

AFTER RECORDING RETURN DOCUMENT TO:

City of Bellingham - Planning Department
210 Lottie Street
Bellingham, WA 98225

DOCUMENT TITLE: *Street Vacation Ordinance*

REFERENCE NUMBER OF RELATED DOCUMENT: VAC2020-0002

GRANTOR(S): *City of Bellingham*

GRANTEE(S): *Whatcom Investment Group*

ASSESSOR'S TAX/PARCEL NUMBER(S): *The subject right-of-way abuts parcels # 380332 234545, 247557 and 248545.*

ABBREVIATED LEGAL DESCRIPTION: *The full width of Queen Street abutting the east half of Lots 1-5 and the north half of Lot 6, Block 1, Cedar Add to Bellingham and also abutting Lots B and C of the Ford Lot Line Adjustment in Bellingham, Washington and as described on EXHIBIT A and as shown on EXHIBIT B.*

ORDINANCE NO. 2021-07-027

AN ORDINANCE RELATING TO THE VACATION OF THE FULL WIDTH OF QUEEN STREET ABUTTING THE EAST HALF OF LOTS 1-5 AND THE NORTH HALF OF LOT 6, BLOCK 1, CEDAR ADD TO BELLINGHAM AND ALSO ABUTTING LOTS B AND C OF THE FORD LOT LINE ADJUSTMENT IN BELLINGHAM.

WHEREAS, on June 18, 2020 the City's Technical Review Committee considered and recommended approval of the petition to vacate the subject right-of-way as described on EXHIBIT A and shown on EXHIBIT B, which are attached hereto and incorporated herein; and

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270

WHEREAS, the Hearing Examiner held a virtual public hearing on the subject petition on August 26th, 2020 at 6:00 PM; and

WHEREAS, the Hearing Examiner recommended approval of the subject vacation petition with the findings of fact and conclusions of law as attached hereto and incorporated herein as EXHIBIT C, and the City Council adopts these findings of fact and conclusions of law, and;

WHEREAS, an appraisal was conducted in order to determine the amount of compensation necessary to vacate the subject right-of-way, and;

WHEREAS, all the jurisdictional steps preliminary to the vacation have been taken as provided by law.

NOW THEREFORE,

THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. The subject right-of-way as described on EXHIBIT A and shown on EXHIBIT B is hereby vacated and the Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation as provided on EXHIBIT C, is hereby incorporated herein and adopted.

Section 2. Easements for public utilities such as water, sewer and stormwater shall not be retained within the subject right-of-way. If provisions for utilities are necessary, it shall be at the sole expense of the petitioner or successors.

Section 3. No damage shall result to any person or persons or to any property by reason of the vacation of said right-of-way.

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VAC2020-0002

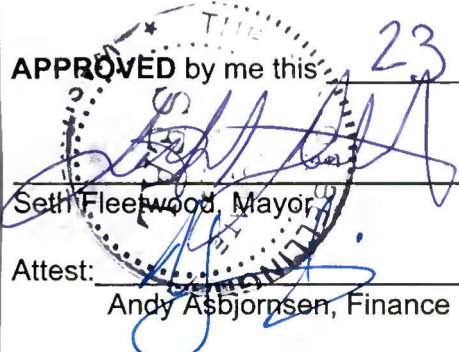
Section 4. Payment of the appraised fair market value of \$1,000.00 has been remitted to the City of Bellingham's Finance Department on May 10, 2021 as compensation to the City for the vacated right-of-way.

PASSED by the Council this 12th day of July, 2021.



Hannah Stone, Council President

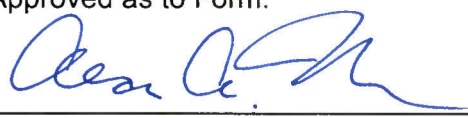
APPROVED by me this 23 day of July, 2021.



Seth Fleetwood, Mayor

Attest: _____
Andy Asbjornsen, Finance Director

As the Finance Director, I acknowledge that the City has received \$1,000.00 as fair market value compensation for this right-of-way vacation.

