

VAC2023-0002: List of Exhibits

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

Attachment A	Aerial of Vacation Area and Abutting Properties of Petitioner
Attachment B	Zoning and Utility Map
Attachment C	TRC Letter to Applicant
Attachment D	Vacation Petition
Attachment E	Notices of Public Hearing and Photo Verification
Attachment F	Public Comment
Attachment G	Petitioner's Narrative of Potential Future Use
Attachment H	Appraisal Summary
Attachment I	Draft Ordinance

CITY OF BELLINGHAM
HEARING EXAMINER STAFF REPORT
August 14, 2024

PROJECT NO.: VAC2023-0002

PETITIONERS: MORRIS AND DEBORAH ARTHUR

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

REQUEST

The petitioners have petitioned the City of Bellingham to vacate the full width of an unimproved alley (20' x 100') abutting properties that they own on each side as shown on **Attachment A**.

The petitioners intend on combining the vacated alley, hereafter "right-of-way," with the abutting lots that they own in to potentially develop a residential unit in some form.

GENERAL INFORMATION

- A. General location: The north-south oriented right-of-way fronts onto Donovan Street and is located between property addressed as 1601 4th Street and Lot 14, Block 130 Fairhaven Land Company's 2nd Add to Fairhaven. The subject right-of-way is within the residential transition 3 sub-area of the Fairhaven Urban Village. Please see **Attachment B**.
- B. Vacation Area: The right-of-way is approximately 20,000 square feet.
- C. Right-of-Way Description: This subject portion of right-of-way is unimproved. The remainder of the alley within the subject block does not provide additional access for any other property within the block but several properties have their own improvements within it. (patios, fences, gardens, etc.) There is a public water main in the eastern portion of the right-of-way and sewer main that T's from the south about halfway "up" the alley to the north. These are shown on **Attachment B**.
- D. Legal Description: Platted alley abutting Lots 14 and 15-18, Block 130, Fairhaven Land Company's 2nd Add to Fairhaven, Whatcom County, Washington.

STAFF / TRC RECOMMENDATION

City Staff and the Technical Review Committee (TRC) recommend approval of the vacation petition with conditions. The TRC letter is provided at Attachment C.

- 1. The petitioner paid the street vacation petition fee on December 20, 2023 and provided responses to the applicable policies. The petition and responses are at **Attachment D**.
- 2. An appraisal has been conducted and the fair market value for the right-of-way has been established. (Attachment H)
- 3. The petitioner is required to pay the full fair market value for the subject right-of-way prior to the closed record hearing before the City Council.
- 4. Easements for the public water and sewer main in the subject right-of-way will be retained. The petitioner may elect to relocate and/or reconfigure the mains in coordination with the Public Works Department and necessary easements would be similarly retained.

(Relocation and/or reconfiguration would be the sole responsibility of the petitioner.)
There are no private utilities within the right-of-way

CHRONOLOGY

Please note that this petition was submitted and the TRC letter was issued prior to the codification of street vacation policies and procedures in BMC 13.50 pursuant to Ordinance #2023-09-029.

On January 23, 2020, the TRC reviewed the subject vacation petition and recommended approval of the vacation with conditions. On April 8, 2020, the TRC letter was provided to the petitioner.

On December 4, 2023, the petitioner submitted a complete street vacation petition and on December 20, 2024 paid the street vacation petition fee of \$4,131.00.

On March 8, 2024, the PCDD provided notification to private utility providers regarding the subject petition. Private utility companies were given at least ten days to respond. The PCDD did not receive any responses from any private utility provider.

On July 15, 2024, the City Council approved Resolution No. 2024-16 via the consent agenda setting the Hearing Examiner public hearing date of August 14, 2024 at 6:00 PM. The public hearing will be held virtually and in person at City Hall Council Chambers.

On July 18, 2024, 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 Advisory Committee members and Neighborhood Association Representatives. This meets the minimum requirement of at least twenty days prior to the hearing.

On July 23, 2024, 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

One public comment was received and is provided on Attachment F. The public commenter indicated a need to retain trees within the Fairhaven Neighborhood. In this particular case, the review of tree retention and / or removal would be addressed at the time a future development permit was submitted.

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 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 provides a future opportunity for the petitioner to develop an additional housing unit in an established urban village transition area. Please also see the applicant's narrative on potential future use on **Attachment G**.

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 unimproved subject right-of-way is not necessary for existing or future vehicular or pedestrian circulation needs within the immediate vicinity. The right-of-way is unimproved and none of the lots in the subject block use the alley for access to their respective properties. (415 and 419 Wilson appear to use a small portion for parking and maneuvering.) The *entire* alley right-of-way with the block appears to host or be encumbered by approximately 7 larger conifer trees.

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 along any portion of the subject right-of-way. No portion of the unimproved right-of-way within the block is currently used for access for any of the lots. Several of the lots in the block have established informal use of the alley for gardens, fences and patio space. This is clearly shown in **Attachment A**.

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.

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 Resolution 2024-16 on July 15, 2024 that set the public hearing date for August 14th, 2024 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 a recommendation on the petition.

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 the abutting lots on each side of the alley. (Lot 14 is east of the alley and Lots 15-18 are west of the alley and addressed as 1601 4th Street.) The petition and tax statements are provided in **Attachment D**.

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 potential future use 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 private utilities within the subject right-of-way. A city water and sewer main exist within the alley and therefore easements will be required to be retained. If the petitioner desires to relocate or reconfigure said utilities the easement will correspond to the relocated utility in coordination with the Public Works Department.

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: The petitioner intends to pay the appraised fair market value for the right-of-way. 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. (Now repealed by BMC 13.50)

The TRC determined that an appraisal was required. An appraisal was conducted by Gustafson and Associates on March 30, 2024. The appraisal concluded that the fair market value of the subject right-of-way is \$46,400. The appraisal summary is provided in **Attachment H**.

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 existing and/or or relocated or reconfigured public water and sewer mains within the subject right-of-way shall be retained in coordination with the Public Works Department prior to the issuance of any development permit within the subject right-of-way and/or on Lot 14, Block 130, Fairhaven Land Company's 2nd Add to Fairhaven.
2. If said public utilities are to be relocated and/or reconfigured, they shall be done so solely at the petitioner's expense.
3. If private utilities are relocated and/or reconfigured, they shall be done so at the at the petitioner's sole expense; and
4. Compensation shall be provided for the subject right-of-way as established by the City Council.

Prepared and Approved by:



Steven Sundin, Senior Planner
Planning and Community Development Dept.