

VAC2023-0001: List of Exhibits

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

Attachment A	Vacation Area / Site Plan
Attachment B	Aerial / Utility / Zoning Map
Attachment C	TRC Letter to Applicant
Attachment D	Vacation Petition
Attachment E	Notice of Public Hearing and Photo Verification
Attachment F	Parties of Record
Attachment G	Petitioner's Responses to Policies
Attachment H	Subdivision Guarantee
Attachment I	Appraisal Summary
Attachment J	Draft Ordinance

**CITY OF BELLINGHAM
HEARING EXAMINER STAFF REPORT
July 12, 2023**

PROJECT NO.: VAC2023-0001
PETITIONER: BELLINGHAM SCHOOL DISTRICT
OWNER: City of Bellingham, 210 Lottie Street, Bellingham, WA 98225

REQUEST

The petitioner has petitioned the City of Bellingham to vacate an approximately 4,000 square feet (sq. ft) platted alley traversing the Columbia Elementary School north to south within Block 299, Supplemental Map of the Town of Whatcom. The portion of right of way is bordered by W North St to the north, Walnut St to the east, Utter St to the west, and a vacated portion of Jefferson St to the south, as shown in **Attachments A and B**.

Bellingham School District (BSD) submitted this petition in order to clear title on the underlying parcels prior to redesigning and redeveloping Columbia Elementary School. Currently, the subject right-of-way encumbers the overall parcel and as such would prohibit development within it.

GENERAL INFORMATION

- A. General location: Alley right-of-way traversing the campus of Columbia Elementary School north to south. The subject right-of-way is within Area 5 of the Columbia Neighborhood and is zoned Public with a School use qualifier. Please see **Attachment B**.
- B. Vacation Area: approximately 4,000 square feet.
- C. Right-of-Way Description: This subject portion of right-of-way is unimproved but is partially developed with school infrastructure (asphalt, building, roofed area) and partially used as a grassy playfield. There are no public or private utilities within the subject right-of-way.
- D. Legal Description: Platted alley within Block 299 of the Plat of Supplemental Map of the Town of Whatcom, Whatcom County, Washington.

STAFF / TRC RECOMMENDATION

City Staff and the Technical Review Committee (TRC) recommend approval of the vacation petition without the retention of any public easements because it is not necessary for the future circulation or other beneficial needs of the City.

Compensation for the subject right-of-way is not required because of the public benefit that Columbia Elementary School provides. However, the TRC recommended that an appraisal be conducted in order to determine fair market value that the City will be waiving as compensation. The TRC letter is provided in **Attachment C**.

CHRONOLOGY

November 18, 2022 the agent for the petitioner submitted a completed street vacation petition and paid the application fees. The petition is provided in **Attachment D**.

On December 1, 2022 the TRC reviewed the subject vacation petition and recommended approval of the vacation provided certain conditions would have to be satisfied.

On January 18, 2023 the TRC issued a letter to the petitioner recommending approval of the subject vacation petition.

On February 2, 2023 the Planning and Community Development Department (PCDD) staff sent private utility providers notice of the vacation petition. Private utility companies were given at least ten days to respond. Puget Sound Energy responded indicating that they do not have facilities within the subject right-of-way. No other private utility companies have responded to the City.

On May 22, 2023 the City Council approved Resolution No. 2023-07 via the consent agenda setting the public hearing date of July 12, 2022 before the Hearing Examiner at 6:00 PM. The public hearing will be held virtually and in person at City Hall Council Chambers.

On June 14, 2023 the Notice of Public Hearing was sent to the Bellingham Herald and circulated to City staff, the petitioner, property owners within 500' of the subject property, and the Mayor's Neighborhood Committee and Neighborhood Association Representatives. This meets the minimum requirement of at least twenty days prior to the hearing.

On June 15, 2023, PCDD staff posted the site with two public notice signs. A copy of the public notice and photographs of the posted site are provided in **Attachment E**.

PUBLIC COMMENT

As of the date of this staff report (7/3/2023) City staff received eight public comments in response to the public notice (**Attachment F**). Two of these comments were from utility providers stating that there were no facilities within the subject right-of-way. Four comments can be categorized as general clarification questions from the public about what defines a street vacation, with requests for additional site-specific information. One of the comments expressed opposition only if the vacation enables a land use change. The final comment expressed concern over the proposed vacation blocking alley access for property owners. It appears that this commenter may have misunderstood the street vacation location. Staff responded to these inquiries and comments via email correspondence by explaining that a street vacation involves a transfer of public to private property and by providing a site plan.

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.

See applicant responses to the following policies in **Attachment G**.

1. 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 is necessary for unencumbering the BSD's property and for potential redevelopment of the subject site. As stated in the application, the school already sits over a portion of the alley; therefore, vacating this alley results in a more desirable and consistent situation. This vacation will create greater flexibility for the property as a whole, regardless of future use or development. As the school provides a public benefit, this vacation creates a more desirable situation for the BSD and the public it serves.

2. 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. The subject right-of-way transects a BSD-owned property developed with an elementary school. Columbia Elementary School has been the only user of the right-of-way.

3. 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 existing parcel, lot of record, or tract. The petitioner owns Lots 1-16, which are bound by covenant under auditor's file #900709011 and abut the subject right-of-way (alley). All of these lots abut fully improved right of ways: Utter St, W North St, and Walnut St.

4. 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 a body of salt or fresh water.

5. 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 vacation petition is consistent with this policy. The subject right-of-way does not lead to any park, open space, view, natural area, or any other natural or man-made attraction. The alley does transect Columbia Elementary School, which is accessible to the public.

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 May 22, 2023 that set a public hearing date of July 12, 2023 before the Hearing Examiner at 6:00 PM. (Resolution #2023-07)

The date for the closed record hearing before the City Council is not set until after the Hearing Examiner issues their 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 owns all lots (1-16) abutting the subject right-of-way. The petition is provided in **Attachment D**, and the subdivision guarantee is included as **Attachment H**.

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

STAFF RESPONSE: The applicant is aware of this policy, as noted in **Attachment G**.

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 in **Attachment G**. Please also see the staff response to vacation policy #1.

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: There are no public or private utilities within the subject right-of-way. Future easements for public and private utilities are not anticipated within the subject right-of-way, therefore, easements will not be retained. If easements are necessary in the future the property owner shall be responsible for acquiring / executing those.

11. The following may be accepted by the City Council as appropriate trade for a Street Vacation: Payment, land, or major improvements to public facilities. In all cases, fair market value of the right of way and of the item to be traded shall be established. Proposed public improvements shall be reviewed and recommended by the affected City Department(s) and shall exceed the established value of the right of way proposed for vacation. Provision of such compensation or departmental approval of proposed improvements does not mandate street vacation approval by the City Council or Mayor.

STAFF RESPONSE: See discussion below.

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 Follis Appraisal Services on April 16, 2023. The appraisal concluded that the fair market value of the subject right-of-way is \$3,125. The appraisal summary is provided in **Attachment I**.

The petitioner is not required to pay the appraised fair market value of the right-of-way because of the public benefit that Columbia Elementary School provides. This is consistent with past street vacation petitions brought forward by the BSD.

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 conditions being satisfied:

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.

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