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

<p>IN RE:</p> <p>MORRIS and DEBORAH ARTHUR, Petitioners</p> <p>Platted alley abutting Lots 14 and 15-18, Block 130, Fairhaven Land Company's 2nd Add to Fairhaven</p> <p>VAC2023-0002 / Street Vacation</p>	<p>HE-24-PL-019</p> <p>FINDINGS, CONCLUSIONS, AND RECOMMENDATION</p> <p>SHARON RICE, HEARING EXAMINER</p>
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SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends to the City Council that the requested vacation of the platted alley abutting Lots 14 and 15-18 of Block 130, Fairhaven Land Company's 2nd Addition to Fairhaven, should be **GRANTED**.

SUMMARY OF RECORD

Request:
Morris and Deborah Arthur (Petitioners) requested vacation for the full width of the platted alley abutting Lots 14 and 15-18 of Block 130 of Fairhaven Land Company's 2nd Addition to Fairhaven. The subject right-of-way is adjacent to 1601 4th Street, Bellingham, Washington.

Hearing Date:
The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on August 14, 2024. 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 August 16, 2024. No in-person site visit was conducted, but the Examiner viewed the subject right-of-way and its surroundings on Google Maps.

1 **Testimony:**

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

3 Steve Sundin, Senior Planner, Planning and Community Development Department
4 Morris Arthur, Petitioner

5 **Exhibits:**

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

7 Exhibit 1 Staff Report to the Examiner, with the following attachments:

- 8 A. Street Vacation Site Plan on Aerial Photograph and Petition
9 B. Zoning and Utility Map
10 C. Technical Review Committee letter to the Petitioners, dated April 8,
11 2020
12 D. Vacation Petition and Use Narrative
13 E. Notices of Public Hearing and Posting Photograph
14 F. Public Comment from Charm Miller-Davis, dated August 4, 2024
15 G. Petitioner's Narrative and Future Use
16 H. Appraisal Summary
17 I. Draft ordinance

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

20
21 **FINDINGS**

- 22 1. Morris and Deborah Arthur (Petitioners) requested vacation of the full width of
23 the alley (subject right-of-way) legally described as follows:
24 Platted alley abutting Lots 14 and 15-18, Block 130, Fairhaven Land
25 Company's 2nd Addition to Fairhaven, Whatcom County, Washington.
26 *Exhibits 1, 1.A, and 1.D.* The subject right-of-way is adjacent to 1601 4th Street,
27 Bellingham, Washington. *Exhibits 1 and 1.A.*
28 2. The subject right-of-way is oriented from north to south and fronts Donovan
29 Street. The area to be vacated is 20 feet wide and 100 feet long, or 2,000 square

30 *Findings, Conclusions, and Recommendation*

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1 feet in area. *Exhibits 1 and 1.A; Morris Arthur Testimony.*

- 2 3. The Petitioners own the parcels abutting each side of the subject right-of-way.
3 The Petitioners' parcel consisting of Lots 15 through 18 of Block 130, adjacent
4 to the west side of the alley, is addressed as 1601 4th Street. The Petitioner's
5 parcel consisting of Lot 14 of Block 130, adjacent to the east side of the alley, is
6 unaddressed and also fronts Donovan Street. The Petitioners submitted
7 Whatcom County tax statements in support of their ownership of the adjacent
8 parcels. *Exhibits 1, 1.A, and 1.D.*
- 9 4. The subject right-of-way is within the Residential Transition 3 (RT-3) subarea
10 of the Fairhaven Urban Village. *Exhibits 1 and 1.B.*
- 11 5. The parcel at 1601 4th Street is approximately 9,980 square feet in area and is
12 developed with a single-family residence. The parcel on the opposite side of the
13 subject right-of-way is approximately 2,500 square feet in area and is
14 undeveloped. The Petitioners are seeking vacation of the right-of-way to
15 facilitate construction of a dwelling unit on the smaller parcel. With the addition
16 of the vacated right-of-way (2,000 square feet), a single-family residence could
17 potentially be developed on the parcel.¹ *Exhibits 1.C and 1.G; Morris Arthur*
18 *Testimony.*
- 19 6. The subject right-of-way is not improved or used for access but contains public
20 water and sewer mains. The remaining alley segments within the block are also
21 not used for access and in some areas contain encroaching residential
22 improvements (sheds, patios, etc.) and conifer trees. No parcel would be
23 landlocked as a result of the requested right-of-way vacation. *Exhibits 1, 1.A,*
24 *and 1.B; Morris Arthur Testimony.*
- 25 7. The City's Technical Review Committee (TRC), which consists of
26 representatives from the Planning, Public Works, Fire, Parks, and Legal
27 departments, reviewed the vacation request and determined that the alley is not
28 necessary for future circulation or other public benefit. However, because the
29 alley contains public water and sewer mains, the TRC recommended that
30 easements for the utilities be retained, and that any relocation of utilities (if
allowed) be at the Petitioners' expense. There are no private utilities within the
right-of-way. *Exhibits 1 and 1.C.*

¹ The Petitioners' narrative also notes a possible alternative of combining all parcels and vacated right-of-way into a single lot and using the additional space to build an accessory dwelling unit. *Exhibit 1.G.*

- 1 8. The subject right-of-way does not abut any body of water. *Exhibits 1 and 1.A.*
- 2 9. The subject right-of-way does not abut or lead to any park, open space, view,
3 natural area, or other attraction. *Exhibits 1 and 1.A.*
- 4 10. The Petitioners submitted an appraisal of the right-of-way, the summary of
5 which established a fair market value of \$46,400.00 as of March 30, 2024.
6 *Exhibit 1.H.*
- 7 11. Public comment was submitted from the owner of the parcel to the south of the
8 Petitioners' smaller parcel, which objected to future development of the parcel
9 due to tree removal. *Exhibits 1.F and 1.A.* Planning Staff submitted that tree
10 retention and removal would be evaluated at the time of development permit
11 review. Future development would be subject to the City's landmark tree
12 ordinance, which would require the planting of replacement trees if regulated
13 trees are impacted. *Exhibit 1; Steve Sundin Testimony.*
- 14 12. The submitted petition to vacate the right-of-way is undated, but Planning Staff
15 submitted that a "complete" petition was submitted on December 4, 2023 and
16 that the associated fee was paid on December 20, 2024. These dates (if correct)
17 suggest that the complete application was submitted after the City Council
18 passed Ordinance No. 2023-09-029, which established new street vacation
19 criteria (codified in BMC 13.50). However, Planning Staff submitted that the
20 application is subject to the street vacation policies that predated Ordinance No.
21 2023-09-029, because the TRC issued its recommendation of approval in a letter
22 dated April 8, 2020 (more than three years earlier). *Exhibits 1, 1.C, and 1.D;*
23 *Ordinance No. 2023-09-029.*
- 24 13. On July 15, 2024, the City Council approved Resolution No. 2024-16, which set
25 the date and time for the public hearing before the Hearing Examiner. *Exhibit 1.*
- 26 14. On July 18, 2024, at least 20 days prior to the hearing, the notice of hybrid
27 public hearing was sent to Cascadia Daily News for publication, mailed to
28 owners of property within 500 feet of the subject right-of-way, and sent to City
29 Staff and the Petitioner. An email notice was sent to the Mayor's Neighborhood
30 Advisory Committee, and Neighborhood Association representatives. The
hearing notice was posted on site on July 23, 2024. Additional hearing notices
were posted at City Hall, the Whatcom County Courthouse and the Bellingham
Public Library. *Exhibits 1 and 1.E.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner is granted authority to hold hearings and make recommendations to City Council on right-of-way vacation requests pursuant to RCW 35.79.030 and BMC 13.50.100.

Criteria for Review:

State Vacation Requirements

RCW 35.79.010 Petition by owners - Fixing time for hearing.

The owners of an interest in any real estate abutting upon any street or alley who may desire to vacate the street or alley, or any part thereof, may petition the legislative authority to make vacation, giving a description of the property to be vacated, or the legislative authority may itself initiate by resolution such vacation 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.

RCW 35.79.020 Notice of hearing - Objections prior to hearing.

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

1 *RCW 35.79.030 Hearing - Ordinance of vacation.*

2 The hearing on such petition may be held before the legislative authority, before a
3 committee thereof, or before a hearing examiner, upon the date fixed by
4 resolution or at the time the hearing may be adjourned to. If the hearing is before
5 a committee the same shall, following the hearing, report its recommendation on
6 the petition to the legislative authority which may adopt or reject the
7 recommendation. If the hearing is held before a committee it shall not be
8 necessary to hold a hearing on the petition before the legislative authority. If the
9 hearing is before a hearing examiner, the hearing examiner shall, following the
10 hearing, report its recommendation on the petition to the legislative authority,
11 which may adopt or reject the recommendation: PROVIDED, That the hearing
12 examiner must include in its report to the legislative authority an explanation of
13 the facts and reasoning underlying a recommendation to deny a petition. If a
14 hearing is held before a hearing examiner, it shall not be necessary to hold a
15 hearing on the petition before the legislative authority. (emphasis added)

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

25 *RCW 35.79.035 Limitations on vacations of streets abutting bodies of water -*
26 *Procedure.*

- 27 1. A city or town shall not vacate a street or alley if any portion of the street
28 or alley abuts a body of fresh or saltwater unless:

30 *Findings, Conclusions, and Recommendation*

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- a. The vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;
 - b. The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education; or
 - c. The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the streets or 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: Port, boat moorage, launching sites, beach or water access, park, public view, recreation, or education;
 - c. Hold a public hearing on the proposed vacation in the manner required by this chapter, where in addition to the normal requirements for publishing notice, notice of the public hearing is posted conspicuously on the street or alley sought to be vacated, which posted notice indicates that the area is public access, it is proposed to be vacated, and that anyone objecting to the proposed vacation should attend the public hearing or send a letter to a particular official indicating his or her objection; and
 - d. Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under (b) of this subsection, and that the vacation is in the public interest.
3. No vacation shall be effective until the fair market value has been paid for the street or alley that is vacated. Moneys received from the vacation may be used by the city or town only for acquiring additional beach or water

1 access, acquiring additional public view sites to a body of water, or
2 acquiring additional moorage or launching sites.

3 *RCW 35.79.040 Title to vacated street or alley.*

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

6 *RCW 35.79.050 Vested rights not affected.*

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

8 *City Vacation Regulations Prior to Ord. 2023-09-029*

9 *BMC 13.48.010 Hearing - Application fee.*

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

17 *BMC 13.48.020 Payment for vacation.*

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

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

26 *Bellingham City Council Vacation Policies Prior to Ord. 2023-09-029*

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

30 *Findings, Conclusions, and Recommendation*

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- 1 1. The right-of-way must be determined to be of no value to the circulation
2 plan of the City either now or in the foreseeable future. The circulation
3 plan is assumed to include vehicular, pedestrian, or other modes of
4 transportation.
- 5 2. No vacation will be allowed if such action locks any existing parcel,
6 lot of record, or tract. Access to a right-of-way of less than 30 feet in
7 width does not constitute adequate access. One ownership of all the lots
8 on a right-of-way does not circumvent this policy, and in this it will be
9 necessary to vacate lots prior to or together with the vacation action.
- 10 3. *State law (RCW 35.79)*. “No city or town shall be authorized to have
11 authority to vacate such street, or alley, or any parts thereof if any portion
12 thereof abuts on a body of salt or fresh water unless such vacation be
13 sought to enable the city, town, port district, or state to acquire the
14 property for port purposes, boat moorage, or launching sites, park,
15 viewpoint, recreational, or educational purposes, or other public uses.
16 This provision shall not apply to industrial zoned property.”
- 17 4. Right-of-way adjacent or leading to any park, open space, view, natural
18 area, or any other natural or man-made attraction should not be vacated.
- 19 5. The proposed vacation should be determined to be necessary to the public
20 good either in terms of needed development or when such vacation will
21 result in a better or more desirable situation. In some instances, a more
22 desirable situation may be a better road pattern in terms of safety, or when
23 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
25 Examiner. The Examiner will schedule review. The Examiner will hold a
26 public hearing and make recommendations to the City Council. The City
27 Council makes the final decision.
- 28 7. The petition should contain the approval of all the abutting property
29 owners, and proof of ownership must accompany the petition.
- 30 8. Vacation is not mandatory even though 100% of the abutting owners
request the vacation. (100% submittal)
9. Proposed or possible use of the vacated right-of-way is not relevant to City
action (court opinion).
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.

1 Current Vacation Criteria: BMC 13.50.110 (Ord. 2023-09-029)

- 2 A. The decision on a vacation petition is a legislative determination by city
3 council based upon the complete record from the public hearing before the
4 hearing examiner including the hearing examiner's findings of fact,
5 conclusions of law, and recommendation. The city council shall consider the
6 complete record and make its decision at a closed record hearing in
7 accordance with BMC 1.26.050. The city council may, in its discretion,
8 vacate a street or alley governed by this chapter if:
9
10 1. The vacation is in the public interest; and
11 2. The subject right-of-way is not currently necessary for transportation or
12 other right-of-way purposes, nor likely to be in the future. Transportation
13 purposes are assumed to include vehicular, pedestrian, and other forms of
14 transportation; and
15 3. No existing parcel, lot of record, or tract will be denied all access as a
16 result of the vacation of the subject right-of-way; and
17 4. If any portion of the street or alley abuts a body of fresh or salt water, the
18 requirements of BMC 13.50.120 are met; and
19 5. The street or alley is not adjacent or leading to any park, open space, view,
20 natural area, or other natural or artificial attraction.
21
22 B. The city council may consider any other fact or issue that is part of the record
23 from the public hearing it deems relevant when deciding whether to vacate a
24 street or alley, including, but not limited to, the street or alley's proposed use
25 after vacation.
26
27 C. The city council may accept the recommendation of the hearing examiner or
28 reject the same in whole or in part. If city council rejects the recommendation
29 in whole or in part, then it shall make findings of fact and conclusions of law
30 explaining its decision.

Conclusions Based on Findings:

1. The right-of-way vacation is consistent with City policy in effect prior to
adoption of Ordinance No. 2023-09-029.
a. The subject right-of-way is of no value to the circulation plan of the City,
either now or in the foreseeable future. *Findings 6 and 7.*
b. Vacating the right-of-way would not landlock any existing parcel, lot of
record, or tract. *Finding 6.*
c. The subject right-of-way does not abut a body of water. *Finding 8.*

- 1 d. The subject right-of-way is not adjacent to and does not lead to any park,
2 open space, view, natural area, or any other natural or man-made attraction.
3 *Finding 9.*
 - 4 e. Vacating the right-of-way would result in a better situation in that the right-
5 of-way is unnecessary for transportation purposes, and its vacation would
6 allow for infill residential development within an urban village. Although
7 such development might result in tree removal, such impact would be
8 addressed through relevant City ordinances. *Findings 4, 5, and 11.*
 - 9 f. This recommendation is being made to City Council after conducting the
10 required public hearing on August 14, 2024. *Finding 13.*
 - 11 g. The Petitioner owns all abutting parcels and submitted proof of ownership.
12 *Finding 3.*
 - 13 h. The policy that vacation is not mandatory even though all abutting owners
14 request the vacation is acknowledged.
 - 15 i. The policy that the proposed or possible use of the vacated right-of-way is
16 not relevant to the decision is acknowledged.
 - 17 j. With the recommended conditions of approval, an easement for utilities
18 would be retained. *Finding 7.*
- 19 2. The current criteria for approval set forth in BMC 13.50.110 are also satisfied.
20 These criteria largely incorporate the previous policies. With retention of an
21 easement for utilities, the vacation would be in the public interest. As described
22 previously, the right-of-way is not needed for transportation purposes and no
23 parcel would be denied access if the right-of-way is vacated. The right-of-way
24 does not abut a body of water and does not abut or lead to any park or other
25 attraction. *Findings 6, 7, 8, and 9.*

RECOMMENDATION

Based on the preceding findings and conclusions, the City’s Hearing Examiner recommends that the requested vacation of the platted alley abutting Lots 14 and 15-18 of Block 130, Fairhaven Land Company’s 2nd Addition to Fairhaven, **SHOULD BE APPROVED** subject to the following conditions:

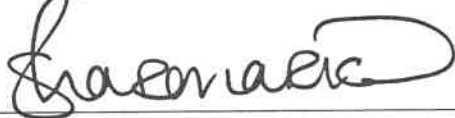
- 1. Easements for existing and/or relocated or reconfigured public water and sewer mains within the subject right-of-way shall be retained in coordination with the Public Works Department prior to the issuance of any development permit

1 within the subject right-of-way and/or on Lot 14, Block 130, Fairhaven Land
2 Company's 2nd Add to Fairhaven.

- 3 2. If said public utilities are to be relocated and/or reconfigured, the work shall be
4 done so solely at the petitioner's expense.
- 5 3. If private utilities are relocated and/or reconfigured, the work shall be done so at
6 the at the petitioner's sole expense; and
- 7 4. Compensation shall be provided for the subject right-of-way as established by
8 the City Council.

9
10 RECOMMENDED August 22, 2024.

11 **BELLINGHAM HEARING EXAMINER**

12 

13
14 Sharon A. Rice