

VAC2022-0002: List of Exhibits

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

Attachment A	Street Vacation Site Plan on Aerial Photograph and Petition
Attachment A-1	Initial Street Vacation Petition Site Plan
Attachment B	Utility / Zoning Map
Attachment C	TRC Letter to Applicant
Attachment D	Notice of Public Hearing
Attachment E	Site Plan / Shoreline Buffer
Attachment F	Appraisal Summary
Attachment G	Draft Ordinance

**CITY OF BELLINGHAM
HEARING EXAMINER STAFF REPORT
June 28, 2023**

PROJECT NO.: VAC2022-0002

PETITIONER: BOILER WORKS, LLC

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

REQUEST

Boiler Works, LLC (BWLLC) has submitted a street vacation petition to vacate the western 10-foot of 10th Street abutting lots 1-4, block 1 and lot 1 and the south half of lot 2, block 2, Town of Bellingham and generally, abutting the petitioner's property. The request does not include the portion of 10th Street that intersects with Fillmore Avenue and does not include the vacation of Fillmore Avenue. Please see Attachment A.

BWLLC is petitioning for vacation of the right-of-way to enable a future development project on the two parcels that they own. The petitioner cannot move forward with design and development plans for a future project if and until the vacation petition is approved. If the vacation petition is approved, subsequent development applications would be submitted to the City for review and permit decision. Such applications would be accompanied by an additional 30-day public comment period.

GENERAL INFORMATION

- A. General location: 10th Street between Taylor and Douglas Avenues and generally south of the Taylor Avenue Dock entry plaza.
- B. Specifically, the subject right-of-way is within Area 8 of the South Hill Neighborhood and is zoned commercial, waterfront, planned. Please see Attachment B.
- C. Vacation Area: the northern portion of 10th Street is 10-feet wide by 75-feet long and the southern portion of 10th Street is 10-feet by 200-feet long.
- D. Right-of-way Description: Currently, the subject portion of right-of-way is blackberry, gravel and pavement and where available, is used for informal public parking.
- E. Legal Description: the westerly 10-feet of 10th Street abutting lots 1-4, block 1 and lot 1 and the south half of lot 2, block 2, Town of Bellingham.

STAFF / TRC RECOMMENDATION

City Staff and the Technical Review Committee (TRC) recommend approval of the vacation petition without the retention of any public easements and subject to fair market value compensation to the City, as established by the City Council.

CHRONOLOGY

On April 21, 2021, the petitioner submitted a street vacation petition and narrative to the Planning and Community Development Department (PCDD). This initial street vacation petition request included a smaller section of 10th Street (same width), Fillmore Avenue west of 10th Street in exchange for certain privately owned aquatic tidelands and upland areas owned by the petitioner. The initial street vacation petition site plan is shown in Attachment A-1.

On May 26, 2021, the TRC reviewed the subject vacation petition. The TRC recommended denial of the vacation petition subject to certain conditions established in the City's letter dated July 7, 2021, which is provided on Attachment C. Essentially, the TRC recommended denial on the portion of the petition related to Fillmore Avenue. The TRC recommended that all of 10th Street abutting the petitioner's property be included in the request, subject to meeting certain conditions. The TRC also recommended that an appraisal be conducted in order to determine fair market value for the subject right-of-way. The TRC did not recommend accepting privately owned aquatic bed lands as compensation for the subject right-of-way.

During the remainder of 2021 and into 2022, the petitioner demonstrated that the other "improvement" related conditions in the 7-7-2021 TRC letter could be satisfied with a revised street vacation petition.

On December 22, 2022, and pursuant to the recommendation in the 7-7-2021 TRC letter, the petitioner submitted a revised street vacation petition that only included the western 10-feet of 10th Street abutting the petitioner's property.

On February 6, 2023, the PCDD circulated a notice of intent to vacate 10th Street to private utility providers. None of the private utility providers responded to the notice.

On January 17, 2023, the PCDD initiated the appraisal process for the subject right-of-way.

On March 16, 2023, a completed appraisal was submitted to the PCDD. The appraisal summary is provided on Attachment F.

On May 22, 2023, the City Council approved a resolution via the consent agenda setting the virtual public hearing date of June 28, 2023, before the Hearing Examiner at 6:00 PM.

On May 24, 2023, the Hearing Examiners office provided notice to property owners within 500-feet of the subject right-of-way and to representatives on the Mayor's Neighborhood Committee and Neighborhood Association Representatives.

On May 25, 2023, the PCDD posted two public notice signs at each end of the subject right-of-way. The public notice, affidavit and photographs of the posting locations is provided on Attachment D.

PUBLIC COMMENT

After the notice of public hearing was circulated, approximately 7 citizens sent emails to the PCDD staff person asking for additional information in order to provide public comment on the subject petition. The PCDD indicated to these individuals that this staff report would be made available approximately one-week prior to the public hearing and further specified that comments submitted between the release of the staff report and the public hearing would be forwarded to the Hearing Examiner for consideration.

CITY VACATION POLICIES

It is the policy of the City of Bellingham to grant vacation of rights-of-way 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 multi-modal circulation or utility needs within the immediate vicinity. The 10th Street right-of-way is 100-feet wide in this location so the remaining 90-feet can be utilized for multiple modes of transportation and circulation. Existing water and sewer public utility mains that would serve the site are not within the portion sought for vacation. Any future project on the site will be required to develop street improvements that include curb, gutter and sidewalk along the abutting right-of-way. Construction of the sidewalk would provide a safe route of travel between the Taylor Avenue Dock plaza (north end) and the trail entrance at Douglas Avenue (south end) which leads to Fairhaven.

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 that currently have frontage on or, abut 10th Street.

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 vacation petition is consistent with this policy. The subject right-of-way does not abut or lead directly to any waterbody. Please note that the original petition included a request to vacate Fillmore Avenue, west of 10th Street. As evidenced in the TRC letter on Attachment C, staff specified that a request to vacate Fillmore Avenue would not be consistent with this policy.

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: Please see the STAFF RESPONSE to policy #3 above.

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 subject right-of-way's highest and best use is to be combined with the abutting lots for future development. There will be 90-feet of right-of-way remaining if the vacation petition is approved. This remaining amount of width (west of the centerline of 10th street) allows a future project to meet street improvement standards in this location. In fact, in order for this street vacation petition to move forward, the petitioner was required to demonstrate that the necessary improvements are developable, as specified in the TRC letter.

Essentially, this street vacation petition has been requested because of shoreline buffer provisions established in BMC Title 22, Shorelines. Marine shoreline reach #10 is designated as urban conservancy and requires a 100-foot buffer in this location, as measured from the ordinary high-water mark of Bellingham Bay. An additional 5-foot setback is also required. This is shown on Attachment E.

After applying the buffer and setback, the remaining depth on the subject lots (without the vacation) was making it difficult to satisfy other code standards regarding parking dimensions, maneuverability and drive-lane width, not to mention what is actually *feasible* given the various sizes of vehicles. (Parking will be underground)

BMC 22 does not include provisions for buffer averaging and the petitioner did not desire to seek a shoreline variance to encroach upon the buffer and setback. Please note that a future project in this location intends to develop a narrow trail around the west side of the buildings footprints which *are* allowed to be developed in buffer and setback areas.

An additional 10-feet of depth would alleviate the need to seek variances, would provide a certain amount of topographical relief and would result in a public trail and viewpoint of Bellingham Bay along the west side of any development footprint.

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 in a closed record hearing.

STAFF RESPONSE: On May 22, 2023, the City Council passed a resolution that set a virtual / in-person hybrid public hearing date of June 28, 2023, before the Hearing Examiner at 6:00 PM.

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 street vacation petition includes signatures of property owners abutting the subject right-of-way that comprises 68% of the total frontage. The total lineal foot of frontage is 550-feet. Signors on the petition comprise 375-feet. $375 / 500 = .681$.

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 entire right-of-way.

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

STAFF RESPONSE: Future use of the subject right-of-way is described briefly in the REQUEST section above and with more detail in the STAFF RESPONSE to policy #5.

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

STAFF RESPONSE: Easements for public utilities will not be retained. The City has determined that there are no existing or planned public utilities within the subject right-of-way in order to facilitate future growth needs of the city. City staff did not receive responses from private utility companies during the notification period. If private utilities are discovered, execution of easements for or relocation of such utilities would be the sole responsibility of the petitioner.

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.

An appraisal has been prepared and submitted to the City and the petitioner. The summary is provided on Attachment F.

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 with the following condition:

1. Easements for public utilities shall not be retained;
2. If private utilities exist within the subject right-of-way, the petitioner shall be responsible for either securing easements for them or relocating them solely at the petitioner's expense; and
3. Compensation shall be provided for the subject right-of-way as established by the City Council.

Prepared By:



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