 20 CONCLUSIONS

### 21 **Jurisdiction:**

22 The Hearing Examiner is granted authority to hold hearings and make recommendations  
23 to City Council on right-of-way vacation requests pursuant to RCW 35.79.030.

### 24 **Criteria for Review:**

#### 25 City Vacation Regulations

26 *BMC 13.48.010 - Hearing - Application fee.*

27 As a condition precedent to the city's consideration of a resolution setting a date for  
28 a public hearing on the question of whether a city street should be vacated, the  
29 petitioner therefor shall submit an application accompanied by a fee in the amount  
30 set by city council resolution and the petitioner shall pay to the city an amount equal  
to the cost of preparation of an appraisal of the area proposed to be vacated and the  
city shall order such appraisal. An appraisal, and payment therefor, may not be

1 required when, in the judgment of the director of planning and community  
2 development, it is not needed to determine the fair market value of the area to be  
3 vacated.

3 *BMC 13.48.020 - Payment for vacation.*

4 Unless otherwise specifically provided by the city council in the street vacation  
5 ordinance, such ordinance shall provide for the payment of compensation by the  
6 petitioner of an amount equal to one-half the appraised value of the area proposed  
7 for vacation. The city council shall have final authority to determine the appraised  
8 value.

8 In no event shall such vacation request come before the city council for final  
9 consideration until such amount has been computed, incorporated into the  
10 ordinance, and deposited with the finance director. In the event that final passage  
11 of the ordinance is not granted, the deposited amount (exclusive of the application  
12 fee and appraisal fee) shall be refunded to the petitioner.

12 *State Vacation Requirements*

13 *RCW 35.79.010 - Petition by owners - Fixing time for hearing.*

14 The owners of an interest in any real estate abutting upon any street or alley who  
15 may desire to vacate the street or alley, or any part thereof, may petition the  
16 legislative authority to make vacation, giving a description of the property to be  
17 vacated, or the legislative authority may itself initiate by resolution such vacation  
18 procedure. The petition or resolution shall be filed with the city or town clerk, and,  
19 if the petition is signed by the owners of more than two-thirds of the property  
20 abutting upon the part of such street or alley sought to be vacated, legislative  
21 authority by resolution shall fix a time when the petition will be heard and  
22 determined by such authority or a committee thereof, which time shall not be more  
23 than sixty days nor less than twenty days after the date of the passage of such  
24 resolution.

22 *RCW 35.79.020 - Notice of hearing - Objections prior to hearing.*

23 Upon the passage of the resolution the city or town clerk shall give twenty days'  
24 notice of the pendency of the petition by a written notice posted in three of the most  
25 public places in the city or town and a like notice in a conspicuous place on the  
26 street or alley sought to be vacated. The said notice shall contain a statement that a  
27 petition has been filed to vacate the street or alley described in the notice, together  
28 with a statement of the time and place fixed for the hearing of the petition. In all  
29 cases where the proceeding is initiated by resolution of the city or town council or  
30 similar legislative authority without a petition having been signed by the owners of  
more than two-thirds of the property abutting upon the part of the street or alley  
sought to be vacated, in addition to the notice hereinabove required, there shall be



1 given by mail at least fifteen days before the date fixed for the hearing, a similar  
2 notice to the owners or reputed owners of all lots, tracts or parcels of land or other  
3 property abutting upon any street or alley or any part thereof sought to be vacated,  
4 as shown on the rolls of the county treasurer, directed to the address thereon shown:  
5 PROVIDED, That if fifty percent of the abutting property owners file written  
6 objection to the proposed vacation with the clerk, prior to the time of hearing, the  
7 city shall be prohibited from proceeding with the resolution.

6 *RCW 35.79.030 - Hearing - Ordinance of vacation.*

7 The hearing on such petition may be held before the legislative authority, before a  
8 committee thereof, or before a hearing examiner, upon the date fixed by resolution  
9 or at the time the hearing may be adjourned to. If the hearing is before a committee  
10 the same shall, following the hearing, report its recommendation on the petition to  
11 the legislative authority which may adopt or reject the recommendation. If the  
12 hearing is held before a committee it shall not be necessary to hold a hearing on the  
13 petition before the legislative authority. If the hearing is before a hearing examiner,  
14 the hearing examiner shall, following the hearing, report its recommendation on the  
15 petition to the legislative authority, which may adopt or reject the recommendation:  
16 PROVIDED, That the hearing examiner must include in its report to the legislative  
17 authority an explanation of the facts and reasoning underlying a recommendation to  
18 deny a petition. If a hearing is held before a hearing examiner, it shall not be  
19 necessary to hold a hearing on the petition before the legislative authority (*emphasis*  
20 *added*).

17 If the legislative authority determines to grant the petition or any part thereof, such  
18 city or town shall be authorized and have authority by ordinance to vacate such  
19 street, or alley, or any part thereof, and the ordinance may provide that it shall not  
20 become effective until the owners of property abutting upon the street or alley, or  
21 part thereof so vacated, shall compensate such city or town in an amount which  
22 does not exceed one-half the appraised value of the area so vacated. If the street or  
23 alley has been part of a dedicated public right of way for twenty-five years or more,  
24 or if the subject property or portions thereof were acquired at public expense, the  
25 city or town may require the owners of the property abutting the street or alley to  
26 compensate the city or town in an amount that does not exceed the full appraised  
27 value of the area vacated. The ordinance may provide that the city retains an  
28 easement or the right to exercise and grant easements in respect to the vacated land  
29 for the construction, repair, and maintenance of public utilities and services. A  
30 certified copy of such ordinance shall be recorded by the clerk of the legislative  
authority and in the office of the auditor of the county in which the vacated land is  
located. One-half of the revenue received by the city or town as compensation for  
the area vacated must be dedicated to the acquisition, improvement, development,

1 and related maintenance of public open space or transportation capital projects  
2 within the city or town.

3 *RCW 35.79.035 - Limitations on vacations of streets abutting bodies of water -*  
4 *Procedure.*

- 5 1. A city or town shall not vacate a street or alley if any portion of the street or  
6 alley abuts a body of fresh or saltwater unless:
  - 7 a. The vacation is sought to enable the city or town to acquire the property  
8 for port purposes, beach or water access purposes, boat moorage or  
9 launching sites, park, public view, recreation, or educational purposes,  
10 or other public uses;
  - 11 b. The city or town, by resolution of its legislative authority, declares that  
12 the street or alley is not presently being used as a street or alley and that  
13 the street or alley is not suitable for any of the following purposes: Port,  
14 beach or water access, boat moorage, launching sites, park, public view,  
15 recreation, or education; or
  - 16 c. The vacation is sought to enable a city or town to implement a plan,  
17 adopted by resolution or ordinance, that provides comparable or  
18 improved public access to the same shoreline area to which the streets or  
19 alleys sought to be vacated abut, had the properties included in the plan  
20 not been vacated.
- 21 2. Before adopting a resolution vacating a street or alley under subsection  
22 (1)(b) of this section, the city or town shall:
  - 23 a. Compile an inventory of all rights-of-way within the city or town that  
24 abut the same body of water that is abutted by the street or alley sought  
25 to be vacated;
  - 26 b. Conduct a study to determine if the street or alley to be vacated is  
27 suitable for use by the city or town for any of the following purposes:  
28 Port, boat moorage, launching sites, beach or water access, park, public  
29 view, recreation, or education;
  - 30 c. Hold a public hearing on the proposed vacation in the manner required  
by this chapter, where in addition to the normal requirements for  
publishing notice, notice of the public hearing is posted conspicuously  
on the street or alley sought to be vacated, which posted notice indicates  
that the area is public access, it is proposed to be vacated, and that  
anyone objecting to the proposed vacation should attend the public  
hearing or send a letter to a particular official indicating his or her  
objection; and .

- 1 d. Make a finding that the street or alley sought to be vacated is not  
2 suitable for any of the purposes listed under (b) of this subsection, and  
3 that the vacation is in the public interest.
- 4 3. No vacation shall be effective until the fair market value has been paid for  
5 the street or alley that is vacated. Moneys received from the vacation may  
6 be used by the city or town only for acquiring additional beach or water  
7 access, acquiring additional public view sites to a body of water, or  
8 acquiring additional moorage or launching sites.

9 *RCW 35.79.040 - Title to vacated street or alley.*

10 If any street or alley in any city or town is vacated by the city or town council, the  
11 property within the limits so vacated shall belong to the abutting property owners,  
12 one-half to each.

13 *RCW 35.79.050 - Vested rights not affected.*

14 No vested rights shall be affected by the provisions of this chapter.

15 *Adopted Bellingham City Council Vacation Policies*

16 It is the policy of the City of Bellingham to grant vacation of street right of ways  
17 when it is determined that such right of way is not needed presently or in the future  
18 for public access including vehicular, pedestrian, and visual access.

- 19 1. The right of way must be determined to be of no value to the circulation  
20 plan of the City either now or in the foreseeable future. The circulation plan  
21 is assumed to include vehicular, pedestrian, or other modes of  
22 transportation.
- 23 2. No vacation will be allowed if such action land locks any existing parcel, lot  
24 of record, or tract. Access to a right of way of less than 30 feet in width  
25 does not constitute adequate access. One ownership of all the lots on a right  
26 of way does not circumvent this policy and in this it will be necessary to  
27 vacate lots prior or together with the vacation action.
- 28 3. State law (R.C.W. 35.79). "No city or town shall be authorized to have  
29 authority to vacate such street, or alley, or any parts thereof if any portion  
30 thereof abuts on a body of salt or fresh water unless such vacation be sought  
to enable the city, town, port district, or state to acquire the property for port  
purposes, boat moorage, or launching sites, park, viewpoint, recreational, or  
educational purposes, or other public uses. This provision shall not apply to  
industrial zoned property".
4. Right-of-way adjacent or leading to any park, open space, view, natural  
area, or any other natural or man-made attraction should not be vacated.

- 1 5. The proposed vacation should be determined to be necessary to the public  
2 good either in terms of needed development or when such vacation will  
3 result in a better or more desirable situation. In some instances a more  
4 desirable situation may be a better road pattern in terms of safety, or when  
5 an exorbitant amount of land is devoted to unneeded right of way.
- 6 6. Notification of street vacation requests will be sent to the Hearing Examiner.  
7 The Examiner will schedule review. The Examiner will hold a public  
8 hearing and make recommendations to the City Council. The City Council  
9 makes the final decision.
- 10 7. The petition should contain the approval of all the abutting property owners  
11 and proof of ownership must accompany the petition.
- 12 8. Vacation is not mandatory even though 100% of the abutting owners request  
13 the vacation. (100% submittal)
- 14 9. Proposed or possible use of the vacated right of way is not relevant to City  
15 action (court opinion).
- 16 10. Easements for utilities will be retained as a matter of procedure unless such  
17 easement is specifically requested by the petitioners and approved by the  
18 City Engineer.

19 **Conclusions Based on Findings:**

- 20 1. Due primarily to topography and lack of need, the subject segment of Douglas  
21 Avenue would not likely ever be improved with street improvements. The TRC  
22 determined that the subject right-of-way is not needed for vehicular circulation;  
23 however, it has a history of being used as a pedestrian connection between trail  
24 segments. Subject to a condition requiring the Applicant to provide for a  
25 pedestrian public access easement through the southern half of the subject right-  
26 of-way, the proposed vacation would be consistent with the first of the City's  
27 vacation policies. *Findings 2, 4, 6, 15, and 16.*
- 28 2. Approval of the vacation petition would not land lock any parcel. All  
29 surrounding parcels currently enjoy access via public streets and/or alleys and  
30 front on adequate public utility lines. *Findings 2 and 9.*
3. The subject right-of-way does not abut a fresh or saltwater body. *Finding 10.*
4. The portion of right-of-way proposed for vacation does not provide existing  
access to any park, open space, view, natural area, or any other natural or man-  
made attraction and is not foreseeably needed to provide future access to any

1 park, open space, view, natural area, or any other natural or man-made  
2 attraction. *Findings 2 and 10.*

3 5. Approval of the vacation petition would provide the Applicant the opportunity  
4 to maximize density on the subject property, consistent with current City of  
5 Bellingham infill policies. It would also provide additional room that could be  
6 used to design vehicle maneuvering and parking improvements to serve  
7 increased density on the adjacent parcel. Subject to a condition to retain a  
8 public pedestrian access easement through the southern half of the right-of-way  
to be vacated, the requested vacation would be consistent with the general  
welfare of the public. *Findings 3, 4, 14, 15, and 16.*

9 6. Notice of the proposed vacation was provided consistent with the requirements  
10 of City code and City right-of-way vacation policies. The required hearing  
11 before the City's Hearing Examiner was noticed and conducted. The instant  
12 recommendation shall be forwarded to City Council for their consideration and  
final action. *Findings 13, 14, and 17.*

13 7. All abutting property owners signed the vacation petition, indicating consent.  
14 *Findings 4 and 11.*

15 8. Conditions of approval would ensure that appropriate easements are retained for  
16 private utilities and public pedestrian access. *Findings 5, 7, 15, 16, and 17.*

### 18 RECOMMENDATION

19 Based on the preceding findings and conclusions, the City's Hearing Examiner  
20 recommends that the requested vacation of the full width of Douglas Avenue abutting  
21 Lot 19, Block 8, Lysle's 1<sup>st</sup> Add to Fairhaven and Lot 2, Block 010, Fairhaven Land  
22 Co's 1<sup>st</sup> Add to Fairhaven, Bellingham, Washington **SHOULD BE APPROVED**  
subject to the following conditions:

- 23 1. Payment of \$18,000 as adequate compensation to the City for the subject right-  
24 of-way; and
- 25 2. Execution of private easements within the subject right-of-way for private utility  
26 providers and recording of said easements with the Whatcom County Auditor.
- 27 3. An easement for public access shall be retained within the southern portion of  
28 the subject right-of-way to be vacated, the exact dimensions of which shall be  
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determined by the Planning, Parks and Public Works Departments in coordination with the Petitioner. The purpose of the easement is to retain a public access function for future construction of a public connection between 21<sup>st</sup> Street and the alleyway directly to the west.

RECOMMENDED July 27, 2020.

**BELLINGHAM HEARING EXAMINER**



Sharon A. Rice