Approved as to Form:


Office of the City Attorney

Published: July 16, 2021

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270

I CERTIFY that I know or have satisfactory evidence that **SETH FLEETWOOD** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Mayor** of the **CITY OF BELLINGHAM** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



7/23/21
DATED
[Signature]
SIGNATURE OF NOTARY PUBLIC
S. Brooksana Raney
NAME PRINTED
Notary
TITLE
7/28/24
MY APPOINTMENT EXPIRES

I CERTIFY that I know or have satisfactory evidence that **ANDY ASBJORNSON** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Finance Director** of the **CITY OF BELLINGHAM** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



8/3/21
DATED
Elisabeth A. Oakes
SIGNATURE OF NOTARY PUBLIC
Elisabeth A. Oakes
Name Printed
Deputy City Clerk
TITLE
6/19/2023
MY APPOINTMENT EXPIRES

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270

EXHIBIT "A"

LEGAL DESCRIPTION FOR RIGHT-OF-WAY VACATION

A tract of land within the Northeast Quarter of the Northwest Quarter of Section 32, Township 38 North, Range 3 East of the W. M. being more particularly described as follows:

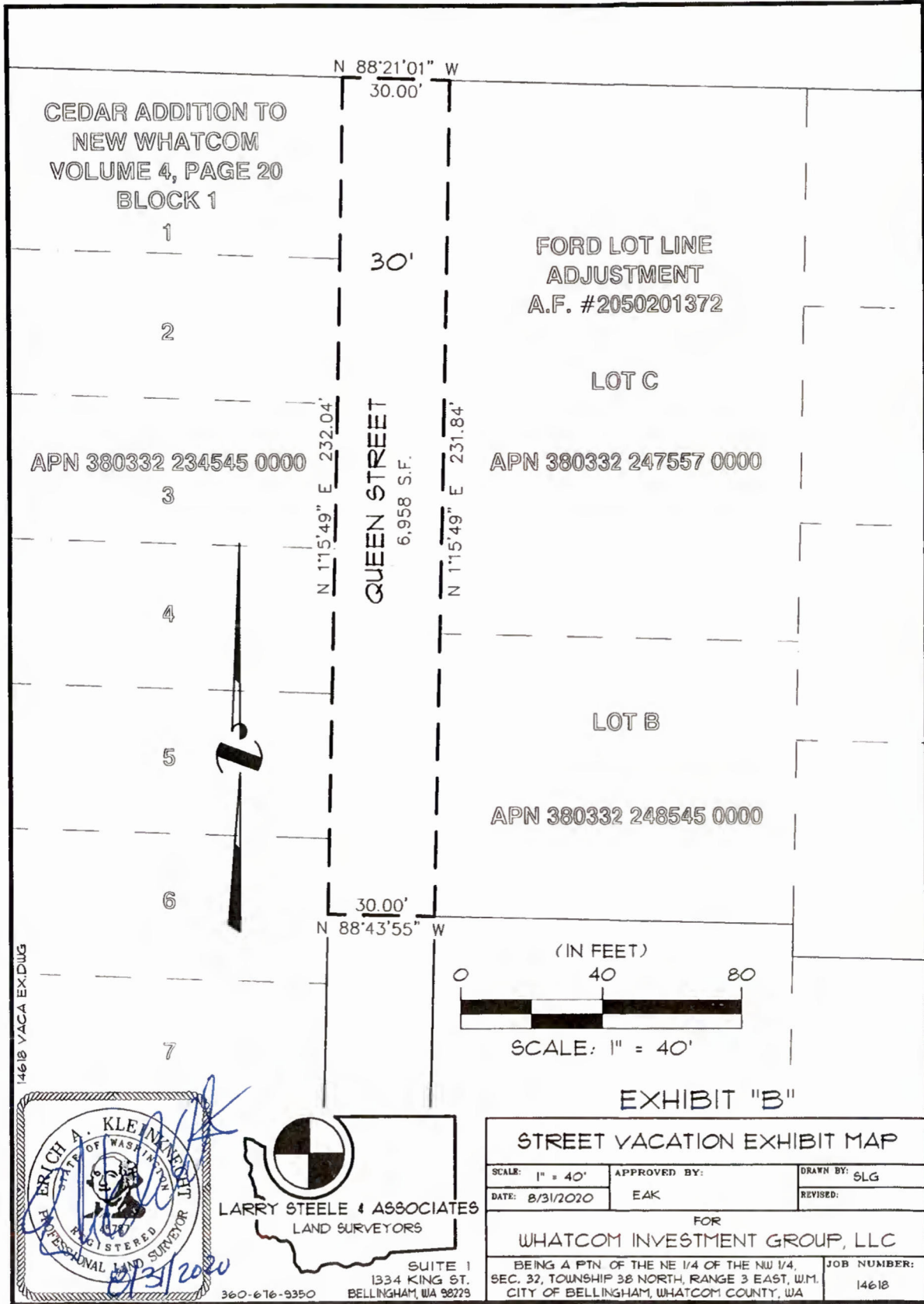
All that portion of Queen Street, being 30 feet wide, lying adjacent to the West line of Lots B and C of the Ford Lot Line Adjustment, as recorded under Whatcom County Auditor's File Number 2050201372.

