

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: *VAC2021-0001*

GRANTOR(S): *City of Bellingham*

GRANTEE(S): *Parberry's Incorporated*

ASSESSOR'S TAX/PARCEL NUMBER(S): *The subject right-of-way abuts parcel numbers 380330-018364-0000, 380330-024354-0000, 380330-029359-0000, 380330-032363-0000.*

ABBREVIATED LEGAL DESCRIPTION: *Full width of Center Street abutting lots 1-16, block 6, Town of Whatcom Supplemental and as described on EXHIBIT A and as shown on EXHIBIT B.*

ORDINANCE NO. 2021-09-035

AN ORDINANCE RELATING TO THE VACATION OF THE FULL WIDTH OF CENTER STREET ABUTTING LOTS 1-16, BLOCK 6, TOWN OF WHATCOM SUPPLEMENTAL IN BELLINGHAM.

WHEREAS, on April 29, 2021, 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 July 14, 2021, 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, on August 19, 2021 the petitioner paid \$84,000.00 of the total appraised fair market value of \$112,000.00 for the subject right-of-way; and

WHEREAS, on September 7, 2021, the petitioner paid the remaining \$28,000.00 for 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. 2. If private utilities exist within the subject right-of-

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VAC2021-0002

way, the petitioner shall be responsible for either securing easements for said utilities or relocating them solely at the petitioner's expense.

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.


Section 4. \$84,000 was remitted to the City of Bellingham's Finance Department on August 19, 2021 to compensate the City for the vacated right-of-way. On September 7, 2021, the remaining \$28,000.00 of the total appraised fair market value of \$112,000.00 was remitted to the City of Bellingham's Finance Department.

PASSED by the Council this 13th day of September, 2021.




Hannah Stone, Council President

APPROVED by me this 24 day of September, 2021.




Seth Fleetwood, Mayor

As the Finance Director, I acknowledge that the City has received \$112,000.00 as compensation for this right-of-way vacation.

Attest: 

Andy Asbjornsen, Finance Director

Approved as to Form:


Office of the City Attorney

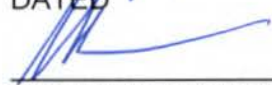
Published: September 17, 2021

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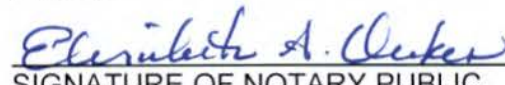
I CERTIFY that I know or have satisfactory evidence that **SETH FLEETWOOD** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Mayor** of the **CITY OF BELLINGHAM**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



9/24/21
DATED _____

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.



9/27/21
DATED _____

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

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Exhibit A

The remaining 16-foot wide portion of Center Street between the north line of Astor Street and the south line of Bancroft Street in Bellingham, Washington.

