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

IN RE: GABE ROGEL, Petitioner Army Street between W. Holly Street and Roeder Avenue VAC2024-0001 / Street Vacation	HE-24-PL-041 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 Army Street right-of-way adjacent to tax parcels 3803300751940000, 3803300862010000, and 3803300901800000 should be **GRANTED**.

SUMMARY OF RECORD

Request:

Gabe Rogel (Petitioner), owner of the parcel addressed as 315 W. Holly Street in Bellingham, requested vacation of the adjacent Army Street right-of-way with the following abbreviated legal description:

Platted Army Street Abutting Blocks 6 and 8, Town of New Whatcom, Except Those Portions Abutting the Railroad Right-of-way and Lot 175, New Whatcom Tidelands, Whatcom County, Washington.

The subject right-of-way is generally located between W. Holly Street and Roeder Avenue and abuts tax parcel numbers 3803300751940000, 3803300862010000, and 3803300901800000 as depicted in Exhibit 1.A.

Hearing Date:

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request on February 26, 2025. 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 February 28, 2025.

1 **Testimony:**

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

3 Lindsay Kershner, Planner II, Planning and Community Development Department

4 Gabe Rogel, Petitioner

5 Alex McLean

6 **Exhibits:**

7 The following exhibits were admitted in evidence through the hybrid open record
8 hearing process:

9 Exhibit 1 Planning and Community Development Department Staff Report, including
10 the following attachments:

11 A. Aerial photo of vacation area and abutting properties

12 B. Vacation Petition, dated January 26, 2024

13 C. Zoning Map

14 D. Utilities Map

15 E. Letter from Lindsay Kershner, Planning and Community Development
16 Department, re: Technical Review Committee's review, dated
17 June 25, 2024

18 F. Letter from Don A. Gustafson, re: Appraisal, dated November 20, 2024

19 G. Old Town Sub-Area Plan

20 H. Comment from Cascade Natural Gas, dated October 3, 2024

21 I. City Resolution No. 2025-3 approving hearing date, dated
22 January 13, 2025

23 J. Notice of Hybrid Public Hearing, Mailing List, and Declaration of
24 Mailing, issued January 21, 2025

25 K. Photos of Posted Notices and Affidavit of Posting, dated
26 January 29, 2025

27 L. Access Easement Agreement, recorded November 9, 2015

28 M. Draft Street Vacation Ordinance, VAC2024-0001

29 After considering the testimony and exhibits submitted, the Hearing Examiner enters
30 the following findings and conclusions.

FINDINGS

1. Gabe Rogel (Petitioner), owner of the parcel addressed as 315 W. Holly Street in Bellingham, requested vacation of the adjacent Army Street right-of-way with the following abbreviated legal description:

Platted Army Street Abutting Blocks 6 and 8, Town of New Whatcom, Except Those Portions Abutting the Railroad Right-of-way and Lot 175, New Whatcom Tidelands, Whatcom County, Washington.

The subject right-of-way is generally located between W. Holly Street and Roeder Avenue and abuts tax parcel numbers 3803300751940000, 3803300862010000, and 3803300901800000 as depicted in Exhibit 1.A. All three abutting property owners signed the petition to vacate the right-of-way. The area of right-of-way to be vacated totals approximately 15,000 square feet. *Exhibits 1, 1.A, and 1.B.*

2. The subject right-of-way is within Area 5 the City Center neighborhood, Old Town urban village overlay district, and is zoned Commercial. *Exhibits 1 and 1.C.*

3. The Old Town Sub-Area Plan identifies the Army Street right-of-way as a candidate for vacation, per the following description of the "Army Street Opportunity":

The location and site features, such as steep topography, make this site a candidate for a public/private partnership. Shared public parking could be accommodated below [the] grade of Holly Street with mixed uses above. A pedestrian way, as shown in the rendering below, would allow for a pedestrian connection or at a minimum a view connection to the waterfront. This right-of-way could be vacated in order to develop parking as long as the view corridor to the waterfront area remains.

Exhibit 1.G.

4. The Petitioner is requesting vacation of the right-of-way to develop the area with a surface parking lot. The parking lot would be used in conjunction with a recreation facility and residential units proposed for 315 W. Holly Street. After the right-of-way is vacated, the Petitioner would need to complete a boundary line adjustment with the other adjoining property owners so that the full extent of the right-of-way (instead of just the half adjacent to his parcel) is under his ownership. The adjoining property owners have agreed to the right-of-way transfer. *Testimony of Gabe Rogel and Lindsay Kershner; Exhibits 1 and 1.B.*

- 1 5. The northeast end of the right-of-way abutting Holly Street is steeply sloped and
2 contains mature trees. The lower portion of the right-of-way is surfaced with
3 gravel and is currently used for informal parking. *Exhibits 1, 1.A, 1.B, and 1.E.*
- 4 6. The subject right-of-way does not abut any body of water. *Exhibits 1 and 1.A.*
- 5 7. The subject right-of-way does not abut or lead to any park, open space, natural
6 area, or other attraction. However, as noted in the Old Town Sub-Area Plan, the
7 right-of-way provides a view corridor towards the waterfront from Holly Street.
8 In order to maintain the view corridor as required by the plan, the Petitioner
9 would provide a view easement. *Exhibits 1, 1.A, and 1.C.*
- 10 8. The Technical Review Committee, which includes representatives from the
11 Public Works Department, has determined that the subject right-of-way is not
12 necessary for current or future transportation needs. *Exhibit 1.E.*
- 13 9. Vacation of the subject right-of-way would not prevent access to any parcel.
14 Due to steep slopes immediately below Holly Street, the subject right-of-way
15 and adjacent parcels are accessed from an easement that extends south from
16 Central Avenue. The proposed parking lot would also be accessed by this
17 easement. *Exhibits 1.B and 1.L.*
- 18 10. The subject property contains utilities, including public sewer and stormwater
19 mains and a Cascade Natural Gas 12-inch pipeline and associated cathodic
20 protection facilities. *Exhibits 1, 1.D, and 1.H.* The recommended conditions of
21 approval address these utilities by requiring the Petitioner to retain an easement
22 for the sewer and stormwater mains, pay for any relocation or reconfiguration of
23 the mains, and execute an easement for the Cascade Natural Gas facilities prior
24 to the City Council meeting on the right-of-way vacation. *Exhibit 1.*
- 25 11. The appraised fair market value of the subject right-of-way is \$83,000 as of
26 October 18, 2024. *Exhibit 1.F.*
- 27 12. A complete street vacation petition was submitted on August 19, 2024. The
28 Petitioner paid the street vacation petition fee of \$4,131.00 on September 18,
29 2024. *Exhibits 1 and 1.B.*
- 30 13. On January 13, 2025, the City Council approved Resolution No. 2025-03, which
set the date and time for the public hearing before the Hearing Examiner.
Exhibit 1.I.

- 1 14. On January 21, 2025, at least 20 days prior to the hearing, the notice of hybrid
2 public hearing was sent to the *Cascadia Daily* for publication; mailed to owners
3 of property within 500 feet of the subject property; sent to the Mayor's
4 Neighborhood Advisory Committee and Neighborhood Association
5 representatives; and posted at City Hall, the downtown library branch, and the
6 Whatcom County Courthouse. Notice of the hybrid public hearing was also
7 posted on-site at Roeder Avenue and at Holly Street on January 22, 2025.
8 *Exhibits 1, 1.J, and 1.K.*
- 9 15. Public comment on the proposal was not opposed to vacation of the right-of-way
10 but included requests that the view corridor be maintained and as many of the
11 existing trees be retained as possible. *Alex McLean Testimony.* The concern
12 regarding the view corridor is addressed by the recommended conditions of
13 approval, which require the Petitioner to establish a view easement. The
14 easement would affect the airspace at the level of Holly Street but would not
15 preclude development below that elevation. *Exhibit 1; Lindsay Kershner*
16 *Testimony.* Tree removal, if any, would be reviewed through the future
17 development permitting process. *Lindsay Kershner Testimony.* The Applicant
18 raised no objections to the conditions recommended in the staff report. *Gabe*
19 *Rogel Testimony.*

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 BMC 13.50.110.A.

Criteria for Review:

Pursuant to BMC 13.50.110.A, the City Council may, in its discretion, vacate a street or alley governed by BMC 13.50 if the following criteria are satisfied:

1. The vacation is in the public interest; and
2. The subject right-of-way is not currently necessary for transportation or other right-of-way purposes, nor likely to be in the future. Transportation purposes are assumed to include vehicular, pedestrian, and other forms of transportation; and
3. No existing parcel, lot of record, or tract will be denied all access as a result of the vacation of the subject right-of-way; and
4. If any portion of the street or alley abuts a body of fresh or salt water, the requirements of BMC 13.50.120 are met; and

1 5. The street or alley is not adjacent or leading to any park, open space, view,
2 natural area, or other natural or artificial attraction.

3 Pursuant to BMC 13.50.110.B, the City Council “may consider any other fact or
4 issue that is part of the record from the public hearing it deems relevant when
5 deciding whether to vacate a street or alley, including, but not limited to, the street
6 or alley’s proposed use after vacation.”

6 **Conclusions Based on Findings:**

- 7 1. As conditioned to require view and utility easement, the vacation is in the public
8 interest. Vacation of the subject right-of-way is explicitly contemplated in the
9 applicable subarea plan. *Findings 3, 7, and 10.*
- 10 2. The subject right-of-way is not currently necessary for transportation or other
11 right-of-way purposes, nor is it likely to be in the future. The conditions of
12 approval address the utility function of the right-of-way by requiring utility
13 easements. *Findings 5, 8, 9, and 10.*
- 14 3. No existing parcel, lot of record, or tract would be denied access as a result of
15 vacation of the subject right-of-way. *Finding 9.*
- 16 4. Because the subject right-of-way does not abut a body of water, the criteria of
17 BMC 13.50.120 do not apply. *Finding 6.*
- 18 5. The view corridor function of the right-of-way would be retained with the
19 conditions of approval. The subject right-of-way is not otherwise adjacent or
20 leading to any park, open space, view, natural area, or other attraction.
Findings 3, 7, and 15.
- 21 6. The proposed future use of the subject right-of-way is relevant to the decision
22 and supports vacating the right-of-way. The parking lot use is called for in the
23 subarea plan and is consistent with maintenance of a view corridor. *Finding 4.*

24 **RECOMMENDATION**

25 Based on the preceding findings and conclusions, the City’s Hearing Examiner
26 recommends that the requested vacation of the platted Army Street right-of-way
27 adjacent to tax parcel numbers 3803300751940000, 3803300862010000, and
28 3803300901800000 as depicted in Exhibit 1.A **SHOULD BE APPROVED** subject to
29 the following conditions.

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1. Prior to setting a date for the closed record hearing before the City Council, a legal description of the proposed vacation area and exhibits necessary for the street vacation ordinance shall be completed by a licensed surveyor and submitted to the City for review and approval.
2. Easements for the public sewer and stormwater mains within the right-of-way shall be retained in coordination with the Public Works Department. If said public utilities are to be relocated and/or reconfigured, they shall be done so solely at the petitioner's expense.
3. A view easement within the right-of-way shall be established in coordination with the Planning and Community Development Department.
4. Prior to setting a date for the closed record hearing before the City Council, an easement(s) for Cascade Natural Gas within the right-of-way shall be fully executed.
5. Compensation shall be provided for the subject right-of-way as established by the City Council.

RECOMMENDED March 10, 2025.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice