

Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Brent Johnson, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Robert Ruffner, Planning Director *RR*

DATE: November 28, 2022

RE: Right-Of-Way Vacation: Vacate a 17-Foot Width & Part of a Cul-De-Sac Bulb for a 373-Foot Portion of Lupine Avenue & Associated Utility Easement. KPB File 2022-156V

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of November 14, 2022 the Kenai Peninsula Borough Planning Commission granted approval of the above proposed vacation by unanimous vote based on the means of evaluating public necessity established by KPB 20.65 (10-Yes, 2-Absent, 2-Vacant). This petition is being sent to you for your consideration and action.

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

November 14, 2022 Draft PC Minutes
November 14, 2022 Meeting Packet Materials
Petition Form

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 10	Gillham, Horton, Hooper, Martin, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
Absent - 2	Brantley, Fikes

ITEM E3 - RIGHT OF WAY VACATION

VACATE A 17 FOOT WIDTH AND PART OF A CUL-DE-SAC BULB FOR A 373 FOOT PORTION OF LUPINE AVENUE AND ASSOCIATED UTILITY EASEMENTS

KPB File No.	2022-156V
Planning Commission Meeting:	November 14, 2022
Applicant / Owner:	Eric Ranguette of Soldotna, AK
Surveyor:	Jason Young, Mark Aimonetti / Edge Survey and Design, LLC
General Location:	Lupine Avenue, Keeven Lane, Nikiski area
Legal Description:	Lupine Avenue, Lot 1 Block 2, Centennial Shores Subdivision Number 1, Plat KN 85-157

Staff report given by Planning Director Robert Ruffner

Vice Chair Martin opened the item for public comment.

Jason Young, Edge Survey & Design; P.O. Box 208, Kasilof, AK 99610: Mr. Young was the surveyor on this project and made himself available for questions.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Horton moved, seconded by Commissioner Gillham to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 10	Gillham, Horton, Hooper, Martin, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
Absent - 2	Brantley, Fikes

**ITEM E4 – CONDITIONAL USE PERMIT
ANADROMOUS WATERS HABITAT PROTECTION DISTRICT
PC RESOLUTION 2022-41**

KPB File No.	2022-41
Planning Commission Meeting:	November 14, 2022
Applicant	Alaska Railroad Corporation
Mailing Address	327 W Ship Creek Ave, Anchorage AK 99501
Legal Description	T 4N R 1W SEC 13 SEWARD MERIDIAN SW 0880002 ALASKA STATE LAND SURVEY 86-176 TRACT A EXCEPT ASLS 86-6
Physical Address	MP 25.7 of the Seward Highway
KPB Parcel Number	12516022

Staff report given by Resource Planner Morgan Aldridge.

Vice Chair Martin opened the item for public comment. See and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

E. NEW BUSINESS

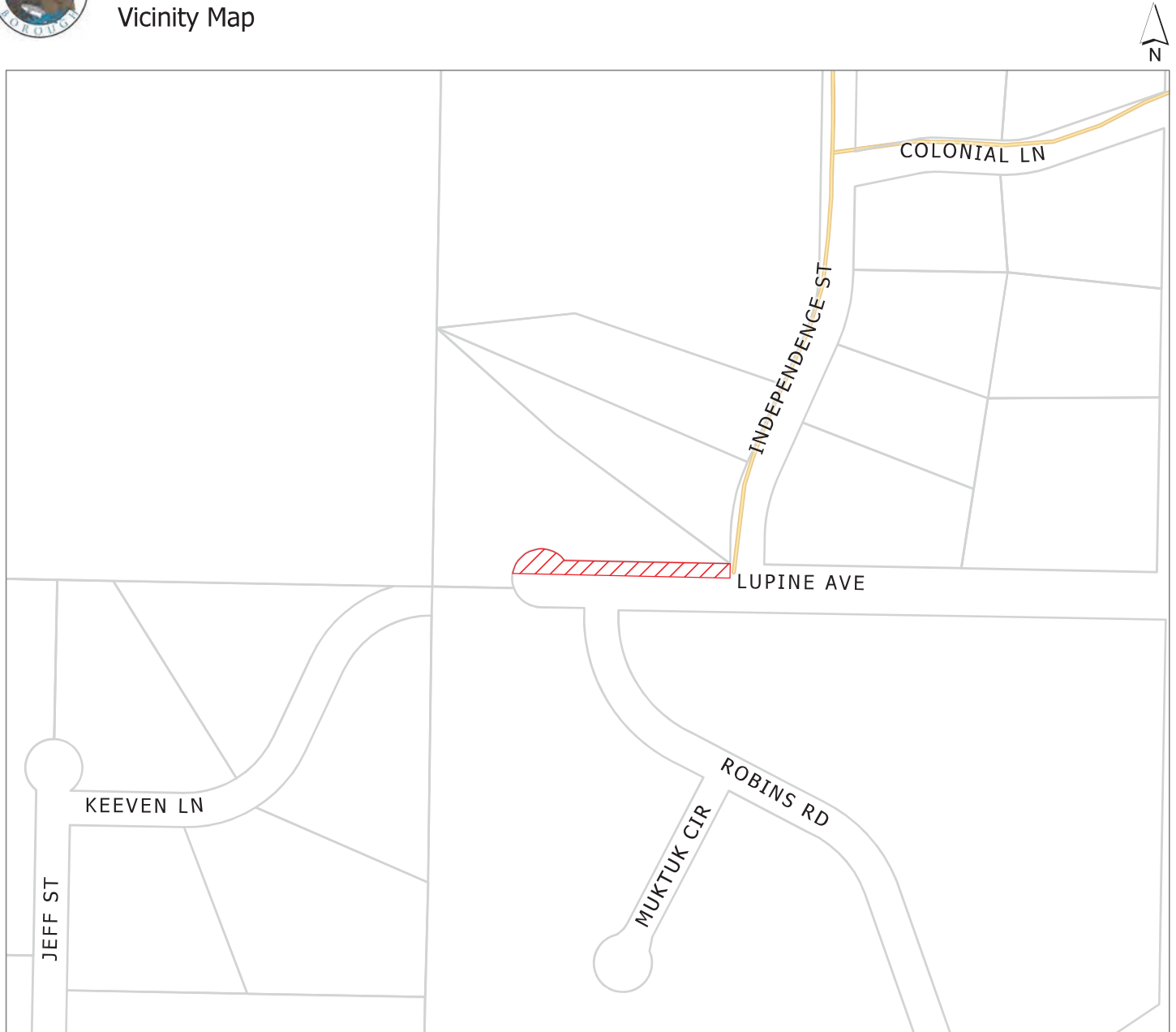
3. Right-Of-Way Vacation; KPB File 2022-156V

Request: Vacate a 17' width and part of a cul-de-sac bulb for a 373' portion of Lupine Ave. & vacates associated utility easements



Kenai Peninsula Borough Planning Department

Vicinity Map

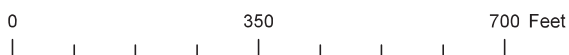


KPB File 2022-156V

T 07N R 11W SEC 7

Nikiski

10/19/2022

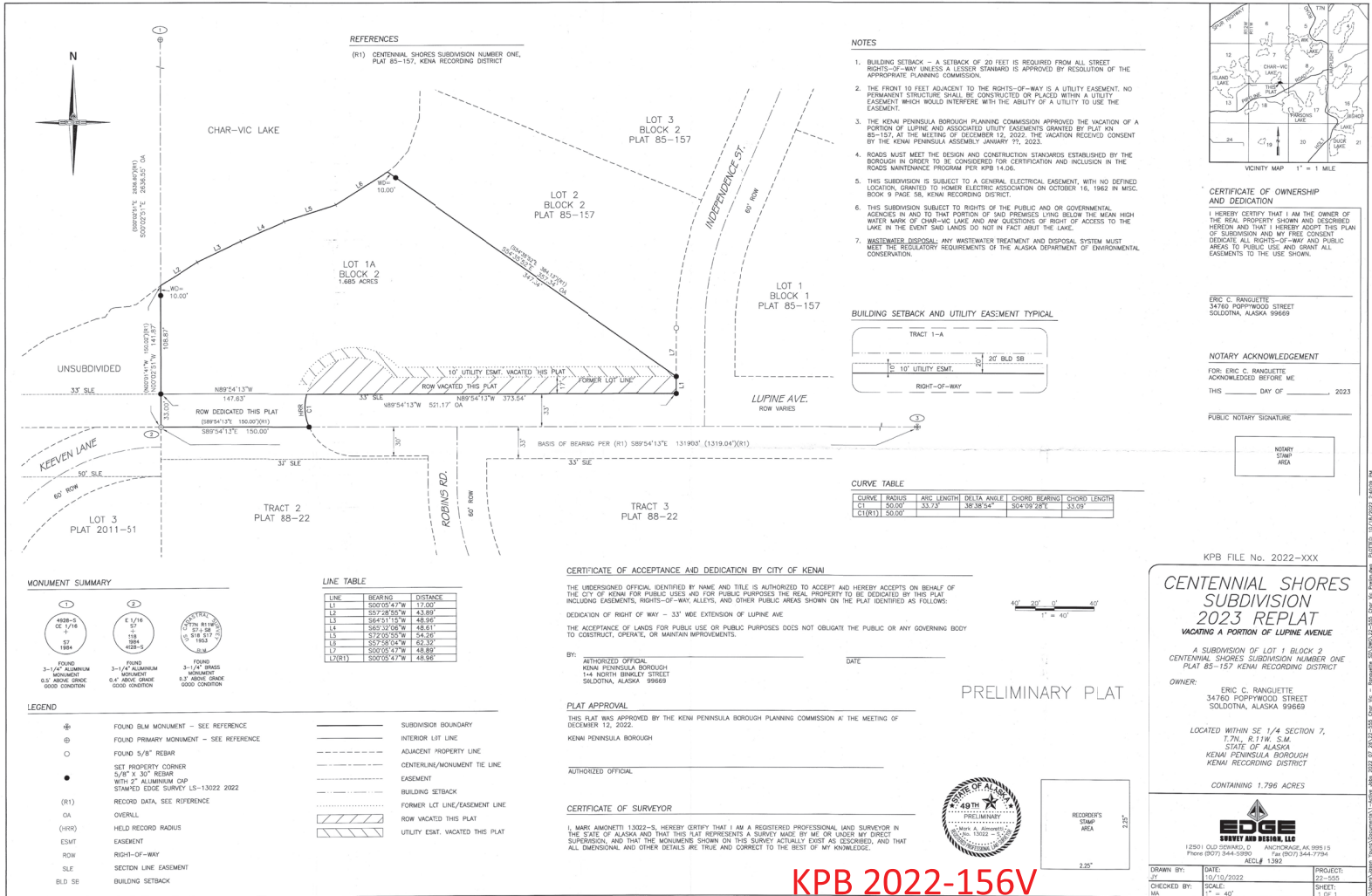




Aerial View



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



KPB 2022-156V

E3-3

AGENDA ITEM E. NEW BUSINESS

ITEM 3. - RIGHT OF WAY VACATION

VACATE A 17 FOOT WIDTH AND PART OF A CUL-DE-SAC BULB FOR A 373 FOOT PORTION OF LUPINE AVENUE AND ASSOCIATED UTILITY EASEMENTS

KPB File No.	2022-156V
Planning Commission Meeting:	November 14, 2022
Applicant / Owner:	Eric Ranguette of Soldotna, AK
Surveyor:	Jason Young, Mark Aimonetti / Edge Survey and Design, LLC
General Location:	Lupine Avenue, Keeven Lane, Nikiski area
Legal Description:	Lupine Avenue, Lot 1 Block 2, Centennial Shores Subdivision Number 1, Plat KN 85-157

STAFF REPORT

Specific Request / Purpose as stated in the petition: Asking to vacate a portion of Lupine Avenue and associated utility easements. Findings for justification to vacate:

1. Lupine Ave. 83' wide dedication, exceeding KPB code of 60' right-of-way width. 50' of the dedication on the North side of section line from plat 85-157 and 33' of the dedication on the South side of section line from plat 88-22.
2. Traveled and used drivable surface of Lupine Ave will remain in the ROW dedicated area.
3. House and improvements on Lot 1 encroaching into current 20' building setback and 10' utility easements along current dedicated cul-de-sac, current owner bought as is and would like to fix the encroachments for future sale and owners.
4. Cul-de-sac not developed, used or needed by public.
5. This platting action will also dedicate 33' of ROW to the West, bringing Lupine Ave. to a full ROW width to West property line.
6. Utility easement vacation and building setback encroachment permit denied by KPB, this platting action was recommended to resolve the encroachments.

Notification: Public notice appeared in the November 3, 2022 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the November 10, 2022 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Nikiski

Post Office of Nikiski

Sixteen certified mailings were sent to owners of property within 600 feet of the proposed vacation. Seven receipts had been returned when the staff report was prepared.

Seventeen public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game
State of Alaska DNR
State of Alaska DOT
State of Alaska DNR Forestry
Nikiski Emergency Services

Nikiski Community Council
Alaska Communication Systems (ACS)
ENSTAR Natural Gas
General Communications Inc, (GCI)
Homer Electric Association (HEA)

Legal Access (existing and proposed): The access will remain from Lupine Avenue. The proposed vacation will be reducing the width of the right-of-way and remove a portion of the cul-de-sac bulb.

Lupine Avenue is located at the south end of borough maintained Independence Street. The area is accessed from Pipeline Road that is located near mile 6 of state maintained Holt Lamplight Road. Not all portions of Pipeline Road are maintained by the roads accessing this vacation do connect to the maintained portion.

Lupine Avenue is dedicated as 83 feet wide atop section line easements that are 66 feet in width. The northern half of Lupine Avenue was dedicated as 50 feet in width. The right-of-way ends with a cul-de-sac bulb. While this right-of-way ends with a bulb, which indicates it is to be permanently closed, it is atop a section line easement and a travelway exists beyond the bulb to connect to Keeven Lane and then to Jeff Street. While these rights-of-way have dedicated access to Pipeline Road, the dedications go through some low wet areas and so the owners in the area use Lupine Avenue for their access. Lupine Avenue, Keeven Lane, and Jeff Street are not borough maintained.

There is an existing structure within the building setback and utility easement adjacent to Lupine Avenue on the subject property. The proposal is to reduce the width of the right-of-way, vacate a portion of the bulb, and provide a through dedication atop the existing travelway.

The block is not compliant due to lakes, wetlands, and large acreage tracts in the area. The proposed dedication does improve the block and access but this plat will not be able to provide any additional dedications to improve the block due to the lake.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	No comment

Site Investigation: An as-built was done for a previous submittal. The as-built shows a portion of the house with portions of the deck are within the building setback associated with the cul-de-sac bulb for Lupine Avenue. The roadway continues past the house and uses the section line easement to go past the bulb for access to lots further to the west.

There do not appear to be any wetlands affecting the subject area or the right-of-way in this area. There are no steep slopes within the subject area or surrounding right-of-way.

KPB River Center review	Floodplain: No comments Habitat Protection: Is NOT within HPD. No comments. State Parks: No comments
State Fish and Game	No objections

Staff Analysis: The property was originally subdivided by Centennial Shores Subdivision Number one, Plat KN 85-157. The plat created Lot 1 Block 2 as well as dedicated Lupine Avenue, originally named Dog Bone Avenue, as a 50 foot wide right-of-way that ended with a partial bulb as an existing roadway continued to the south.

The property to the south was originally subdivided by Robins Subdivision No. 1, KN 79-139. It did not dedicate any portion of Lupine Avenue but did indicate a section line easement was present. The property was then replatted by Kenai Timers, Plat KN 86-133, which was amended by KN 86-195. That plat vacated the original dedication of Robins Road and dedicated the new location as currently exists. The plat also dedicated the southern portion of Lupine Avenue by granting 30 feet to 33 feet of dedication. The plat indicates 30 feet at the western portion with 33

feet on the eastern portion with a 33 foot section line easement still in place. Kenai Timbers Replat, KN 88-22, was recorded which removed lot lines to create larger tracts but the dedications remained as granted by the parent plats.

The current configuration is an 80 to 83 foot wide right of way atop section line easements. The cul-de-sac bulb has been broke through to provide access to the properties to the west by the use of the section line easements. Per KPB Code, cul-de-sacs should be viewed as permanently closed and to open a cul-de-sac staff requests approval from all lots along the cul-de-sac. Due to the limited number of owners along the cul-de-sac and the existence of an “in-use” section line easement, staff did not required signatures from additional landowners but all within 600 feet of the vacation have received certified notification.

Centennial Shores Subdivision Number one, Plat KN 85-157 did not depict setbacks but plat note 2 stated “*BUILDING SET BACK – A building set back of 20 ft. is required from all street rights of ways unless a lesser standard is approved by resolution of the appropriate Planning Commission.*”

Staff worked with the KPB Assessing department to determine if the structures in question may have been built prior to the creation of the setback and utility easements. Records do indicate a structure was present before the creation of the setback but the deck was improved after the setback was put into place. It is also unknown if any other improvements on the house were done prior or after.

The Kenai Peninsula Borough Planning Commission heard a petition for a building setback encroachment permit and a utility easement vacation for the encroachments shown on the as-built. The Planning Commission, at their August 8, 2022 meeting denied the encroachment permit and utility easement alteration. As the dedicated right-of-way is wider than required by KPB Code and the fact that landowners were using the section line easements west of the dedication, it was recommended to propose a vacation and dedication to resolve not only the encroachment issues but to provide a dedicated access through.

20.65.050 – Action on vacation application

D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:

1. The right-of-way or public easement to be vacated is being used;
Staff comments: The portion being vacated needs to be outside the used /driven road in the southeast corner. Surveyor needs to locate the road and adjust the vacated area accordingly. *The dedicated right-of-way and section line easement are in use. The width granted is larger than required by KPB Code.*
2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: *The surveyor indicated the intent to dedicate a continuation of the right-of-way and making sure the existing roadway is within the remaining and new dedication.*
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: *The area is developed and this new dedication will improve the area. New utility easements will be required along the new edge of right-of-way and any requests by utility companies shall be reviewed.*
4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: *Does not access public lands*

5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;

Staff comments: *The vacation will not limit as there will still be a 66 foot wide dedication.*

6. Other public access, other than general road use, exist or are feasible for the right-of-way;

Staff comments:

7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.

Staff comments: *10 foot utility easements will be required adjacent to the new right-of-way edge.*

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

Staff comments: *This will resolve the encroachment issues for the owner and provide a through dedication for the neighboring lands.*

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

The Assembly or City Council will hear the vacation at their scheduled December 13, 2022 meeting.

If approved, Centennial Shores Subdivision 2023 Replat will finalize the proposed right of way vacations. The Plat Committee is scheduled to review the plat on November 14, 2022.

KPB department / agency review:

Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: 51200 LUPINE AVE Existing Street Names are Correct: Yes List of Correct Street Names: LUPINE AVE INDEPENDENCE ST ROBINS RD KEEVEN LN Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names:

	List of Street Names Denied: Comments: 51200 LUPINE AVE will remain with lot 1A.
Assessing	Reviewer: Windsor, Heather Comments: No comment

Utility provider review:

HEA	No comments
ENSTAR	No comments or recommendations
ACS	No objections
GCI	Approved as shown

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(D) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

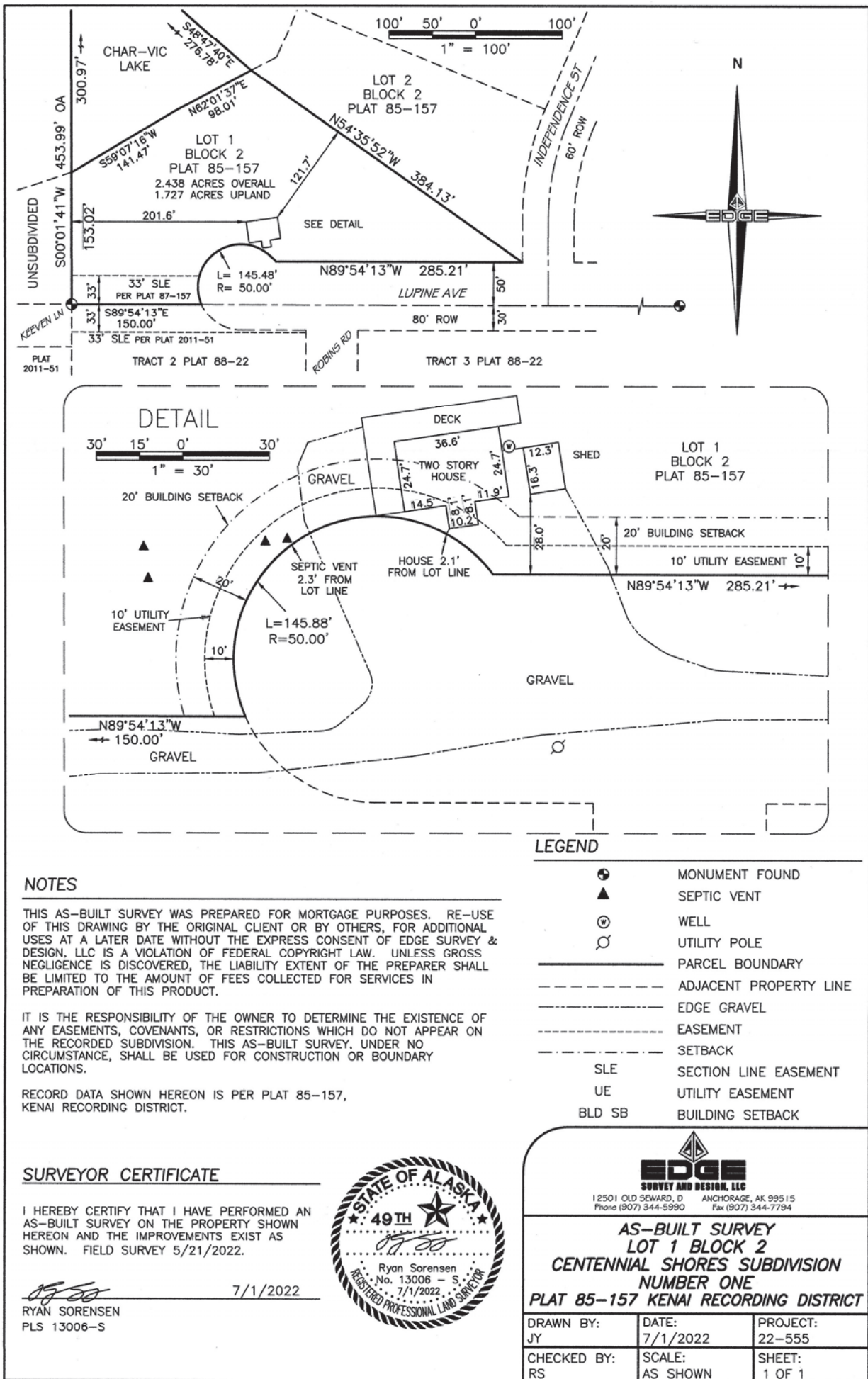
- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *Focus Area: Transportation*
 - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

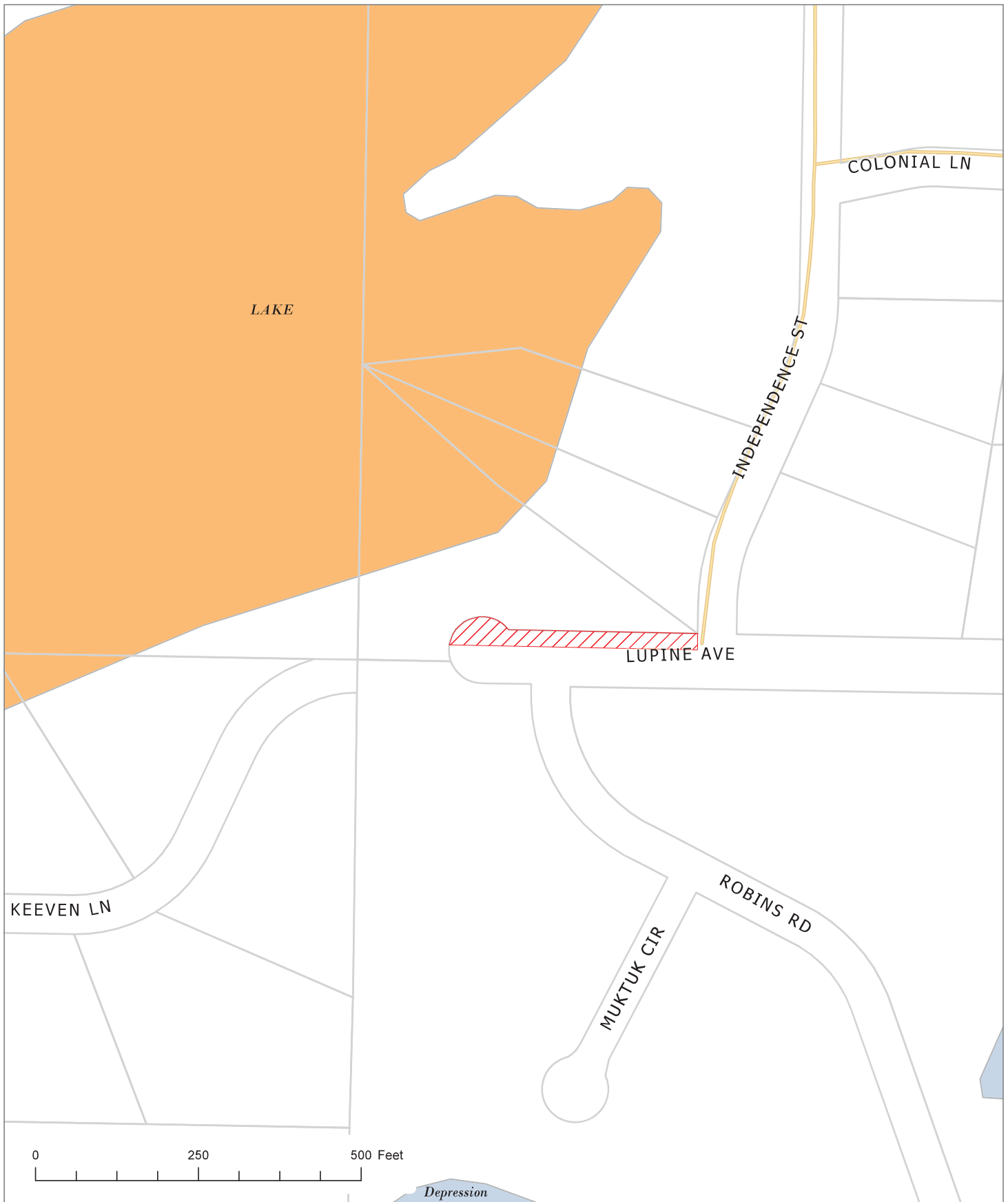
END OF STAFF REPORT

KPB 2022-100



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Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 12	Brantley, Fikes, Gillham, Hooper, Horton, Martin, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	

**ITEM E7 – BUILDING SETBACK ENCROACHMENT PERMIT
LOT 11B BLOCK 3, FERNWOOD 1977 SUBDIVISION HM 77-63**

KPB File No.	2022-099
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	James Ferguson and Karen Jackman of Fritz Creek, Alaska
Surveyor:	Tom Latimer / Orion Surveys
General Location:	Highview Court, Glacier View Road, Fritz Creek area / Kachemak Bay APC
Parent Parcel No.:	172-190-35
Legal Description:	Fernwood 1977 Subdivision Lot 11B Block 3, HM 77-63
Assessing Use:	Residential
Zoning:	Rural Unrestricted

Staff report given by Platting Specialist Julie Hindman.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Gillham moved, seconded by Commissioner Staggs to adopt PC Resolution 2022-33 granting a building setback encroachment permit to Lot 11-B, Block 3, Fernwood Subdivision Unit 3, Plat HM 77-17.

Commissioner Stutzer stated that he would be voting against approving this permit. He did not believe it was appropriate to build in the setback and then come and ask for a permit after the fact. When building, landowners need to have the properties surveyed to ensure that the structures they are building do not encroach into the setbacks or rights-of-way. Seeing that the encroachment is a carport he believes that it is possible to shorten the structure so it no longer encroaches into the setback.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY MAJORITY VOTE:

Yes - 10	Fikes, Gillham, Hooper, Horton, Martin, Morgan, Slaughter, Staggs, Tautfest, Venuti
No - 2	Brantley, Stutzer

**ITEM E8 – BUILDING SETBACK ENCROACHMENT PERMIT
LOT 1 BLOCK 2 CENTENNIAL SHORES SUBDIVISION NUMBER ONE (KN 0850157)**

KPB File No.	2022-099
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	Eric Ranguette of Soldotna, Alaska
Surveyor:	Jason Young, Ryan Sorensen / Edge Survey and Design LLC
General Location:	Lupine Avenue, Keeven Lane, Nikiski area
Parent Parcel No.:	013-281-24
Legal Description:	Centennial Shores Subdivision Number 1, Lot 1 Block 2, KN 85-157
Assessing Use:	Residential
Zoning:	Rural Unrestricted

Staff report given by Platting Specialist Julie Hindman.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Martin moved, seconded by Commissioner Fikes to adopt PC Resolution 2022-39 granting a building setback encroachment permit to Lot 1, Block 2, Centennial Shores Subdivision Number One, Plat KN 85-157.

Commissioner Stutzer noted that he preferred staff option two, he would like to see a new subdivision opening the cul-de-sac and creating a new right-of-way dedication, so he will be voting not to approved the encroachment permit.

Commissioner Gillham asked staff if they knew what the cost of option two would be to the petitioner. Ms. Hindman replied that she could not say what the survey costs would be as they vary from surveyor to surveyor. The borough fees associated with a vacation and a replat, which would be required to fix the situation, would be \$1300.00, which would be on top of the survey fees.

Commissioner Martin noted that cul-de-sacs were typically not to be opened, that they are much more difficult to vacate. He asked staff to elaborate on what it would take to vacate this cul-de-sac. Ms. Hindman replied that it would take the signatures of all landowners fronting on the cul-de-sac to open it up. In this situation this cul-de-sac is already being used as a throughfare to the west. It is also on top of a section line easement which people are using to access properties to the west. What staff would like to see is the vacation of portions of the cul-de-sac bulb, which would resolve the current issues of encroachments into the setbacks and utility easements, and to provide a continuation of the dedication. Commissioner Martin then stated based on that information he would be voting no on the motion.

Commissioner Horton stated the he believed it was more advantageous to make this cul-de-sac a connecting road, which is how it is currently being used. He then stated that he would be voting no on this motion.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION FAILED BY MAJORITY VOTE:

Yes - 1	Hooper
No - 11	Brantley, Fikes, Gillham, Horton, Martin, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti

Ms. Hindman noted that KPB 20.10.110(h) notes that a decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 21.20.210 within 15 days of the notice of decision in accordance with KPB 21.20.250.

**ITEM E9 - UTILITY EASEMENT ALTERATION
LOT 1 BLOCK 2 CENTENNIAL SHORES SUBDIVISION NUMBER ONE (KN 85-157)**

KPB File No.	2022-101V
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	Eric Ranguette
Surveyor:	Jason Young, Ryan Sorensen / Edge Survey and Design LLC
General Location:	Lupine Avenue, Keeven Lane, Nikiski area

Staff report given by Platting Specialist Julie Hindman. She noted KPB 20.65.070(E) states that a planning commission decision under this section is final. No reapplication of a petition concerning the same alteration to a platted utility easement may be filed within one calendar year of the date of the final denial action, except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration or platted utility easement with documentation that the issues have been resolved, accompanied by a new fee. KPB 20.32.070(F) notes that an appeal of the planning commission decision under this section must be filed in the superior court in accordance with the Alaska Rules of appellate Procedure.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public

comment was closed and discussion was opened among the committee.

MOTION: Commissioner Staggs moved, seconded by Commissioner Fikes to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Commissioner Brantley asked staff if the applicant came back with a plat vacating the cul-de-sac and extending the 30-foot right-of-way, would that be consider a change of condition which would allow the petitioner to come back with these utility easement vacations. Ms. Hindman replied that yes, that would be a change in conditions. She also noted that depending on what changes are approved by the planning commission and then by the assembly the encroachment issue may no longer be valid.

Commissioner Staggs asked if the petitioner came back with the changes recommended by staff, could there still be a utility encroachment issue that would need to be resolved. Ms. Hindman replied that if after making the recommended changes and there was still an encroachment into the utility easement, they would need to file another petition to vacate and there would be an additional fee. However, it could be finalized by the other process and those fees could be absorbed by that process.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION FAILED BY MAJORITY VOTE:

Yes – 2	Hooper, Venuti
No – 10	Brantley, Fikes, Gillham, Horton, Martin, Morgan, Slaughter, Staggs, Stutzer, Tautfest

ITEM E10 - RIGHT OF WAY VACATION
Fritz Creek Acres Right of Way Vacation of Mushroom Street

KPB File No.	2022-095V
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	Edward Gamble and Barbara Gamble and Sealevel Inc all of Homer, AK
Surveyor:	Kenton Bloom/ Seabright Surveys
General Location:	Mushroom Street and East End Road / Fritz Creek / Kachemak Bay APC
Legal Description:	Mushroom Street associated with Fritz Creek Acres Subdivision, Plat HM 77-37, Homer Recording District, Section 28 Township 5S Range 12W S.M.

Staff report given by Platting Specialist Julie Hindman.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

MOTION: Commissioner Venuti moved, seconded by Commissioner Fikes to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Chair Brantley noted that he will be supporting this vacation request. He then stated that this is the type of right-of-way vacation that he likes to see.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 12	Brantley, Fikes, Gillham, Hooper, Horton, Martin, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	

E. NEW BUSINESS

9. Utility Easement Vacation; KPB File 2022-101V
PC Resolution 2022-40
Lot 1, Block 2, Centennial Shores Subdivision Number One;
Plat KN 85-157
Edge Survey & Design / Ranquette
Nikiski Area

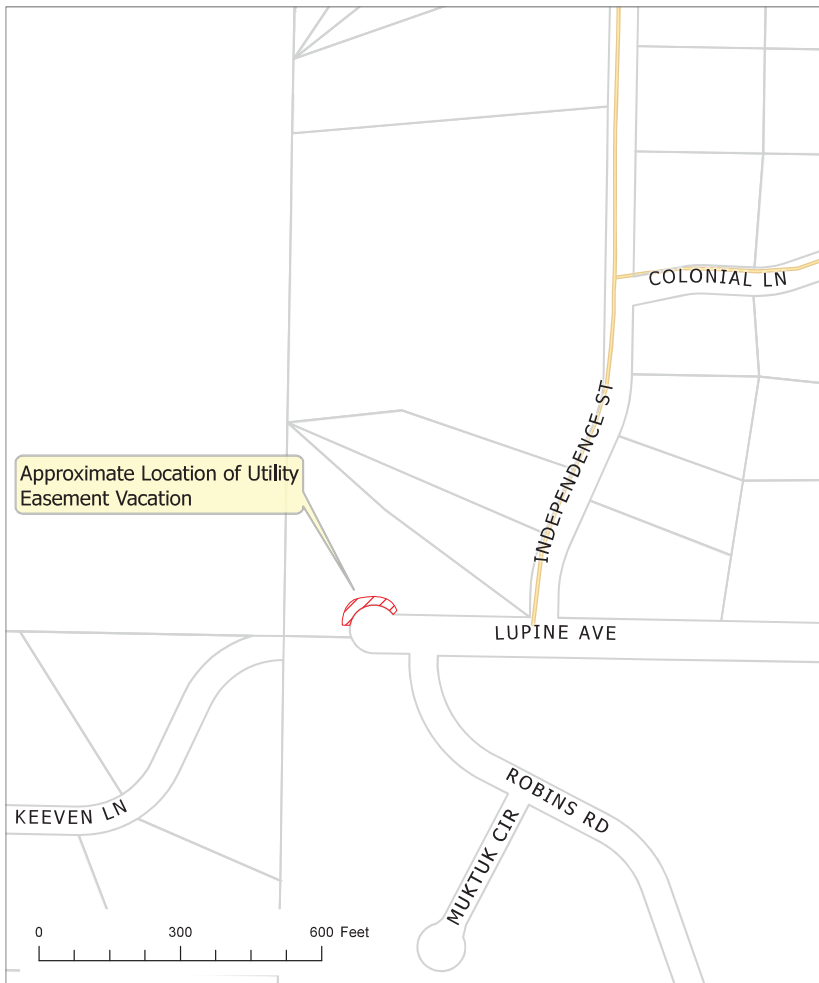
AUGUST 8, 2022 PC MEETING MATERIALS



Kenai Peninsula Borough Planning Department

Vicinity Map

7/13/2022



KPB File # 2022-101V
S07 T07N R11W
Nikiski

The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



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**ITEM 9 - UTILITY EASEMENT ALTERATION
LOT 1 BLOCK 2 CENTENNIAL SHORES SUBDIVISION NUMBER ONE (KN 85-157)**

KPB File No.	2022-101V
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	Eric Ranguette
Surveyor:	Jason Young, Ryan Sorensen / Edge Survey and Design LLC
General Location:	Lupine Avenue, Keeven Lane, Nikiski area

STAFF REPORT

Specific Request / Purpose as stated in the petition: House was purchased without easement encroachment disclosed. House is encroaching into a non-utilized easement. All utility companies have signed off on vacation of partial easement.

Notification: Notice of vacation mailings were sent by regular mail to fifteen owners of property within 600 feet. Notice of the proposed vacation was emailed to twelve agencies and interested parties.

The public notice was posted on the Planning Department's bulletin board at the KPB Administration Building.

Staff Analysis: The property was originally subdivided by Centennial Shores Subdivision Number one, Plat KN 85-157. The plat created Lot 1 Block 2 as well as dedicated Lupine Avenue, originally named Dog Bone Avenue, as a 50 foot wide right-of-way that ended with a partial bulb as an existing roadway continued to the south. Utility easements were not depicted but plat note 4 stated "*The front 10' of the building setback will serve as a utility easement.*" The plat did not depict the setbacks but did state in plat note 2 that they were being created along the rights-of-way.

An as-built had been done on the property that indicated that portions of the house and its attached improvements are within the utility easement and the building setback. The sketch provided with this petition indicates the desire to vacate the entire 10 foot wide utility easement along the norther portion of the bulb. 10 foot wide utility easements will remain on the straight portion of Lupine Avenue. Section line easements coincide the dedication of Lupine Avenue and continue west past the cul-de-sac. It is stated that the easement is not currently in use. If the utility providers did a connection from Lupine Avenue to the west, permits may be requested from the Borough for use of the right-of-way and section line easements.

Staff worked with the KPB Assessing department to determine if the structures in question may have been built prior to the creation of the setback and utility easements. Records do indicate a structure was present before the creation of the setback and utility easement but the deck was improved after the utility easement was put into place. It is also unknown if any other improvements on the house were done prior or after.

The property to the south was originally subdivided by Robins Subdivision No. 1, KN 79-139. It did not dedicate any portion of Lupine Avenue but did indicate a section line easement was present. The property was then replatted by Kenai Timers, Plat KN 86-133, which was amended by KN 86-195. That plat vacated the original dedication of Robins Road and dedicated the new location as currently exists. The plat also dedicated the southern portion of Lupine Avenue by granting 30 feet to 33 feet of dedication. The plat indicates 30 feet at the western portion with 33 feet on the eastern portion with a 33-foot section line easement still in place. Kenai Timbers Replat, KN 88-22, was recorded which removed lot lines to create larger tracts but the dedications remained as granted by the parent plats.

The current configuration is a 80 to 83 foot wide right of way atop section line easements. The cul-de-sac bulb has been broke through to provide access to the properties to the west by the use of the section line easements. The owner has stated that they are requesting this as it is a less expensive option. Staff has no objection if the Planning Commission wishes to grant this exception but staff would rather see a plan to vacate the bulb, reduce the right-of-

way width only if needed to bring the lot into compliance with the setback, and have a dedication be granted over the existing travelway.

There are encroachments into the building setback and a separate petition has been received to be reviewed by the Planning Commission at the August 8, 2022 meeting.