Exhibit B

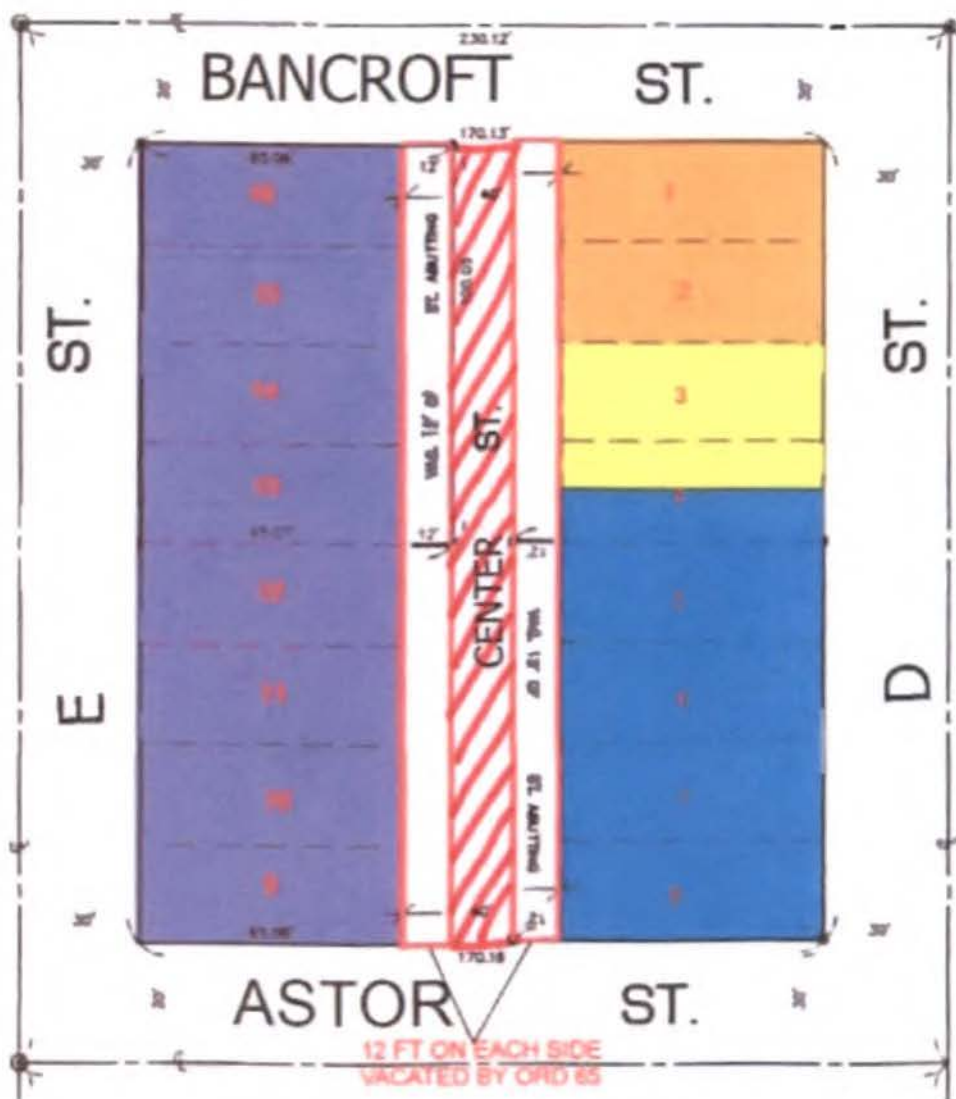


Exhibit C

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

IN RE:	HE-21-PL-0010
PARBERRY'S INC., Petitioner	FINDINGS, CONCLUSIONS, AND RECOMMENDATION
Remaining 16 feet of Center Street between Astor and Bancroft Streets	
VAC2021-0001 / Street Vacation	SHARON RICE, HEARING EXAMINER

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends to the City Council that the requested vacation of the remaining 16-foot-wide Center Street right-of-way generally located between D, E, Astor, and Bancroft Streets, in Bellingham should be **GRANTED**.

SUMMARY OF RECORD

Request:

Kevin Moore on behalf of Parberry's Inc. (Petitioner) requested vacation of the remaining 16-foot-wide Center Street right-of-way between the north line of Astor Street and the south line of Bancroft Street located between D and E Streets, Bellingham, Washington. Petitioner intends to market and sell the property within the block that contains Center Street, and vacating the subject right-of-way clears title for a future potential sale.

Hearing Date:

The Bellingham Hearing Examiner conducted a virtual open record hearing on the request on July 14, 2021. 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 16, 2021.

Testimony:

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

- Steve Sundin, Senior Planner, Planning and Community Development Department
- Kevin Moore, Parberry's Inc. CEO, Applicant's Representative

Exhibits:

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

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

- A. Vacation area on aerial photograph
 - B. Utility / zoning map
 - C. Vacation petition
 - D. Technical Review Committee letter to Nicole L. Terpstra (attorney for Parberry's Inc.) dated May 19, 2021
 - E. Notice of public hearing
 - F. Letter from Nicole Terpstra to Steve Sundin dated April 20, 2021
 - G. Draft ordinance
 - H. Email notification to Mayor's Neighborhood Advisory Committee (MNAC) and the Neighborhood Associations, dated June 11, 2021

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

FINDINGS

1. Parberry's Inc., (Petitioner) requested vacation of the remaining 16-foot-wide Center Street right-of-way generally located between D, E, Astor, and Bancroft Streets, in Bellingham, Washington.¹ The area subject to vacation is 16 feet wide by 200 feet long and approximately 3,200 square feet (0.73 acres) and comprises the entire remaining right-of-way. *Exhibits 1 and 1.A.*
2. The subject right-of-way is in Area 10 of the Lettered Streets Neighborhood, within the Old Town Overlay District established in Bellingham Municipal Code (BMC) Chapter 20.35. It is zoned Commercial. *Exhibits 1 and 1.B.*

¹ The property is legally described as the full width of Center Street abutting Lots 1-16, Block, 6, Town of Whatcom, supplemental. *Exhibit 1.*

3. The subject right-of-way is contained within the former Holly Street landfill site and is partially developed. It is currently used as light storage for the former landfill operations. Portions of the subject right-of-way were previously vacated in 1888. *Exhibit 1.A.; Kevin Moore Testimony.*
4. The Petitioner owns all abutting property on both sides of the subject right-of-way. While there are no current plans to develop the subject property and right-of-way, the Petitioner plans to market and sell the property. The present petition is necessary to provide clear title to the property for a future potential sale. *Exhibit 1; Kevin Moore Testimony.*
5. The proposed vacation would not land lock any parcels. All platted lots within Block 6 abut either D, E, Astor, or Bancroft Streets. *Exhibits 1 and 1.A.*
6. The affected right-of-way segment does not abut waterbodies that can be used for commerce or navigation. There are no parks, open space, view, natural area, or any other natural or man-made attractions in the vicinity to which the right-of-way provides access. *Exhibits 1 and 1.A.*
7. There are no existing or planned public utilities within the subject right-of-way in order to facilitate future City growth needs. The City would not retain any public utility easements. *Exhibits 1 and 1.B; Steve Sundin Testimony.*
8. The subject right-of-way's highest and best use is to be combined with the abutting lots for future development. The entire block has a height limit of 130 feet, as established in the Old Town Sub-Area planning (2006-2008). *BMC 20.35.070.C.* Vacation of the proposed right-of-way segment would facilitate the full development potential of the subject property. *Exhibits 1 and 1.C.*
9. The instant request for right-of-way vacation does not require State Environmental Policy Act (SEPA) review pursuant to WAC 197-11-800(6)(b).
10. The instant vacation petition was submitted by the Petitioner on April 14, 2021. *Exhibits 1 and 1.C.*
11. On May 19, 2021, the Planning Department issued the Technical Review Committee (TRC) letter indicating the subject right-of-way segment was not needed for circulation or utility purposes and recommending approval of the subject vacation petition. The TRC recommended that easements not be retained by the City. The TRC recommended the City be compensated by Petitioner for the entire right-of-way at full fair market value as determined by a qualified professional approved by the City. *Exhibits 1 and 1.D.*

12. The City Council passed Resolution 2021-14 on July 14, 2021, setting the instant vacation request for virtual public hearing. *Exhibits 1 and 1.C.*
13. The City's Planning Department issued electronic notice of public hearing to the representatives of the Mayor's Neighborhood Advisory Committee (MNAC) and the Neighborhood Associations on June 11, 2021. Planning Staff also posted notice of public hearing in the most conspicuous possible location at the north and south ends of Center Street, at Astor and Bancroft Streets. On the same date, the Hearing Examiner's office sent out the notice of public hearing to property owners within 500 feet of the affected right-of-way segment. *Exhibits 1 and 1.E.*
14. On July 7, 2021, Planning Staff sent private utility providers notice of the vacation petition, asking them to respond by July 16, 2021, to inform the City whether any private utilities were located within the affected right-of-way segment. As of the hearing, no private utilities had responded to the City's notice. At hearing Planning Staff submitted that if private utilities are not present in the subject right-of-way, no utility easements would be retained following vacation of the subject right-of-way. *Exhibit 1; Steve Sundin Testimony.*
15. On June 11, 2021, electronic notice of the subject vacation petition hearing was sent to the Mayor's Neighborhood Advisory Committee (MNAC) and the Neighborhood Associations. *Exhibit 1.H.; Steve Sundin Testimony.*
16. The City received no public comments on the instant petition. Planning Staff recommended approval of the petition for vacation. *Exhibit 1; Steve Sundin 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 RCW 35.79.030.

Criteria for Review:

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 set by city council resolution and the petitioner shall pay to the city an amount equal to the cost of preparation of an appraisal of the area proposed to be vacated and the city shall order such appraisal. An appraisal, and payment therefor, may not be 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.

BMC 13.48.020 - Payment for vacation.

Unless otherwise specifically provided by the city council in the street vacation ordinance, such ordinance shall provide for the payment of compensation by the petitioner of an amount equal to one-half the appraised value of the area proposed 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.

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.

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

If the legislative authority determines to grant the petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and the ordinance may provide that it shall not become effective until the owners of property abutting upon the street or alley, or 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 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.

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

1. A city or town shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or saltwater unless:
 - 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 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".
4. 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.
5. 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.

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.
7. The petition should contain the approval of all the abutting property owners and proof of ownership must accompany the petition.
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.

Conclusions Based on Findings:

1. The City's TRC determined that the subject right-of-way is not necessary for existing or future multi-modal circulation or utility needs to support future development in the vicinity. No evidence in the record contradicts this. *Findings 5, 6, 7, 11, and 14.*
2. All surrounding parcels appear to have access via other routes, such that approval of the vacation request would not landlock any parcel. All platted lots within Block 6 abut either D, E, Astor, or Bancroft Streets. The Petitioner owns all abutting properties on each side of the subject right-of-way. There is no evidence in the record of any parcel that would be landlocked if the vacation were approved. *Findings 1, 4, 5, and 11.*
3. The affected right-of-way segment does not abut any fresh or salt waterbody capable of providing public access to a waterfront or navigation, moorage, or any other water-dependent use. *Finding 6.*
4. The segment of Center Street requested to be vacated does not abut or provide access to any park, open space, view, natural area, or any other natural or man-made attraction. *Findings 4 and 6.*
5. Approval of the vacation would allow consolidation of abutting lots, maximizing the future development potential of the abutting properties consistent with the Old Town Sub-Area Plan. *Findings 1, 2, 4, 7, 8, 11, and 14.*
6. Council passed Resolution 2021-14 on July 7, 2021, setting the instant fact finding hearing, leading to establishment of the record upon which the instant findings, conclusions, and recommendation are based. *Finding 12.*

7. The Planning and Community Development Department supports this vacation petition. *Finding 16.*
8. The Examiner concurs with the TRC recommendation to retain no utility easements in the vacated right-of-way segment. *Finding 11.*
9. The Examiner concurs with the TRC recommendation that the Petitioner pay full fair market value as compensation for the subject right-of-way segment as determined by a City-approved professional appraisal. *Finding 11.*

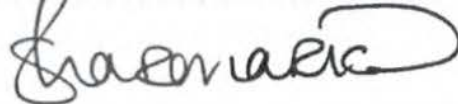
RECOMMENDATION

Based on the preceding findings and conclusions, the City's Hearing Examiner recommends that the requested vacation for the remaining 16-foot-wide Center Street right-of-way between the north line of Astor Street and the south line of Bancroft Street located between D and E Streets, Bellingham, 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.

RECOMMENDED July 30, 2021.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice