

**RECORD OF PROCEEDINGS OF
THE HEARING EXAMINER
CITY OF BELLINGHAM**

HYBRID HEARING

WEDNESDAY, JUNE 28, 2023

6:00 P.M.

CITY COUNCIL CHAMBERS

CALL TO ORDER: The hybrid hearing of the Hearing Examiner was called to order.

ROLL CALL: Staff Members Present: Steve Sundin, Senior Planner (via Zoom)
Kathy Bell, Senior Planner
Recording Secretary: Kristina J. Bowker

1. **VAC2022-0002: A public hearing to consider a Street Vacation Petition for 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.**

Commercial, Waterfront, Planned zoning designation. Ron Jepson and Rob Janicki, petitioners; Boiler Works LLC, owner. South Hill Neighborhood, Area 8.

Hearing Examiner – Calls to order the land use calendar. She is an attorney who works as a Hearing Examiner for 10 jurisdictions up and down the I-5 corridor. Appointed by the City Council as the presiding official. This hearing is being conducted both virtually on Zoom and in-person in the City Council Chambers. All staff and applicants are panelists and members of the public are invited to attend as they choose. All members of the public are Zoom attendees, until the public comment period. City staff prepared participation instructions for this virtual hearing. This is the one fact-finding hearing to determine the evidence that the decision will be based upon. The hearing is being video and audio recorded in the Zoom platform. Zoom participants will keep their audio muted, until they are called upon to testify. Please silence your phones, speak slowly and clearly, and make verbal references to any exhibits (ie: the exhibit number and description). If there are any disruptions, the audio will be muted and/or removed from the meeting if necessary. The chat function has been disabled. It will not be part of the legal record, but it is part of the public record and subject to disclosure. If we become disconnected for any reason, try to reconnect to the original meeting invite, and then check your email for a new email. If we are unable to reconnect, then we will notify everyone of a new hearing as soon as possible.

Land use hearings are required to appear be fair and be fair. She is an impartial decision maker with no personal or professional interests in Bellingham. She is not a City of Bellingham employee. The applicant bears the burden of proof and must demonstrate that the criteria have been met. If anyone has grounds to challenge her impartiality, you must bring it up at tonight’s hearing at your earliest opportunity. Permits are not approved by consensus or popularity, but by demonstration of evidence that the permit criteria can be satisfied. Try to focus your testimony on the approval criteria. Testimony

tonight will be in the following order: the applicant, then the City's presentation, then the public comment, at the conclusion of comment, staff/applicant will respond. Please state and spell your name prior to testifying. She will swear in staff and those wishing to comment individually. If you are listening by phone and want to testify, then you will need to do so during the public comment period. She will issue a written decision in 10 business days from the close of the record. She will go over the post-hearing schedule at the conclusion of the hearing.

We are holding this hearing on behalf of the City Council. She will issue a recommendation to them and they will make the final decision.

The Planning Staff report is labeled as Exhibit 1 with Attachments A – G. Exhibit 2 is the Applicant's narrative and Exhibit 3 is the Public Comment. They are admitted in the record.

APPLICANT PRESENTATION:

Carrie Veldman, The AJ Group, (sworn in) – Represents the ownership of this vacation request. She provided the narrative letter (Exhibit 2) with compliance narratives for each of the City's vacation policies. She did review the staff report and agrees with their findings. Here for any questions.

Hearing Examiner – Could we have a little bit of testimony on the site constraints that are driving this request and reason for the vacation request? Can you give a little description of the area?

Carrie Veldman – There are two parcels under the same ownership, just south of a very popular trail connection, the boardwalk and Boulevard Park. The trail leads to Fairhaven. This property was previously owned by Boiler Works, an industrial manufacturer. The property is currently vacant and fenced-off. It is on the shoreline above the Burlington Northern Railroad. There is steep slope on the site. The parcels include tidal lands and fronts on 10th Street. Currently folks park haphazardly along that right-of-way for access to Fairhaven and Boulevard Park. There are residents across the street. The right-of-way is 100' wide, with about 40' of paving and a gravel shoulder. They are requesting westerly 10' of the right-of-way for their parking for a future residential housing development. The parcel is zoned commercial. The 10' would allow them to remove out of the shoreline setback (100') and the steep slope, pushing a little farther east without interfering with any vehicle or pedestrian circulation. This development would trigger frontage improvements to 10th Street for pedestrian safety and provide public parking, with clear separation. They will provide residential parking for their project below-grade. The City has identified that this proposal does not interfere with any future right-of-way circulation plans. The Fillmore Avenue right-of-way, which runs perpendicular to 10th Street, would remain unimproved as open space, which is consistent with WA State Code. This proposal would allow a potential plaza or a public overlook and a view corridor for those neighbors across the street.

Hearing Examiner – Any discussion about future development is conceptual at this point. Tonight's hearing is about the street vacation itself. Looking at the site plan (Attachment E), the two red/orange rectangles are the areas requested to be vacated? We don't have

building plans yet, but any structures that would be built on these two parcels would be built east of or to the right of that shoreline setback?

Carrie Veldman – Correct. We do not have any building plans at this point in time. Those buildable areas are east of the 100’ Ordinary High Water Mark setback, given the vacation of the 10th Street right-of-way.

Hearing Examiner – The letter from TRC asks the applicant to demonstrate that those frontage improvements could be developed even if this right-of-way vacation weren’t granted. The pedestrian trail that’s being discussed is waterward of the proposed building envelopes?

Carrie Veldman – A portion of it is. The waterward portion, in the Fillmore right-of-way, and then would jog east along 10th Street.

Hearing Examiner – There will be a pedestrian path along the frontage of the southern parcel as well?

Carrie Veldman – Yes, for that southern parcel.

Hearing Examiner – One primary public concern is interruption to pedestrian access and parking along 10th Street. What impacts would the vacation petition have?

Carrie Veldman – The parking there is very busy on any given Saturday, and with this proposal it would become orderly and separated with some landscaping from the trail connection which would provide a designated area for pedestrians. Folks currently use the middle of 10th Street to go around the cars parked on the gravel. This proposal would create two designated areas for safety.

Hearing Examiner – Regarding the vacation area (Attachment A), she viewed the property on Google maps, which showed the entire frontage covered with parking.

Carrie Veldman – The proposed parking would be consistent with what you see north of their parcel fronting the boardwalk and Chrysalis Hotel.

STAFF PRESENTATION:

Steve Sundin, Senior Planner (sworn in) – There are a number of additional public comments for the record, some submitted before the staff report. He wants to ensure the people in the audience that Examiner Rice will consider all those comments. The vacated area (Attachment A), is on 10th which is a very unique right-of-way. It is used by lots of folks and cars. There was a lot of concern that the function of 10th would disappear. The vacation petition will allow a future project with an improvement that will separate bikes/pedestrians from cars. There are other projects in the works, 925 – 933 is a future townhome project and about 50 industrial work units further south, that will bring more to 10th. We need more formalized ways for people who use this corridor.

Hearing Examiner – The right-of-way width is 100'. On this graphic (Attachment A) the width is indicated between the light-colored lines is the whole right-of-way?

Steve Sundin – Yes, that reflects the full width of the right-of-way. That's maybe part of the concern, that the vacation would change that access, but the vacation right-of-way is away from where the road used today.

The vacation is consistent with the RCW 35.79 which talks about abutting bodies of water. A request for Fillmore Avenue was denied by TRC based on that portion of the RCW. The vacation is outside the 100' line from the Ordinary High Watermark and an additional 5' setback for the footpath. The City of Bellingham is one of the few municipalities that does not allow buffer averaging in marine shorelines. The applicant did not wish to pursue a shoreline variance.

The improvements to the north of the vacation are very formalized and this proposal would be similar. A future project would require curb, gutter and sidewalk. He wants folks to understand that this would take a similar shape in the future (Conceptual Site Plan, Exhibit 4). In a separate, future process the applicant will be seeking an easement to use underground Fillmore Avenue for parking for the project, similar to a project on McKenzie Avenue. On top of the underground parking would be a plaza or view corridor and the provision for on-street parking. Those public benefits would be provided as part of that future project.

Hearing Examiner – In the body of staff report, Page 3, the public notice is missing the affidavit of posting.

Steve Sundin – He will submit those as soon as we're done. Thank you for pointing that out.

Hearing Examiner – No other questions at this time. For public comment, go to the podium, state and spell your name for the record, provide an address and then take an oath. Staff and the Applicant will take note of any questions and they will respond to those after public comment is closed.

PUBLIC HEARING OPENED

PUBLIC TESTIMONY:

Mike Keenan, 811 10th Street (sworn in) – He lives across the street at the 10th & Taylor Condominiums and owns the Chrysalis Inn. He wants to know how many parking spaces we're actually going to lose south of the new charging stations on 10th. Those took two parking spaces.

He built the Chrysalis Inn was built in 2001 with 46 underground parking spots (8 or 9 above spots above), 45 rooms, a restaurant and a spa. 85% of their customers are locals. He has 110 employees, about 55 at any one time. Employees park underground between 9:00 a.m. to 4:00 p.m., then it's for hotel guests. He left the Inn at 5:20 p.m. tonight and he counted 21 cars south of the charging station. Altogether in the whole area were 75 cars parked. When the pier was built it really exacerbated the parking. Over the past 20 years, they've 10 or 12 parking spaces and the business has more than doubled. They are

in a tough spot for parking to maintain the business. Losing any more than 3 or 4 spaces would be a problem.

Dick Porter, 911 10th Street (sworn in) – He lives across the street from the northmost of the two parcels. We're talking about the vacation of the land today, not the Filmore piece, or the parking. Thinks we're getting ahead of the game. We're giving up valuable City property without a legal agreement for the applicants to make those improvements. He sees how valuable each inch of land is to the City. This is an official part of the South Bay Trail. As a park user it's not in his interest to give up that space right now. Most people park carefully in a diagonal way. There is space there and shouldn't be given up until there is an obligation from the applicant for the public improvements.

Steve Sanger, 928 11th Street, Apt. 4 – He lives above 10th Street, looking out to the west. He agrees with Dick Porter's comments about how important the street is. There is an important stretch of street and view that will disappear with the project is important too.

PUBLIC HEARING CLOSED

Steve Sundin – When a vacation petition is submitted to the City the TRC meets with representatives from Planning, Parks, Public Works, Legal, Police and Fire Departments. If it has any future value to the City, that is their number one criteria. We all consult not only our internal plans, policies and regulations, but look outward to the neighborhood plans. There was initially some question about the public benefit, so they have worked with the petitioner to provide that. We do not need this 10' of right-of-way. Mr. Porter is correct that 10th Street functions like the South Bay Trail and Parks desires a clear delineation between people and cars. We always anticipated that 10th Street would change but continue to provide opportunities for pedestrians to move. The Parks Department has an emphasis to provide a trail experience on trails, which will be an improved sidewalk in this area. We don't have a specific parking plan, but the conceptual plan has approximately 30 spaces south of the new EV charging station. They are trying to achieve a net-zero change in parking. We expect that formalized parking will increase the amount of parking. We want to do whatever we can to maintain a net-zero change in parking. The vacation is a separate action from the design and development plans and applications. The City has been very clear of what the requirements will be for this project if it moves forward. We typically don't provide those guarantees until there is a permit applied for. Those are typically things that are required or conditioned as part of the approval process.

Hearing Examiner – She believes the real concern is that the public believes that it's possible that if the vacation were approved, then the developer could go forward with a proposal that wouldn't provide those public features. Can you speak to that concern?

Steve Sundin – We have code that requires street improvements in BMC Titles 13 and 20. That's about as good of a guarantee as we have.

Hearing Examiner – If the vacation is approved and the development doesn't happen, is there harm to the public? The area is so valuable to the community. They're worried that the land itself matters.

Steve Sundin – The petitioner would be out the fair market value of the land. The fence that's there now would stay there. 10th Street would continue to function like it does now with haphazard parking and folks comingling with cars in the right-of-way.

Hearing Examiner – Any development that would occur on this property would be required to meet city code frontage standards?

Steve Sundin – That's correct.

Carrie Veldman – They counted 33 parking stalls and there would be no loss of stalls. The vacation is granted in conjunction with a public benefit. If the vacation is approved it triggers the street frontage improvements, the Fillmore overlook and the trail connection. The vacation enables something that is already provided for in the City code.

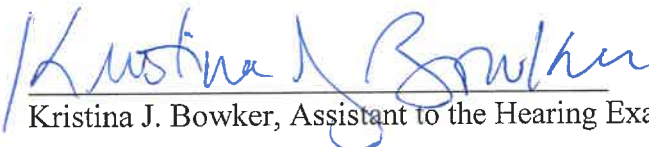
Hearing Examiner – She will take the full record under advisement and issue a recommendation to the City Council for their final decision. The post-hearing schedule is as follows: the record will be held open until the end of business on the 30th, two business days for public comments due to technical/access issues. If no public comments, then the decision will issue on July 17th (including the Independence Day holiday). If there are post-hearing comments, then the record will close on July 5th and decision on July 19th.

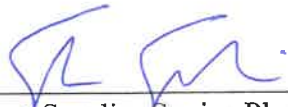
Hearing Examiner – Can we include the graphic shown at the hearing tonight?

Steve Sundin – Yes, he will submit the Conceptual Site Plan (Exhibit 4).

Hearing Examiner – Thank you all for participating in this community-building process.

ADJOURN: 7:30 PM

Prepared by: 
Kristina J. Bowker, Assistant to the Hearing Examiner

Reviewed by: 
Steve Sundin, Senior Planner