Containing an area of 6,958 square feet.

Situate in the City of Bellingham, Whatcom County, Washington.



Prepared by Larry Steele & Associates, Inc.
Land Surveyors
1334 King Street, Suite 1
Bellingham WA 98229
360-676-9350
Job #14618
August 31, 2020



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Exhibit C

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

IN RE:	HE-20-PL-022
WHATCOM INVESTMENT GROUP, Petitioner	FINDINGS, CONCLUSIONS, AND RECOMMENDATION
Full width of Queen Street between Lakeway Drive and the Civic Field Open Space, east of Puget Street	
VAC2020-0002 / Street Vacation	SHARON RICE, HEARING EXAMINER

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends to the City Council that the requested vacation of the full width of Queen Street abutting the east half of Lots 1 through 5 and the north half of Lot 6, Block 1, Cedar Addition to Bellingham and also abutting Lots B and C of the Ford Lot Line Adjustment, Bellingham, should be **GRANTED**.

SUMMARY OF RECORD

Request:

Jaime White, Whatcom Land Use Consulting LLC, on behalf of Whatcom Investment Group (Applicant) requested vacation of the full width of Queen Street abutting the east half of Lots 1 through 5 and the north half of Lot 6, Block 1, Cedar Addition to Bellingham and also abutting Lots B and C of the Ford Lot Line Adjustment in Bellingham, Washington.

Hearing Date:

The Bellingham Hearing Examiner conducted a virtual open record hearing on the request on August 26, 2020. 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 28, 2020.

1 **Testimony:**

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

3 Steve Sundin, Senior Planner
4 Jaime White, Whatcom Land Use Consulting LLC, Applicant's Representative
5 Ashley Worley, 1513 Lakeway Drive

6 **Exhibits:**

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

8 Exhibit 1 Staff Report to the Examiner with the following attachments:

- 9 A. Vacation Area / Aerial / Public Utilities
10 B. Aerial / Public Utilities
11 C. Technical Review Committee letter to Applicant
12 D. Vacation Petition
13 E. Petitioner's Responses to Vacation Policies 1 – 5
14 F. Draft Ordinance

15 Exhibit 2 Public Comments

- 16 A. Email from Ashley and Matt Worley, dated August 26, 2020

17 Upon consideration of the testimony and exhibits submitted, the Hearing Examiner
18 enters the following findings and conclusions:

19
20 **FINDINGS**

- 21 1. Whatcom Investment Group (Applicant) requested vacation of the full width of
22 Queen Street abutting the east half of Lots 1 through 5 and the north half of Lot
23 6, Block 1, Cedar Addition to Bellingham and also abutting Lots B and C of the
24 Ford Lot Line Adjustment in Bellingham (subject right-of-way). The subject
25 right-of-way is generally located between Lakeway Drive and the Civic Field
26 Open Space east of Puget Street and measures approximately 7,000 square feet.
27 *Exhibits 1, 1.B, and 1.D.*
- 28 2. The subject right-of-way is in Areas 7 and 12, Puget Neighborhood. The west
29 half of the subject right-of-way is within area 12 of the Puget Neighborhood is
zoned residential multi-multiple with a 1,500 square foot per unit density. The
east half of the subject right-of-way is within area 7 and is zoned residential

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single family detached and cluster attached with an 8,000 and 6,000 square foot per unit density, respectively. *Exhibit 1.A; Google Maps Site view; Steve Sundin Testimony.*

3. The unimproved subject right-of-way dead ends into the City's Civic Field Open Space. It is located on a sloped and forested hillside within a regulated wetland buffer. There are no trails or footpaths leading to the Civic Field Open Space and no public or private utilities within the subject right-of-way. The Applicant owns the properties on both sides of the segment of Queen Street proposed for vacation. *Exhibit 1.*

4. The portion of the Queen Street right-of-way requested to be vacated does not connect to the existing improved segment of Queen Street extending north of Lakeway Drive. The area requested for vacation ends north of a large tree that exists in the unopened right-of-way. Access from the existing Queen Street segment onto Lakeway Drive and to the semi-improved east-west alley north of 1515 Lakeway that empties out to Puget Street to the west would remain viable if the vacation were approved. *Steve Sundin Testimony; Exhibit 1.B; Google Maps site view.*

5. The Applicant indicated that the purpose of the vacation request is to allow installation of a private force sewer main across the subject right-of-way to facilitate future development of a subdivision. The force main is needed to convey wastewater uphill to a nearby public sewer main. Because the City does not allow private force main facilities within public right-of-way, the Applicant submitted the instant request. If approved, the right-of-way vacation would allow the Applicant to consolidate parcels and maximize density in one part of the abutting property while minimizing impacts to the regulated wetland buffers. *Exhibits 1, 1.D, and 1.E; Jaime White Testimony.*

6. No future easements for public and private utilities are anticipated to be needed within the subject right-of-way. During the hearing process it was made clear that if easements are necessary in the future, the property owner would be responsible for acquiring and executing them. *Exhibit 1; Steve Sundin Testimony.*

7. Upon review of the request, the City's Technical review Committee (TRC) determined that the subject right-of-way is not necessary for existing or future vehicular or pedestrian circulation needs and that the requested vacation would not land lock any parcels. The Applicant's property on the west side of Queen Street (parcel# 380332 234545) and the parcel addressed as 1601 Lakeway,

1 owned by Bryan and Nancy Chen, would retain access to the unvacated portion
2 of Queen Street. The subject right-of-way abuts properties at 1310 and 1320
3 Queen Street on the east side of Queen Street, both of which are owned by the
4 Applicant. These parcels would be combined in any future development
5 scenario because nearly all of 1320 is encumbered by wetland and the associated
6 buffer. The parcel addressed as 1310 Queen Street, which contains development
7 opportunity, would abut the new dead end of Queen Street if the vacation is
8 approved. Planning Staff noted that parcel #380332 258548 to the east abutting
9 Racine Street is also owned by the Applicant. The segment of unimproved
10 Racine Street abutting that parcel is not buildable due to steepness and the
11 presence of an open drainage course. Development of parcel #380332 258548 is
12 intended to be combined with the development of 1310 and 1320 Queen Street,
13 also taking access from the same new dead end of Queen Street. *Exhibit 1.*

14 8. The TRC determined that an appraisal was required in order to determine
15 adequate compensation for the right-of-way to be vacated. As of the hearing
16 date, the Applicant had retained a local professional to provide the required
17 appraisal, but it had not yet been completed. The appraisal must be completed
18 and payment made for the subject right-of-way prior to the closed record hearing
19 before the City Council. *Exhibit 1; Steve Sundin Testimony.*

20 9. Note, the subject right-of-way may abut the west fork of Racine Creek, which is
21 a type IV seasonal non-fish bearing drainage in a steep ravine that is fully
22 forested and regulated by the City's critical area ordinance. During the TRC
23 review, the City Parks Department indicated that it did not desire to retain a
24 public access easement across the subject right-of-way because such an
25 easement would afford no opportunity to connect to other trails or paths in the
26 Civic Field Open Space at that location. The original right-of-way vacation
27 application proposed an exchange of a portion of the petitioner's property across
28 the northern 30 feet of 1320 Queen Street and parcel #38032 258548 for the
29 subject right-of-way; however, the Parks Department declined that offer.
30 *Exhibit 1.*

10. The petitioner attended a pre-application meeting with City staff On October 8,
2019 to review a future subdivision application on the petitioner's properties
abutting the subject right-of-way. In pursuit of that project, the Applicant
submitted the instant street vacation petition together with application fees on
May 28, 2020. The request was reviewed by the City's Technical review
Committee (TRC) and on July 16, 2020, the TRC recommended approval
subject to conditions were satisfied. *Exhibits 1, 1.C, and 1.D.*

- 1 11. On July 17, 2020, Planning and Community Development Department (PCDD)
2 Staff sent private utility providers notice of the vacation petition, requesting a
3 response by August 1, 2020. Puget Sound Energy timely responded, indicating
4 that they have no facilities within the subject right-of-way. No other private
5 utility companies responded. *Exhibit 1.*
- 6 12. On July 20, 2020, the Bellingham City Council approved Resolution #2020-
7 0029 setting the virtual public hearing before the Hearing Examiner on August
8 26, 2020. Notice of the virtual hearing was published in the Bellingham Herald
9 and sent to City Staff, the Applicant, and 'abutting' property owners on July 28,
10 2020. Notice of the hearing was posted on site by City Staff on August 10,
11 2020. *Exhibit 1; Steve Sundin Testimony.*
- 12 13. The City received one public comment from a resident in a nearby house that
13 accesses via Lakeway and Puget Street, requesting clarification of whether the
14 vacation would impact that property's access route. Planning Staff responded to
15 the access concerns and provided information about how to attend the virtual
16 public hearing. *Exhibit 2.* The author of the comment attended the virtual
17 hearing and testified that her concerns had been addressed. *Ashley Worley*
18 *Testimony.*
- 19 14. After hearing all testimony, Planning Staff recommended approval of the
20 requested right-of-way vacation subject to a condition stipulating that the
21 Applicant and successors in interest would be responsible for any future private
22 easements that become necessary within the vacated portion of right-of-way.
23 *Exhibit 1; Steve Sundin Testimony.* The Applicant representative waived
24 objection to the condition. *Jaime White Testimony.*

25 CONCLUSIONS

26 Jurisdiction:

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

29 Criteria for Review:

30 City Vacation Regulations

BMC 13.48.010 - Hearing - Application fee.

As a condition precedent to the city's consideration of a resolution setting a date for
a public hearing on the question of whether a city street should be vacated, the
petitioner therefor shall submit an application accompanied by a fee in the amount

1 set by city council resolution and the petitioner shall pay to the city an amount equal
2 to the cost of preparation of an appraisal of the area proposed to be vacated and the
3 city shall order such appraisal. An appraisal, and payment therefor, may not be
4 required when, in the judgment of the director of planning and community
development, it is not needed to determine the fair market value of the area to be
vacated.

5 *BMC 13.48.020 - Payment for vacation.*

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

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

14 State Vacation Requirements

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

16 The owners of an interest in any real estate abutting upon any street or alley who
17 may desire to vacate the street or alley, or any part thereof, may petition the
18 legislative authority to make vacation, giving a description of the property to be
19 vacated, or the legislative authority may itself initiate by resolution such vacation
20 procedure. The petition or resolution shall be filed with the city or town clerk, and,
21 if the petition is signed by the owners of more than two-thirds of the property
22 abutting upon the part of such street or alley sought to be vacated, legislative
23 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.

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

25 Upon the passage of the resolution the city or town clerk shall give twenty days'
26 notice of the pendency of the petition by a written notice posted in three of the most
27 public places in the city or town and a like notice in a conspicuous place on the
28 street or alley sought to be vacated. The said notice shall contain a statement that a
29 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

1 similar legislative authority without a petition having been signed by the owners of
2 more than two-thirds of the property abutting upon the part of the street or alley
3 sought to be vacated, in addition to the notice hereinabove required, there shall be
4 given by mail at least fifteen days before the date fixed for the hearing, a similar
5 notice to the owners or reputed owners of all lots, tracts or parcels of land or other
6 property abutting upon any street or alley or any part thereof sought to be vacated,
7 as shown on the rolls of the county treasurer, directed to the address thereon shown:
8 PROVIDED, That if fifty percent of the abutting property owners file written
9 objection to the proposed vacation with the clerk, prior to the time of hearing, the
10 city shall be prohibited from proceeding with the resolution.

11 *RCW 35.79.030 - Hearing - Ordinance of vacation.*

12 The hearing on such petition may be held before the legislative authority, before a
13 committee thereof, or before a hearing examiner, upon the date fixed by resolution
14 or at the time the hearing may be adjourned to. If the hearing is before a committee
15 the same shall, following the hearing, report its recommendation on the petition to
16 the legislative authority which may adopt or reject the recommendation. If the
17 hearing is held before a committee it shall not be necessary to hold a hearing on the
18 petition before the legislative authority. If the hearing is before a hearing examiner,
19 the hearing examiner shall, following the hearing, report its recommendation on the
20 petition to the legislative authority, which may adopt or reject the recommendation:
21 PROVIDED. That the hearing examiner must include in its report to the legislative
22 authority an explanation of the facts and reasoning underlying a recommendation to
23 deny a petition. If a hearing is held before a hearing examiner, it shall not be
24 necessary to hold a hearing on the petition before the legislative authority (*emphasis*
25 *added*).

26 If the legislative authority determines to grant the petition or any part thereof, such
27 city or town shall be authorized and have authority by ordinance to vacate such
28 street, or alley, or any part thereof, and the ordinance may provide that it shall not
29 become effective until the owners of property abutting upon the street or alley, or
30 part thereof so vacated, shall compensate such city or town in an amount which
does not exceed one-half the appraised value of the area so vacated. If the street or
alley has been part of a dedicated public right of way for twenty-five years or more,
or if the subject property or portions thereof were acquired at public expense, the
city or town may require the owners of the property abutting the street or alley to
compensate the city or town in an amount that does not exceed the full appraised
value of the area vacated. The ordinance may provide that the city retains an
easement or the right to exercise and grant easements in respect to the vacated land
for the construction, repair, and maintenance of public utilities and services. A
certified copy of such ordinance shall be recorded by the clerk of the legislative

1 authority and in the office of the auditor of the county in which the vacated land is
2 located. One-half of the revenue received by the city or town as compensation for
3 the area vacated must be dedicated to the acquisition, improvement, development,
4 and related maintenance of public open space or transportation capital projects
5 within the city or town.

6 *RCW 35.79.035 - Limitations on vacations of streets abutting bodies of water -
7 Procedure.*

- 8 1. A city or town shall not vacate a street or alley if any portion of the street or
9 alley abuts a body of fresh or saltwater unless:
 - 10 a. The vacation is sought to enable the city or town to acquire the property
11 for port purposes, beach or water access purposes, boat moorage or
12 launching sites, park, public view, recreation, or educational purposes,
13 or other public uses;
 - 14 b. The city or town, by resolution of its legislative authority, declares that
15 the street or alley is not presently being used as a street or alley and that
16 the street or alley is not suitable for any of the following purposes: Port,
17 beach or water access, boat moorage, launching sites, park, public view,
18 recreation, or education; or
 - 19 c. The vacation is sought to enable a city or town to implement a plan,
20 adopted by resolution or ordinance, that provides comparable or
21 improved public access to the same shoreline area to which the streets or
22 alleys sought to be vacated abut, had the properties included in the plan
23 not been vacated.
- 24 2. Before adopting a resolution vacating a street or alley under subsection
25 (1)(b) of this section, the city or town shall:
 - 26 a. Compile an inventory of all rights-of-way within the city or town that
27 abut the same body of water that is abutted by the street or alley sought
28 to be vacated;
 - 29 b. Conduct a study to determine if the street or alley to be vacated is
30 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

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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 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.

RCW 35.79.050 - Vested rights not affected.

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

Adopted Bellingham City Council Vacation Policies

It is the policy of the City of Bellingham to grant vacation of street right of ways 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 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.
- 2. 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.
- 3. 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".

- 1 4. Right-of-way adjacent or leading to any park, open space, view, natural
2 area, or any other natural or man-made attraction should not be vacated.
- 3 5. The proposed vacation should be determined to be necessary to the public
4 good either in terms of needed development or when such vacation will
5 result in a better or more desirable situation. In some instances, a more
6 desirable situation may be a better road pattern in terms of safety, or when
7 an exorbitant amount of land is devoted to unneeded right of way.
- 8 6. Notification of street vacation requests will be sent to the Hearing Examiner.
9 The Examiner will schedule review. The Examiner will hold a public
10 hearing and make recommendations to the City Council. The City Council
11 makes the final decision.
- 12 7. The petition should contain the approval of all the abutting property owners
13 and proof of ownership must accompany the petition.
- 14 8. Vacation is not mandatory even though 100% of the abutting owners request
15 the vacation. (100% submittal)
- 16 9. Proposed or possible use of the vacated right of way is not relevant to City
17 action (court opinion).
- 18 10. Easements for utilities will be retained as a matter of procedure unless such
19 easement is specifically requested by the petitioners and approved by the
20 City Engineer.

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Conclusions Based on Findings:

1. The subject right-of-way has never been improved as right-of-way and is not needed for vehicular or public pedestrian circulation. No parcel would be landlocked by approval; all abutting parcels (vacant and developed) have alternate access to the public road network. The subject right-of-way does not abut fresh or salt water and does not lead to any attraction or destination for which access needs to be retained. The Parks Department expressly declined to retain an easement or other property right for trails connecting to the adjacent Civic Field Open Space. Approval would result in public benefit in that it would maximize the infill development potential of the adjacent privately owned parcels while allowing protection of the nearby stream, wetland, and associated buffers. The Applicant owns the properties abutting the east and west sides of the subject right-of-way, and the City owns the property to the north; there are no other abutting property owners. All necessary signatures indicating consent have been obtained. A condition should be included requiring the Applicant and successors in interest to obtain and record any required utility easements

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necessary in the future within the subject right-of-way. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14.*

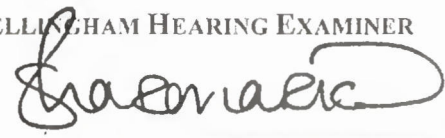
RECOMMENDATION

Based on the preceding findings and conclusions, the City's Hearing Examiner recommends that the requested vacation of the full width of Queen Street abutting the east half of Lots 1 through 5 and the north half of Lot 6, Block 1, Cedar Addition to Bellingham and also abutting Lots B and C of the Ford Lot Line Adjustment, Bellingham, Washington **SHOULD BE APPROVED** subject to the following conditions:

1. Full payment of the fair market appraised value shall be provided to the City prior to the closed record hearing before the City Council on the subject vacation ordinance as adequate compensation for the subject right-of-way; and
2. Easements for public or private utilities shall not be retained. If an easement becomes necessary in the future, the private property owner would be required to acquire it.

RECOMMENDED September 15, 2020.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice