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

IN RE:

HE-23-PL-008

BOILER WORKS LLC, Petitioner

**FINDINGS, CONCLUSIONS, AND
RECOMMENDATION**

**The western 10 feet of 10th Street
between the south line of Taylor Avenue
and the north line of Douglas Avenue
except for that portion of 10th Street
that intersects Fillmore Avenue**

VAC2022-0002 / Street Vacation

SHARON RICE, HEARING EXAMINER

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends to the City Council that the requested vacation of the western 10 feet of 10th Street right-of-way generally located between Taylor and Douglas Avenues in Bellingham as described herein should be **GRANTED**.

SUMMARY OF RECORD

Request:

Ron Jepson and Rob Janicki, on behalf of Boiler Works LLC (Petitioner), requested vacation of the western 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, 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.

Hearing Date:

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on June 28, 2023. 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 June 30, 2023.

1 No in-person site visit was conducted, but the Examiner viewed the subject property
2 and its environs on Google Maps.

3 **Testimony:**

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

- 5 Steve Sundin, Senior Planner, Planning and Community Development Department
6 Carrie Veldman, Managing Director RJ Group, Applicant's Representative
7 Mike Keenan
8 Dick Porter
9 Steve Sanger

10 **Exhibits:**

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

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

- 13 A. Street Vacation Site Plan on Aerial Photograph and Petition
14 1. Initial Street Vacation Petition Site Plan
15 B. Utility / zoning map
16 C. Technical Review Committee letter to the Applicant, dated July 7, 2021
17 D. Notice of Public Hearing, issued May 23, 2023 and Certificate of
18 Posting, dated May 25, 2023
19 E. Site Plan / Shoreline Buffer
20 F. Appraisal Summary
21 G. Draft Street Vacation Ordinance

22 Exhibit 2 Applicant's Narrative prepared by The RJ Group, dated June 16, 2023

23 Exhibit 3 Public Comments:

- 24 a. Kim Hines email, dated June 11, 2023
25 b. Mary Chaney email, dated June 26, 2023
26 c. Tip Johnson, dated June 27, 2023
27 d. Tim Paxton email, dated June 27, 2023
28 e. Walt Ingram email, dated June 12, 2023
29 f. Randee Blackstone email, dated May 26, 2023

- g. Walt and Alicia Kochan email, dated May 26, 2023
- h. Candyce Fisher email, dated June 1, 2023
- i. Keith Kemplin email, dated June 4, 2023
- j. Daryl H email, dated June 4, 2023
- k. Sonja Max email, dated June 5, 2023
- l. Kim Hines email, dated June 11, 2023
- m. James Iverson email, dated June 16, 2023

Exhibit 4 Conceptual Building/Parking Garage Site Plan, submitted by Petitioner

After considering the testimony and exhibits submitted, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. Boiler Works LLC (Petitioner) requested vacation of the western 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, and generally abutting the Petitioner's property.¹ The area subject to vacation request is in two segments: the northern portion is 10 feet wide by 75 feet long and the southern portion is 10 feet by 200 feet long. The area requested for vacation excludes that portion of 10th Street that intersects with unimproved Fillmore Avenue and does not include Fillmore Avenue. *Exhibits 1 and 1.A.*
2. The subject right-of-way is in Area 8 of the South Hill Neighborhood, and is zoned commercial, waterfront, planned. *Exhibits 1 and 1.B.*
3. The Petitioner owns Parcels 3702010792480000 and 3702010792540000 on 10th Street, south of the Taylor Dock Boardwalk. The parcels abut 10th Street to the east, unimproved Douglas Avenue right-of-way to the south, Bellingham Bay to the west, and Boulevard Park/Taylor Dock Boardwalk to the north. The overall property, which includes three segregated areas of aquatic tidelands, is transected north/south by the Burlington Northern Santa Fe railroad right-of-way near its west boundary. East of the railroad right-of-way, Petitioner's

¹ The property is legally described as 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. *Exhibit 1.*

1 property is also transected east/west by the unimproved Fillmore Avenue right-
2 of-way. *Exhibits 1, 1.A, 1.A1, and 2; Google Maps site view.*

