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

IN RE: BELLINGHAM SCHOOL DISTRICT, Petitioner Platted alley within Block 299 of the Plat of Supplemental Map of the Town of Whatcom VAC2023-0001 / Street Vacation	HE-23-PL-010 FINDINGS, CONCLUSIONS, AND RECOMMENDATION SHARON RICE, HEARING EXAMINER
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SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends to the City Council that the requested vacation of the platted alley within Block 299 of the Plat of Supplemental Map of the Town of Whatcom should be **GRANTED**.

SUMMARY OF RECORD

Request:

Bellingham School District (Petitioner) requested vacation of the platted alley within Block 299 of the Plat of Supplemental Map of the Town of Whatcom, Whatcom County, Washington. The subject right-of-way bisects the Columbia Elementary School campus from north to south between W. North Street and a vacated portion of Jefferson Street. Columbia Elementary School, which was constructed in 1925, sits over a portion of the unvacated right-of-way. The Petitioner seeks vacation of the alley to unencumber the school site to facilitate development of a new elementary school on the site.

Hearing Date:

The Bellingham Hearing Examiner conducted a virtual open record hearing on the request on July 12, 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 July 14, 2023.

1 **Testimony:**

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

3 Anya Gedrath, Planner

4 Brian Smart, Capital Projects Manager, Bellingham School District

5 Curtis Lawyer, Director of Capital Projects, Bellingham School District

6 Joy Dunne

7 Brad Roen

8 **Exhibits:**

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

10 Exhibit 1 Planning and Community Development Department Staff Report to the
11 Examiner with the following attachments:

12 A. Vacation Area / Site Plan

13 B. Aerial / Utility / Zoning Map

14 C. Technical Review Committee Letter to Petitioner

15 D. Vacation Petition

16 E. Notice of Public Hearing and Photo Verification

17 F. Public Comment

18 a. Richard Heiman, June 19, 2023

19 b. Dex Horton, June 15, 2023

20 c. Marilyn Stoops, June 15, 2023

21 d. Aaron Silverberg and Janette Rosebrook, June 15, 2023

22 e. Amy Hoover, Puget Sound Energy, February 13, 2023

23 f. Brian McConnell, Cascade Natural Gas Corp, February 6, 2023

24 g. Colleen Hyde, June 27, 2023

25 h. Brad Roen, June 28, 2023

26 G. Petitioner's Responses to Policies

27 H. Subdivision Guarantee

28 I. Appraisal Summary

29 J. Draft Ordinance

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

3
4 **FINDINGS**

- 5 1. Bellingham School District (Petitioner) requested vacation of the platted alley
6 within Block 299 of the Plat of Supplemental Map of the Town of Whatcom,
7 Whatcom County, Washington. The alley bisects the Columbia Elementary
8 School campus from north to south between W. North Street and a vacated
9 portion of Jefferson Street. Columbia Elementary School, which was
10 constructed in 1925, sits over a portion of the unvacated alley. The Petitioner is
11 seeking vacation of the alley to unencumber the school site to facilitate
12 development of a new elementary school on the site. *Exhibits 1, 1.B, 1.D, and*
13 *1.G.*
- 14 2. The right-of-way sought to be vacated is approximately 4,000 square feet in
15 area. The right-of-way is unimproved for access but is partially developed with
16 school infrastructure. The right-of-way has never been used for public access,
17 and such access is precluded by school campus fencing. There are no utilities
18 within the right-of-way. *Exhibits 1, 1.B, 1.G, and 1.I.*
- 19 3. The subject right-of-way is within Area 5 of the Columbia Neighborhood and is
20 zoned Public with a school use qualifier. *Exhibits 1 and 1.B.*
- 21 4. On January 18, 2023, after reviewing the right-of-way vacation petition, the
22 City's technical review committee (TRC) determined that the subject right-of-
23 way is not needed for any City circulation or utility purpose. *Exhibit 1.C.*
- 24 5. On February 2, 2023, Planning Staff sent notice of the vacation petition to the
25 private utility providers, which were asked to respond within 10 days to inform
26 the City whether they had facilities in the subject right-of-way. Puget Sound
27 Energy and Cascade Natural Gas responded, both indicating that they have no
28 facilities that would be affected by the right-of-way vacation. No other private
29 utility companies informed the City of any affected facilities. *Exhibits 1 and*
30 *1.F.*
6. A professionally prepared appraisal was conducted on February 21, 2023, which
determined that the fair market value of the subject right-of-way is \$3,125.00.
Exhibit 1.I. The TRC determined that compensation for the subject right-of-way
is not required due to the public benefit that the elementary school provides.
Consequently, no money was submitted prior to the hearing. However, because

1 payment of compensation is at the City Council’s discretion, Planning Staff
2 recommended as a condition of approval that compensation be provided “as
3 established by the City Council.” *Exhibit 1; page 6; Exhibit 1.C; Anya Gedrath
4 Testimony.*

- 4 7. Approval of the vacation would not land lock any parcels. The Petitioner owns
5 the lots abutting the subject right-of-way, which consist of Lots 1-8 and 9-16 of
6 Block 299, and the lots are bound by a Covenant to Bind Properties under
7 Auditor’s File No. 900709011. All of the lots abut fully improved rights of way,
8 including Utter Street, W. North Street, and Walnut Street. *Exhibits 1, 1.A, 1.G,
9 and 1.H.*
- 9 8. The subject right-of-way does not abut fresh or salt water and is not adjacent
10 to/does not lead to a park, open space, view, natural area, or any other natural or
11 man-made attraction. *Exhibits 1 and 1.G.*
- 12 9. The Petitioner owns all lots abutting the subject right-of-way and submitted
13 proof of ownership with the petition. *Exhibits 1.D and 1.H.*
- 14 10. Pursuant to WAC 197-11-800(2)(i) and Bellingham Municipal Code (BMC)
15 16.20.100.A, SEPA review is not required. *Exhibit 1; BMC 16.20.100.A.*
- 16 11. The petition for street vacation was submitted on November 18, 2022. On May
17 22, 2023, Bellingham City Council approved Resolution #2023-07 setting a date
18 of July 12, 2023 at 6:00 pm for consideration of the proposed vacation in a
19 public hearing before the Hearing Examiner. *Exhibit 1.* On June 14, 2023,
20 Planning Staff sent notice of the hearing to the *Bellingham Herald* for
21 publication and sent the notice to City Staff, the Petitioner, owners of property
22 within 500 feet of the subject right-of-way, the Mayor’s Neighborhood
23 Committee, and neighborhood association representatives. On June 15, 2023,
24 Planning Staff posted the site with two public notice signs. *Exhibits 1 and 1.E.*
- 25 12. Several public comment letters were submitted, most consisting of requests for
26 clarification or additional information, which were addressed by Planning Staff.
27 One commenter objected to the right-of-way vacation if it facilitated a change in
28 land use from public school or school administration. One commenter objected
29 to the right-of-way vacation due to concern that it would block access to
30 residential properties, but it appeared to Planning Staff that the commenter was
referring to a different alley, and Staff provided clarification to that commenter.
Exhibits 1 and 1.F. No other issues were raised during public comment at the
hearing; the public who attended indicated their questions had been satisfactorily

1 addressed and they did not wish to testify. *Comments of Joy Dunne and Brad*
2 *Roen.*

3 13. After considering all evidence in the record, Planning Staff continued to
4 recommend approval of the right-of-way-vacation subject to conditions ensuring
5 that easements for public utilities not be retained, that the Petitioner secure
6 easements for or relocate any private utilities within the subject right-of-way,
7 and that the Petitioner pay compensation as established by the City Council.
8 *Exhibit 1; Anya Gedrath Testimony.* The Petitioner waived objection to the
9 recommended conditions of approval. *Brian Smart Testimony.*

10 CONCLUSIONS

11 **Jurisdiction:**

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

14 **Criteria for Review:**

15 *City Vacation Regulations*

16 *BMC 13.48.010 - Hearing - Application fee.*

17 As a condition precedent to the city's consideration of a resolution setting a date for
18 a public hearing on the question of whether a city street should be vacated, the
19 petitioner therefor shall submit an application accompanied by a fee in the amount
20 set by city council resolution and the petitioner shall pay to the city an amount equal
21 to the cost of preparation of an appraisal of the area proposed to be vacated and the
22 city shall order such appraisal. An appraisal, and payment therefore, may not be
23 required when, in the judgment of the director of planning and community
24 development, it is not needed to determine the fair market value of the area to be
25 vacated.

26 *BMC 13.48.020 - Payment for vacation.*

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

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

Findings, Conclusions, and Recommendation

page 5

M:/HE/DATA/DECISIONS/Columbia Elementary ROW Vacation

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

1 State Vacation Requirements

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

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

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

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

RCW 35.79.030 - Hearing - Ordinance of vacation.

The hearing on such petition may be held before the legislative authority, before a
committee thereof, or before a hearing examiner, upon the date fixed by resolution
or at the time the hearing may be adjourned to. If the hearing is before a committee
the same shall, following the hearing, report its recommendation on the petition to
the legislative authority which may adopt or reject the recommendation. If the
hearing is held before a committee it shall not be necessary to hold a hearing on the

1 petition before the legislative authority. If the hearing is before a hearing examiner,
2 the hearing examiner shall, following the hearing, report its recommendation on the
3 PETITION to the legislative authority, which may adopt or reject the recommendation:
4 PROVIDED, That the hearing examiner must include in its report to the legislative
5 authority an explanation of the facts and reasoning underlying a recommendation to
6 deny a petition. If a hearing is held before a hearing examiner, it shall not be
7 necessary to hold a hearing on the petition before the legislative authority (*emphasis*
8 *added*).

9 If the legislative authority determines to grant the petition or any part thereof, such
10 city or town shall be authorized and have authority by ordinance to vacate such
11 street, or alley, or any part thereof, and the ordinance may provide that it shall not
12 become effective until the owners of property abutting upon the street or alley, or
13 part thereof so vacated, shall compensate such city or town in an amount which
14 does not exceed one-half the appraised value of the area so vacated. If the street or
15 alley has been part of a dedicated public right of way for twenty-five years or more,
16 or if the subject property or portions thereof were acquired at public expense, the
17 city or town may require the owners of the property abutting the street or alley to
18 compensate the city or town in an amount that does not exceed the full appraised
19 value of the area vacated. The ordinance may provide that the city retains an
20 easement or the right to exercise and grant easements in respect to the vacated land
21 for the construction, repair, and maintenance of public utilities and services. A
22 certified copy of such ordinance shall be recorded by the clerk of the legislative
23 authority and in the office of the auditor of the county in which the vacated land is
24 located. One-half of the revenue received by the city or town as compensation for
25 the area vacated must be dedicated to the acquisition, improvement, development,
26 and related maintenance of public open space or transportation capital projects
27 within the city or town.

28 *RCW 35.79.035 - Limitations on vacations of streets abutting bodies of water -*
29 *Procedure.*

- 30 1. A city or town shall not vacate a street or alley if any portion of the street or
31 alley abuts a body of fresh or saltwater unless:
 - 32 a. The vacation is sought to enable the city or town to acquire the property
33 for port purposes, beach or water access purposes, boat moorage or
34 launching sites, park, public view, recreation, or educational purposes,
35 or other public uses;
 - 36 b. The city or town, by resolution of its legislative authority, declares that
37 the street or alley is not presently being used as a street or alley and that
38 the street or alley is not suitable for any of the following purposes: Port,
39

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

3 c. The vacation is sought to enable a city or town to implement a plan,
4 adopted by resolution or ordinance, that provides comparable or
5 improved public access to the same shoreline area to which the streets or
6 alleys sought to be vacated abut, had the properties included in the plan
7 not been vacated.

8 2. Before adopting a resolution vacating a street or alley under subsection
9 (1)(b) of this section, the city or town shall:

10 a. Compile an inventory of all rights-of-way within the city or town that
11 abut the same body of water that is abutted by the street or alley sought
12 to be vacated;

13 b. Conduct a study to determine if the street or alley to be vacated is
14 suitable for use by the city or town for any of the following purposes:
15 Port, boat moorage, launching sites, beach or water access, park, public
16 view, recreation, or education;

17 c. Hold a public hearing on the proposed vacation in the manner required
18 by this chapter, where in addition to the normal requirements for
19 publishing notice, notice of the public hearing is posted conspicuously
20 on the street or alley sought to be vacated, which posted notice indicates
21 that the area is public access, it is proposed to be vacated, and that
22 anyone objecting to the proposed vacation should attend the public
23 hearing or send a letter to a particular official indicating his or her
24 objection; and

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

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

RCW 35.79.040 - Title to vacated street or alley.

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

1 *RCW 35.79.050 - Vested rights not affected.*

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

3 *Adopted Bellingham City Council Vacation Policies*

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

- 6 1. The right of way must be determined to be of no value to the circulation
7 plan of the City either now or in the foreseeable future. The circulation plan
8 is assumed to include vehicular, pedestrian, or other modes of
9 transportation.
- 9 2. No vacation will be allowed if such action land locks any existing parcel, lot
10 of record, or tract. Access to a right of way of less than 30 feet in width
11 does not constitute adequate access. One ownership of all the lots on a right
12 of way does not circumvent this policy and in this it will be necessary to
13 vacate lots prior or together with the vacation action.
- 13 3. State law (RCW 35.79). "No city or town shall be authorized to have
14 authority to vacate such street, or alley, or any parts thereof if any portion
15 thereof abuts on a body of salt or fresh water unless such vacation be sought
16 to enable the city, town, port district, or state to acquire the property for port
17 purposes, boat moorage, or launching sites, park, viewpoint, recreational, or
18 educational purposes, or other public uses. This provision shall not apply to
19 industrial zoned property."
- 19 4. Right-of-way adjacent or leading to any park, open space, view, natural
20 area, or any other natural or man-made attraction should not be vacated.
- 20 5. The proposed vacation should be determined to be necessary to the public
21 good either in terms of needed development or when such vacation will
22 result in a better or more desirable situation. In some instances a more
23 desirable situation may be a better road pattern in terms of safety, or when
24 an exorbitant amount of land is devoted to unneeded right of way.
- 24 6. Notification of street vacation requests will be sent to the Hearing Examiner.
25 The Examiner will schedule review. The Examiner will hold a public
26 hearing and make recommendations to the City Council. The City Council
27 makes the final decision.
- 27 7. The petition should contain the approval of all the abutting property owners
28 and proof of ownership must accompany the petition.

- 1 8. Vacation is not mandatory even though 100% of the abutting owners request
2 the vacation. (100% submittal)
- 3 9. Proposed or possible use of the vacated right of way is not relevant to City
4 action (court opinion).
- 5 10. Easements for utilities will be retained as a matter of procedure unless
6 vacation of such easement is specifically requested by the petitioners and
7 approved by the City Engineer.

8 **Conclusions Based on Findings:**

- 9 1. The subject right-of-way has no value to the circulation plan of the City.
10 *Findings 1, 2, and 4.*
- 11 2. Approval of the vacation petition would not land lock any parcel. *Finding 7.*
- 12 3. The subject right-of-way does not abut a fresh or saltwater body. *Finding 8.*
- 13 4. The subject right-of-way does not lead to any park, open space, view, natural
14 area, or any other natural or man-made attraction. *Findings 2 and 8.*
- 15 5. Approval of the vacation petition is necessary to the public good in that it would
16 allow for redevelopment of Columbia Elementary School. The subject alley
17 bisects the school property such that the existing school sits on a portion of the
18 alley. Vacating the alley would thus result in a better situation. *Findings 1, 12,
19 and 13.*
- 20 6. Notice of the proposed vacation was provided consistent with the requirements
21 of City code and City right-of-way vacation policies. The required hearing
22 before the City's Hearing Examiner was noticed and conducted. The instant
23 recommendation shall be forwarded to City Council for their consideration and
24 final action. *Finding 11.*
- 25 7. The Petitioner owns all parcels abutting the subject right-of-way and submitted
26 proof of ownership. *Findings 7 and 9.*
- 27 8. Easements for utilities would not be retained, because there are no utilities
28 within the right-of-way and the need for future utility easements is not
29 anticipated. *Findings 2, 4, and 5.*

RECOMMENDATION

Based on the preceding findings and conclusions, the City’s Hearing Examiner recommends that the requested vacation of the platted alley within Block 299 of the Plat of Supplemental Map of the Town of Whatcom, Whatcom County, Washington **SHOULD BE APPROVED** subject to the following conditions:

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.
3. Compensation shall be provided for the subject right-of-way as established by the City Council.

RECOMMENDED July 24, 2023.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice