

**VAC2017-0001: List of Exhibits**

EXHIBIT 1 Planning and Community Development Department Staff Report including the following Attachments:

Attachment A	Vacation Area / Aerial / Public Utilities
Attachment B	Zoning Map
Attachment C	Project Narrative
Attachment D	TRC Letter to Applicant
Attachment E	Vacation Petition
Attachment F	Appraisal Summary
Attachment G	Draft Ordinance

**CITY OF BELLINGHAM  
HEARING EXAMINER STAFF REPORT  
July 8, 2020**

**PROJECT NO.:** VAC2020-0001

**PETITIONER:** 21<sup>ST</sup> AND TAYLOR, LLC

**OWNER:** City of Bellingham, 210 Lottie Street, Bellingham, WA 98225

**REQUEST**

The petitioner has requested the City of Bellingham vacate the full width of Douglas Avenue generally located between 21<sup>st</sup> Street and the alley immediately to the west. The subject right-of-way is approximately 7,000 square feet in size and is shown on Attachments A and B.

The petitioner intends to acquire the entire width of the right-of-way for access and parking alternatives for future development of his property abutting at 936 21<sup>st</sup> Street. The petitioner has reached an agreement with the abutting owner to the south to acquire the full width of Douglas Avenue and has compensated the City the full market appraised value specified in the appraisal summary. A full project narrative is provided on Attachment C.

**GENERAL INFORMATION**

- A. General location: Douglas Avenue between 21<sup>st</sup> Street and the alley abutting to the west. Area 1A, Happy Valley Neighborhood, residential multi-multiple zoning, 1,000 square feet per unit if lot size is greater than 10,000 and 2,000 square feet per unit if lot size is less than 10,000 but greater than 4,000 square feet. Abutting parcels owned by petitioner total approximately 10,500 square feet.
- B. Vacation Area: approximately 7,000 square feet.
- C. Street Description: Douglas Avenue in this location is unimproved. It slopes steeply from the alley down to 21<sup>st</sup> Street approximately 35 feet. It is vegetated with a mix of vegetation. Puget Sound Energy power lines traverse the north ½ of the right-of-way and Cascade Natural Gas has a 2" distribution line running within the southern ½ of the right-of-way. A City water main and a storm water main are also located within the subject the right-of-way. The subject right-of-way is more completely described in the applicant's project narrative in Attachment C.
- D. Vacation Description: Full width of Douglas Avenue abutting Lot 19, Block 8, Lysle's 1<sup>st</sup> Add to Fairhaven and Lot 2, Block 101, Fairhaven Land Co's 1<sup>st</sup> Add to Fairhaven, Bellingham, Washington. Please note that the south line of the Lysle Donation Claim constitutes the south line of Douglas Avenue in this location resulting in a tapered right-of-way that increases in width from west to east.

**STAFF / TRC RECOMMENDATION**

**City Staff and the Technical Review Committee (TRC) recommend approval of the vacation petition.** On November 6, 2019 the TRC determined that the subject right-of-way is not necessary for the future circulation or other beneficial needs of the City.

The TRC also recommended that an appraisal be conducted in order to determine fair market value in order to determine adequate compensation for the subject right-of-way. The TRC letter is provided on Attachment D.

## **BACKGROUND**

The petitioner has land use approvals to construct a 10-unit complex in two buildings on the parcels he owns - addressed as 936 21<sup>st</sup> Street. A consolidated multi-family design review, planned development and critical area permit was issued on June 7, 2018. (DR2018-0003 / PDP2018-0002 / CAP2018-0004)

A building permit application was submitted on June 28, 2018 but was never implemented and therefore expired on January 31, 2020.

At the time of this staff report the multi-family design portion of the consolidated permit has expired. The planned development and critical area portions are valid until June 7, 2023.

No other land use or building permit applications are currently under review.

## **CHRONOLOGY**

On November 6, 2019 the TRC provided the petitioner with its recommendation.

On March 18, 2020 the representative for the petitioner submitted a street vacation petition and paid the application fees. The petition is provided on Attachment E.

On April 22, 2020 the Planning and Community Development Department (PCDD) staff sent private utility providers notice of the vacation petition. Private utility companies were given until May 8, 2020 to respond. Puget Sound Energy, Comcast Cable and Cascade Natural Gas specified that they have facilities within the petitioned right-of-way. At the time of this staff report an easement has been executed with Puget Sound Energy and is recorded under AF#2020-0603747. The petitioner continues to coordinate with Comcast Cable and Cascade Natural Gas in order to execute similar easements.

No other private utility companies have notified the city.

On June 8, 2020 the City Council approved Resolution #2020-0014 setting a public hearing date of July 8, 2020 before the Hearing Examiner at 6:00 PM in the City Council chambers located at 210 Lottie Street in Bellingham.

On June 23, 2020 the notice of public hearing was published in the Bellingham Herald.

On June 26, 2020 notice was sent to abutting property owners and City staff which met the minimum requirement of at least ten (10) days prior to the hearing. On June 26, 2020 City staff posted the site with public notice signage.

## **PUBLIC COMMENT**

As of the date of this staff report (6/28/2020) no public comments have been received.

## **CITY VACATION POLICIES**

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

1. The right-of-way must be determined to be of no value to the circulation plan of the City either now or in the foreseeable future. The circulation plan is assumed to include vehicular, pedestrian, or other modes of transportation.

**STAFF RESPONSE:** The TRC determined that the subject right-of-way is not necessary for existing or future vehicular or pedestrian circulation needs within the immediate vicinity. Douglas Avenue is too steep to construct in this location.

2. No vacation will be allowed if such action land locks any existing parcel, lot of record, or tract. Access to a right-of-way of less than 30 feet in width does not constitute adequate access. One ownership of all the lots on a right-of-way does not circumvent this policy and in this it will be necessary to vacate lots prior or together with the vacation action.

**STAFF RESPONSE:** The proposed vacation will not land lock any parcels. The abutting parcel to the south at 1002 21<sup>st</sup> Street takes access from the same alley. Properties at 933, 935 and 939 20<sup>th</sup> Street take access directly from 20<sup>th</sup> Street via a driveway within the Douglas Avenue right-of-way west of the portion sought for vacation. This is clearly shown on the aerial at Attachment B.

3. State law (R.C.W. 35.79). "No city or town shall be authorized to have authority to vacate such street, or alley, or any parts thereof if any portion 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".

**STAFF RESPONSE:** The subject right-of-way to be vacated does not abut any fresh or salt-water.

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.

**STAFF RESPONSE:** The subject right-of-way is not adjacent to nor lead to any of these features.

5. The proposed vacation should be determined to be necessary to the public good either in terms of needed development or when such vacation will result in a better or more desirable situation. In some instances a more desirable situation may be a better road pattern in terms of safety, or when an exorbitant amount of land is devoted to unneeded right-of-way.

**STAFF RESPONSE:** The proposed vacation provides the abutting owner an opportunity to maximize density on his fee-simple owned parcels (370201-455252 370201-455247) and/or develop access and parking alternatives within the subject right-of-way. Utilities exist within the subject right-of-way. Retention of public and private easements across the full width of the right-of-way precludes development of buildings on it also.

6. Notification of street vacation requests will be sent to the Hearing Examiner. The Examiner will schedule review. The Examiner will hold a public hearing and make recommendations to the City Council. The City Council makes the final decision.

**STAFF RESPONSE:** The City Council passed a Resolution on June 8, 2020 that set a public hearing date of July 8, 202 before the Hearing Examiner at 6:00 PM in the City Council chambers at City Hall. (Resolution #2020-0014)

The date for the closed record hearing before the City Council is not set until after the Hearing Examiner issues her recommendation.

7. The petition should contain the approval of all the abutting property owners and proof of ownership must accompany the petition.

**STAFF RESPONSE:** The petitioner has submitted a signature from the abutting property owner at 1002 21<sup>st</sup> Street. These are provided on Attachment E.

8. Vacation is not mandatory even though 100% of the abutting owners request the vacation. (100% submittal)

**STAFF RESPONSE:** The petitioner will be acquiring the full width of the right-of-way.

9. Proposed or possible use of the vacated right-of-way is not relevant to City action (court opinion).

**STAFF RESPONSE:** The Petitioner's narrative is provided on Attachment C. Please also see the staff response to vacation policy #5.

10. Easements for utilities will be retained as a matter of procedure unless such easement is specifically requested by the petitioners and approved by the City Engineer.

**STAFF RESPONSE:** Easements will be retained and/or executed for all public and private utilities within the subject right-of-way.

## **ENVIRONMENTAL EVALUATION**

The subject vacation does not require SEPA review pursuant to WAC 197-11-800 (2) (i).

## **APPLICABLE SECTIONS OF THE BELLINGHAM MUNICIPAL CODE**

Bellingham Municipal Code 13.48.010: Street Vacations.

The TRC determined that an appraisal was required. An appraisal was conducted by Wm. T. Follis, LLC, Realtors on May 15, 2020. The appraisal concluded that the fair market value of the subject right-of-way is \$18,000. The appraisal summary is provided on Attachment F.

The petitioner intends to pay the appraised fair market value of the right-of-way prior to the public hearing date of July 8, 2020.

## **STAFF CONCLUSION & RECOMMENDATION:**

Staff concludes that the subject vacation petition is consistent with the vacation policies specified above. Staff recommends approval of the proposed vacation provided that the following

conditions are satisfied prior to the closed record hearing before the City Council on the subject vacation ordinance:

1. Payment of \$18,000 as adequate compensation to the City for the subject right-of-way; and
2. Execution of private easements within the subject right-of-way for private utility providers and recording of said easements with the Whatcom County Auditor.

Prepared By:



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Approved by:



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