- 3 4. Bellingham Bay abutting the Petitioner's property is within Marine Shoreline
4 Reach #10 and is designated as Urban Conservancy shoreline, which requires a
5 100-foot buffer measured from the ordinary high-water mark of the Bay plus an
6 additional five-foot setback. There is a significant slope down to the water level
7 within the shoreline buffer. The shoreline buffer and setback occupy the
8 western two-thirds to three-quarters of Petitioner's property, making it difficult
9 to develop the property in compliance with zoning and street standards,
10 specifically those regulating parking dimensions, maneuvering room, and drive-
11 lane width. *Exhibits 1, 1.C, and 1.E.*
- 12 5. Along the Petitioner's property, the 10th Street right-of-way is 100 feet wide and
13 is improved with 40 feet of paved width in the eastern portion of the right-of-
14 way. The portion of right-of-way abutting the Petitioner's property contains
15 unmaintained scrub vegetation (predominantly blackberry), gravel, and
16 pavement. It is heavily used for informal public parking for visitors to the area,
17 including but not limited to those accessing the Boulevard Park and the South
18 Bay Trail. In its current condition, there are no sidewalks or other pedestrian
19 facilities along Petitioner's frontage, such that those parking and heading to the
20 trail/park must walk in the street. Because the parking is informal (not signed or
21 striped), visitors regularly park "haphazardly" rather than uniformly, either
22 perpendicular or parallel to the right-of-way. *Exhibits 1, 1.A, 1.A1, and 2;
23 Google Maps site view.*
- 24 6. Initially the Petitioner requested vacation of a different configuration that
25 included a shorter portion of the abutting 10th Street right-of-way and
26 approximately half of the Fillmore Avenue right-of-way between the two
27 portions of its property east of the railroad. *See Exhibit 1.A1.* Supporting an
28 earlier conceptual development proposal on Petitioner's property, this first
29 vacation request involved an offer to exchange the Petitioner's aquatic tidelands
30 and approximately the western half of its upland property east of the railroad for
the proposed vacation area, with the land exchange serving as at least partial
compensation for the vacated right-of-way. *Exhibits 1 and 1.A.*
7. The City's Technical Review Committee (TRC), the body charged with
reviewing right-of-way vacation requests, recommended denial of the portion of
the vacation petition involving Fillmore Avenue. State law establishes
limitations on right-of-way vacation, prohibiting vacation of "any portion of the
street or alley abuts a body of fresh or salt water unless: ... (b) [t]he city or town,

1 by resolution of its legislative authority, declares that the street or alley is ... not
2 suitable for any of the following purposes: Port, beach or water access, boat
3 moorage, launching sites, park, public view, recreation, or education..." *Exhibit*
4 *1.C, citing Revised Code of Washington (RCW) 35.79.035*. Because Fillmore
5 Avenue leads to Bellingham Bay, it presents an opportunity to provide public
6 view, park, or recreation amenities. The TRC determined that vacation of
7 Fillmore Avenue would not be consistent with state law or City vacation policies
8 3 and 4 (see conclusions of law, below, for City vacation policies). Regarding
9 the remainder of the right-of-way requested to be vacated and the Petitioner's
10 conceptual development proposal, the TRC letter requested more information
11 about: 1) how the proposed improvements would fit into the existing improved
12 portions of the 10th Street right-of-way and with other existing or potential future
13 private improvements (driveways / landscaping / etc.); and 2) information about
14 the potential interface between the public trail coming from the south (Hertz
15 project), the Petitioner's contemplated improvements to 10th Street, and the
16 design for the entrance into a proposed under-building garage. *Exhibit 1.C*.

17 8. On December 22, 2022, the Petitioner submitted the instant revised vacation
18 petition and a revised conceptual development proposal. The petition now under
19 consideration excludes vacation of any portion of the Fillmore Avenue right-of-
20 way and includes the full extent of the western 10 feet of 10th Street abutting the
21 Petitioner's property. In response to the TRC letter's request for demonstration,
22 the submitted conceptual site plan shows commercial and residential uses,
23 (approximately) 29 underground parking stalls on Petitioner's property for the
24 proposed improvements, 32 angle-in parking stalls along the 10th Street frontage
25 including ADA stalls, a widened sidewalk along the frontage connecting to
26 existing sidewalk in Boulevard Park, a public trail on Petitioner's property
27 waterward of the proposed buildings that would also connect to Boulevard Park
28 and a public overlook in the Fillmore Avenue right-of-way segment between
29 Petitioner's property segments. *Exhibits 1, 1.A, and 2*.

30 9. The petition asserts that, if approved, the additional 10 feet of depth would
obviate the need for shoreline variance and would result in private development
of a public trail and viewpoint overlooking Bellingham Bay along the west side
of any development footprint. The conceptual plan's underground parking to
serve the contemplated site development would avoid obstruction of waterward
views for upland property and avoid impacts to the slope in the shoreline buffer.
Exhibits 1.A, 2, and 4.

10. Of note, there is no actual development proposal currently submitted to the City,
as the Petitioner cannot proceed with design and development until is known

1 whether the vacation petition will be approved. If the vacation petition is
2 approved, subsequent development applications would be required, which would
3 undergo a full public process involving at least a 30-day public comment period.
4 *Exhibit 1.*

5 11. The Petitioner commissioned an appraisal, which in summary determined that
6 the combined value of the two right-of-way segments proposed for vacation is
7 \$46,400.00. *Exhibits 1.C and 1.F.*

8 12. In the course of its review of the initial proposal, the TRC determined that the
9 right-of-way subject to the vacation petition is not needed for existing or future
10 multi-modal circulation needs of the City. Any future project on Petitioner's
11 property would be required to construct frontage improvements including curb,
12 gutter, and sidewalk. Planning Staff noted that construction of sidewalk along
13 Petitioner's frontage would create a safe pedestrian route between the Taylor
14 Avenue Dock plaza and the South Bay Trail entrance at Douglas Avenue, which
15 leads to Fairhaven. The requested vacation would not land lock any parcels.
16 *Exhibits 1, 1.A, and 2.*

17 13. There are no existing or planned public utilities within the subject right-of-way,
18 and no easements for public utilities would need to be retained. In response to
19 notice of the petition and request for comment, the City did not receive
20 responses from private utility companies prior to the public hearing. If private
21 utilities are discovered, execution of easements for or relocation of such utilities
22 would be the sole responsibility of the Petitioner. *Exhibit 1.*

23 14. The vacation petition is accompanied by evidence of the Petitioner's ownership
24 of the land abutting the right-of-way sought to be vacated. The petition is
25 signed by the owners of 100% of the land abutting the west side of the subject
26 right-of-way segment and by the owners of 36.4% of the land abutting the east
27 side of the right-of-way segment. Planning Staff submitted that the revised
28 vacation petition is consistent with the recommendations in the TRC letter and
29 forwarded the Planning Department's position that the highest and best use of
30 the subject right-of-way is to be combined with the abutting lots for future
development. If vacation is approved, 10th Street would have 90 feet of right-of-
way width remaining along the Petitioner's property, which would leave ample
room west of the centerline to allow future development to meet full street
improvement standards. *Exhibits 1 and 1.A; Steve Sundin Testimony.*

- 1 15. Notice of the June 28, 2023 hybrid open record public hearing on the revised
2 petition was issued May 23, 2023. On May 24, 2023, notice was mailed to
3 owners of property within 500 feet of the subject right-of-way, and sent by both
4 mail and email to representatives of the Mayor's Neighborhood Advisory
5 Committee and Neighborhood Associations. On May 25, 2023, the PCDD
6 posted two public notice signs at each end of the subject right-of-way. *Exhibits*
7 *1 and 1.D.*
- 8 16. Thirteen public comments were submitted by email prior to the hearing, and
9 three people who attended the public hearing provided testimony. Several of the
10 comments requested additional information about the right-of-way vacation
11 process and/or the development proposal. Concerns expressed included: that the
12 area is heavily used by trail and park visitors and the entire right-of-way should
13 remain available to the public; that the vacation and/or future development of
14 the Petitioner's property would reduce or otherwise negatively impact the
15 public's ability to use 10th Street for parking; that electric vehicle charging
16 stations and parallel street parking installed with other recent development in the
17 vicinity had cost the public approximately 10 parking stalls in an area that is
18 already oversubscribed for parking; that the City shouldn't agree to give up
19 valuable public right-of-way without a binding agreement that requires the
20 Petitioner to install the public frontage improvements described in the materials;
21 testimony disputing that the public parks "haphazardly" along the site frontage
22 and asserting that the vast majority of public parkers conscientiously share the
23 space available; concerns about people car and van camping (living) in vehicles
24 in the area; that maybe the developer should be limited to whatever uses they
25 can make of the property without discretionary approvals; concern that future
26 development of the site would be allowed to rely on already heavily used street
27 parking; a suggestion that the City allow reduction in shoreline setback in place
28 of the vacation request; and concern that future development of the site will
29 obstruct views from upland properties. One comment was in favor of approving
30 the vacation. *Exhibit 3; Testimony of Mike Keenan, Dick Porter, and Steve
Sanger.*
17. In response to public comment, Planning Staff further explained that when a
petition for right-of-way vacation is submitted, City Staff from the Police, Fire,
Parks, Public Works, and Planning Departments all meet expressly to consider
whether the vacation would impact the public benefit and to determine whether
the right-of-way in question has value for the City for circulation, utility
extension, or access to a waterbody or park, open space, view, natural area, or
any other natural or man-made attraction to which public access should be
maintained. In this case, in questioning whether the proposal could negatively

1 impact the public, the TRC required the Petitioner to demonstrate that all
2 frontage improvements could still be built without the 10 feet of right-of-way.
3 The revised petition and conceptual plan satisfied the City that all desirable and
4 Code-required frontage improvements can be provided within the resulting 90-
5 foot width. Also, Staff underscored the distinction between the instant vacation
6 request and any future development proposals, reiterating that future
7 development would be required to undergo the full process required in code and
8 would necessarily provide public comment opportunities. Staff asserted that no
9 development would be allowed that did not provide all required frontage
10 functions. Planning Staff indicated that Parks Staff is particularly concerned
11 about making a trail connection where now pedestrians must walk in 10th Street
12 to get to the trailhead at Douglas Avenue, and that Parks Staff has reviewed the
13 conceptual development plan and indicated that a sidewalk connection would be
14 acceptable and would be an improvement in public safety over the existing
15 condition. Regarding whether the vacation could potentially “cost” any parking
16 spaces that are available currently, Staff noted that future proposed development
17 would be required to achieve approximately a net zero change to number of
18 existing parking stalls. Addressing the public’s suggestion that the City needs to
19 make the Petitioner sign a legally binding agreement to provide the frontage
20 improvements prior to granting vacation, Staff testified that such an arrangement
21 would not be consistent with standard City practice, and that future development
22 would be required to provide all Code-required parking, pedestrian, and other
23 frontage improvements. Having heard all testimony, Staff maintained their
24 recommendation for approval of the vacation petition subject to the conditions
25 in the staff report. *Steve Sundin Testimony.*

- 19 18. In response to public comment, the Petitioner’s representative agreed with
20 Planning Staff’s responses, submitting that it is possible future development
21 would result in a net increase in parking along the site frontage. The
22 representative also agreed and acknowledged that any future development, by
23 the Petitioner or any successor in interest, would trigger the same frontage
24 improvement standards, which means that approving the vacation before
25 knowing what the future development will be does not open up the possibility of
26 detriment to the public interest. *Carrie Veldman Testimony.*

26 CONCLUSIONS

27 **Jurisdiction:**

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

1 **Criteria for Review:**

2 City Vacation Regulations

3 *BMC 13.48.010 - Hearing - Application fee.*

4 As a condition precedent to the city's consideration of a resolution setting a date for
5 a public hearing on the question of whether a city street should be vacated, the
6 petitioner therefor shall submit an application accompanied by a fee in the amount
7 set by city council resolution and the petitioner shall pay to the city an amount equal
8 to the cost of preparation of an appraisal of the area proposed to be vacated and the
9 city shall order such appraisal. An appraisal, and payment therefor, may not be
10 required when, in the judgment of the director of planning and community
11 development, it is not needed to determine the fair market value of the area to be
12 vacated.

13 *BMC 13.48.020 - Payment for vacation.*

14 Unless otherwise specifically provided by the city council in the street vacation
15 ordinance, such ordinance shall provide for the payment of compensation by the
16 petitioner of an amount equal to one-half the appraised value of the area proposed
17 for vacation. The city council shall have final authority to determine the appraised
18 value.

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

24 State Vacation Requirements

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

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

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

2 Upon the passage of the resolution the city or town clerk shall give twenty days'
3 notice of the pendency of the petition by a written notice posted in three of the most
4 public places in the city or town and a like notice in a conspicuous place on the
5 street or alley sought to be vacated. The said notice shall contain a statement that a
6 petition has been filed to vacate the street or alley described in the notice, together
7 with a statement of the time and place fixed for the hearing of the petition. In all
8 cases where the proceeding is initiated by resolution of the city or town council or
9 similar legislative authority without a petition having been signed by the owners of
10 more than two-thirds of the property abutting upon the part of the street or alley
11 sought to be vacated, in addition to the notice hereinabove required, there shall be
12 given by mail at least fifteen days before the date fixed for the hearing, a similar
13 notice to the owners or reputed owners of all lots, tracts or parcels of land or other
14 property abutting upon any street or alley or any part thereof sought to be vacated,
15 as shown on the rolls of the county treasurer, directed to the address thereon shown:
16 PROVIDED, That if fifty percent of the abutting property owners file written
17 objection to the proposed vacation with the clerk, prior to the time of hearing, the
18 city shall be prohibited from proceeding with the resolution.

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

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

25 If the legislative authority determines to grant the petition or any part thereof, such
26 city or town shall be authorized and have authority by ordinance to vacate such
27 street, or alley, or any part thereof, and the ordinance may provide that it shall not
28 become effective until the owners of property abutting upon the street or alley, or
29 part thereof so vacated, shall compensate such city or town in an amount which
30 does not exceed one-half the appraised value of the area so vacated. If the street or

1 alley has been part of a dedicated public right of way for twenty-five years or more,
2 or if the subject property or portions thereof were acquired at public expense, the
3 city or town may require the owners of the property abutting the street or alley to
4 compensate the city or town in an amount that does not exceed the full appraised
5 value of the area vacated. The ordinance may provide that the city retains an
6 easement or the right to exercise and grant easements in respect to the vacated land
7 for the construction, repair, and maintenance of public utilities and services. A
8 certified copy of such ordinance shall be recorded by the clerk of the legislative
9 authority and in the office of the auditor of the county in which the vacated land is
10 located. One-half of the revenue received by the city or town as compensation for
11 the area vacated must be dedicated to the acquisition, improvement, development,
12 and related maintenance of public open space or transportation capital projects
13 within the city or town.

14 *RCW 35.79.035 - Limitations on vacations of streets abutting bodies of water -*
15 *Procedure.*

- 16 1. A city or town shall not vacate a street or alley if any portion of the street or
17 alley abuts a body of fresh or saltwater unless:
 - 18 a. The vacation is sought to enable the city or town to acquire the property
19 for port purposes, beach or water access purposes, boat moorage or
20 launching sites, park, public view, recreation, or educational purposes,
21 or other public uses;
 - 22 b. The city or town, by resolution of its legislative authority, declares that
23 the street or alley is not presently being used as a street or alley and that
24 the street or alley is not suitable for any of the following purposes: Port,
25 beach or water access, boat moorage, launching sites, park, public view,
26 recreation, or education; or
 - 27 c. The vacation is sought to enable a city or town to implement a plan,
28 adopted by resolution or ordinance, that provides comparable or
29 improved public access to the same shoreline area to which the streets or
30 alleys sought to be vacated abut, had the properties included in the plan
not been vacated.
2. Before adopting a resolution vacating a street or alley under subsection
(1)(b) of this section, the city or town shall:
 - a. Compile an inventory of all rights-of-way within the city or town that
abut the same body of water that is abutted by the street or alley sought
to be vacated;
 - b. Conduct a study to determine if the street or alley to be vacated is
suitable for use by the city or town for any of the following purposes:

1 Port, boat moorage, launching sites, beach or water access, park, public
2 view, recreation, or education;

3 c. Hold a public hearing on the proposed vacation in the manner required
4 by this chapter, where in addition to the normal requirements for
5 publishing notice, notice of the public hearing is posted conspicuously
6 on the street or alley sought to be vacated, which posted notice indicates
7 that the area is public access, it is proposed to be vacated, and that
8 anyone objecting to the proposed vacation should attend the public
9 hearing or send a letter to a particular official indicating his or her
10 objection; and

11 d. Make a finding that the street or alley sought to be vacated is not
12 suitable for any of the purposes listed under (b) of this subsection, and
13 that the vacation is in the public interest.

14 3. No vacation shall be effective until the fair market value has been paid for
15 the street or alley that is vacated. Moneys received from the vacation may
16 be used by the city or town only for acquiring additional beach or water
17 access, acquiring additional public view sites to a body of water, or
18 acquiring additional moorage or launching sites.

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

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

23 *RCW 35.79.050 - Vested rights not affected.*

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

25 *Adopted Bellingham City Council Vacation Policies*

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

- 29 1. The right of way must be determined to be of no value to the circulation
30 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.
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

1 of way does not circumvent this policy and in this it will be necessary to
2 vacate lots prior or together with the vacation action.

- 3 3. State law (R.C.W. 35.79). "No city or town shall be authorized to have
4 authority to vacate such street, or alley, or any parts thereof if any portion
5 thereof abuts on a body of salt or fresh water unless such vacation be sought
6 to enable the city, town, port district, or state to acquire the property for port
7 purposes, boat moorage, or launching sites, park, viewpoint, recreational, or
8 educational purposes, or other public uses. This provision shall not apply to
9 industrial zoned property".
- 10 4. Right-of-way adjacent or leading to any park, open space, view, natural
11 area, or any other natural or man-made attraction should not be vacated.
- 12 5. The proposed vacation should be determined to be necessary to the public
13 good either in terms of needed development or when such vacation will
14 result in a better or more desirable situation. In some instances, a more
15 desirable situation may be a better road pattern in terms of safety, or when
16 an exorbitant amount of land is devoted to unneeded right of way.
- 17 6. Notification of street vacation requests will be sent to the Hearing Examiner.
18 The Examiner will schedule review. The Examiner will hold a public
19 hearing and make recommendations to the City Council. The City Council
20 makes the final decision.
- 21 7. The petition should contain the approval of all the abutting property owners
22 and proof of ownership must accompany the petition.
- 23 8. Vacation is not mandatory even though 100% of the abutting owners request
24 the vacation. (100% submittal)
- 25 9. Proposed or possible use of the vacated right of way is not relevant to City
26 action (court opinion).
- 27 10. Easements for utilities will be retained as a matter of procedure unless such
28 easement is specifically requested by the petitioners and approved by the
29 City Engineer.

30 **Conclusions Based on Findings:**

1. The right-of-way has been determined to be of no value to the circulation
plan of the City either now or in the foreseeable future. *Findings 12, 14,
and 17.*
2. No parcel would be land locked by approval. *Finding 12.*

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- 3. The instant request does not include vacating any part of a right-of-way that abuts a waterbody. *Findings 7 and 8.*
- 4. Approval would not vacate any part of a right-of-way that leads to any park, open space, view, natural area, or any other natural or man-made attraction. *Findings 7 and 8.*
- 5. The Petitioner has demonstrated that full City standard frontage improvements can be provided within the resulting 90-foot width, and that vacation facilitate development of the abutting property in a manner that would forward the interests of the City as expressed in the zoning code, such that approval of the vacation would result in a better or more desirable situation. *Findings 8, 9, 10, 11, 12, 16, 17, and 18.*
- 6. The required public hearing was conducted June 28, 2023, and the instant document constitutes the recommendation of the City’s Hearing Examiner to the City Council. *Finding 15.*
- 7. The petition is signed by and thus indicates approval of the owners of 100% of the land abutting the west side of the subject right-of-way segment and by the owners of 36.4% of the land abutting the east side of the right-of-way segment. The required proof of ownership is attached to the petition. *Finding 14.*
- 8. The Petitioner acknowledged that vacation is not mandatory even though 100% of the abutting owners request the vacation.
- 9. While the proposed future development of the vacated right-of-way is not considered relevant to City action on the petition, the conceptual plan submitted by the Petitioner demonstrates that all required public amenities can be provided in the 90-foot right-of-way section if approval is granted. Improvements facilitated by vacation approval would include – at a minimum – widened sidewalk along the 10th Street frontage capable of serving as a link to the trails at Douglas Avenue that would improve pedestrian safety over the existing condition and net zero change in on-street parking stall count. *Findings 8, 9, 16, 17, and 18.*
- 10. No utilities are known to exist in the requested vacation area, and Planning Staff recommended that no easements be retained. Should any private utilities become known in the vacation area, their relocation or other

1 appropriate disposition would be the responsibility of the Petitioner, and not
2 the City. *Finding 13.*

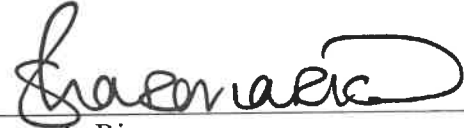
3
4 **RECOMMENDATION**

5 Based on the preceding findings and conclusions, the City's Hearing Examiner
6 recommends that the requested vacation of the western 10 feet of 10th Street right-of-
7 way as described herein **SHOULD BE APPROVED** subject to the following
8 conditions:

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

15 RECOMMENDED July 18, 2023.

16 **BELLINGHAM HEARING EXAMINER**

17 

18
19 Sharon A. Rice