Utility provider review:

HEA	No comments
ENSTAR	Approved as shown
ACS	No objections to the easement vacation as shown
GCI	Approved as shown.

Findings:

1. The petition states that the utility easement proposed to be vacated is not in use by a utility company.
2. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation.
3. Centennial Shores Subdivision Number One, KN 85-157, created 10 foot utility easements along dedicated rights-of-way.
4. A structure and its attached improvements are currently within the easement thus limiting its use.
5. The right-of-way width is 80 feet wide and is atop section line easements.
6. Lupine Avenue is an 80 foot wide dedicated right-of-way.
7. Lupine Avenue is constructed and in use but not maintained by the borough.
8. The encroachments are along a cul-de-sac but access continues through the bulb within the section line easements.
9. Majority of the road is in the lower part of the right-of-way and the driveway is in the bulb of the right-of-way.
10. There does not appear to be any line of sight issues due to the clearing done in the area.

RECOMMENDATION:

Based on consideration of the merits as outlined by Staff comments and Staff findings, Staff recommends

- 1) To adopt Resolution 2022-40, subject to compliance with KPB 20.10.110 sections E and F and grant the utility easement permit.
- 2) To deny the utility easement permit and recommend petitioner return with a subdivision vacating a portion of Lupine Avenue, thereby moving and relocating the 20' building setback and also dedicating a portion of Lot 1 Block 2 Centennial Shores Subdivision No 1 85-157 on the southwesterly side as new roadway. This would begin to fix the issue of the roadway crossing and continuing west and connecting to Keeven Lane.

20.65.070 Alteration of platted utility easements

- E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.**
- F. An appeal of the planning commission decision under this section must be filed in the superior**

court in accordance with the Alaska Rules of Appellate Procedure.

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

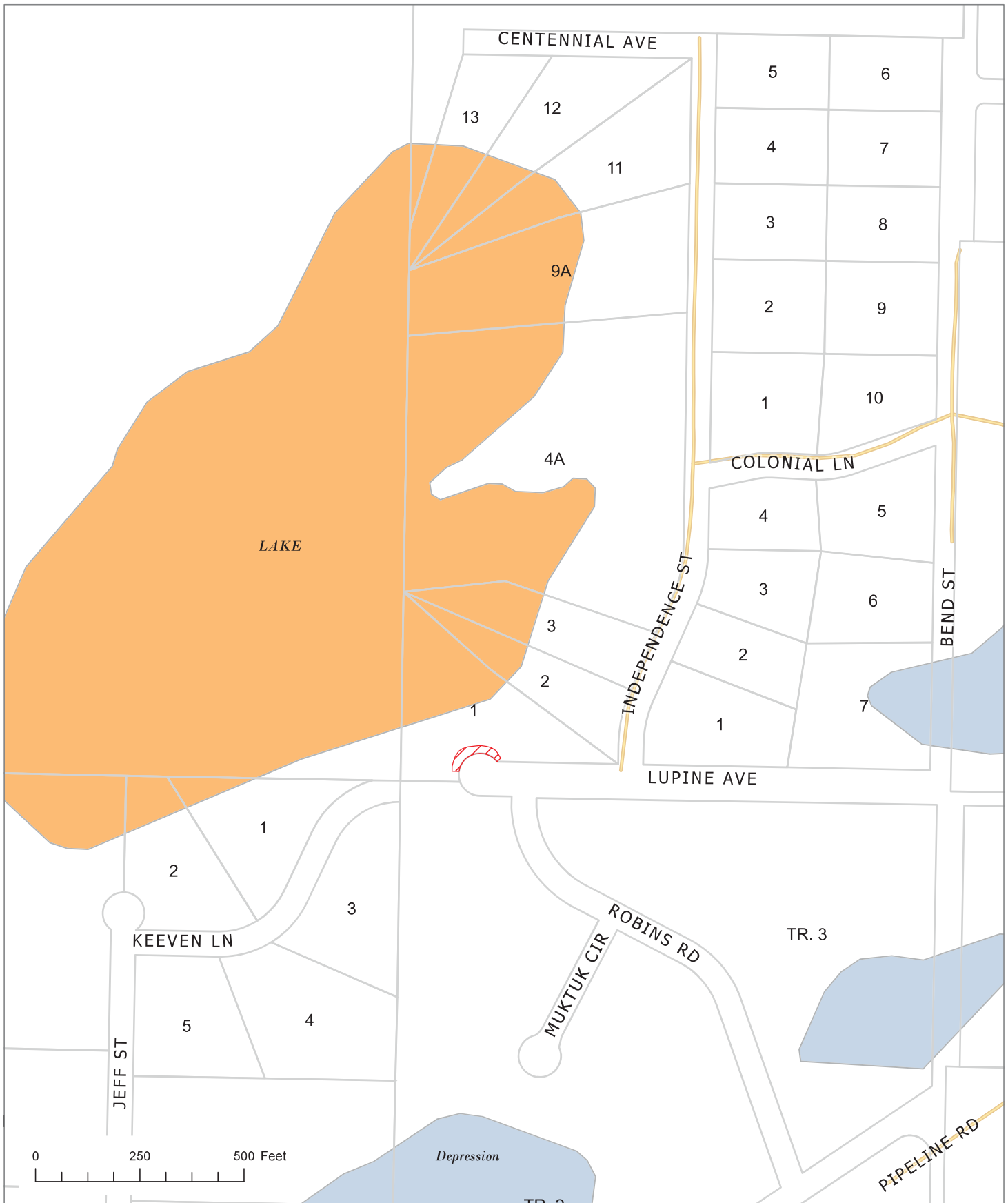
END OF STAFF REPORT



Aerial with 5-foot Contours



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E. NEW BUSINESS

- 8. Building Setback Permit; KPB File 2022-100; PC RES 2022-39
Lot 1, Block 2, Centennial Shores Subdivision Number One;
Plat KN 85-157
Edge Survey & Design / Ranquette
Nikiski Area**

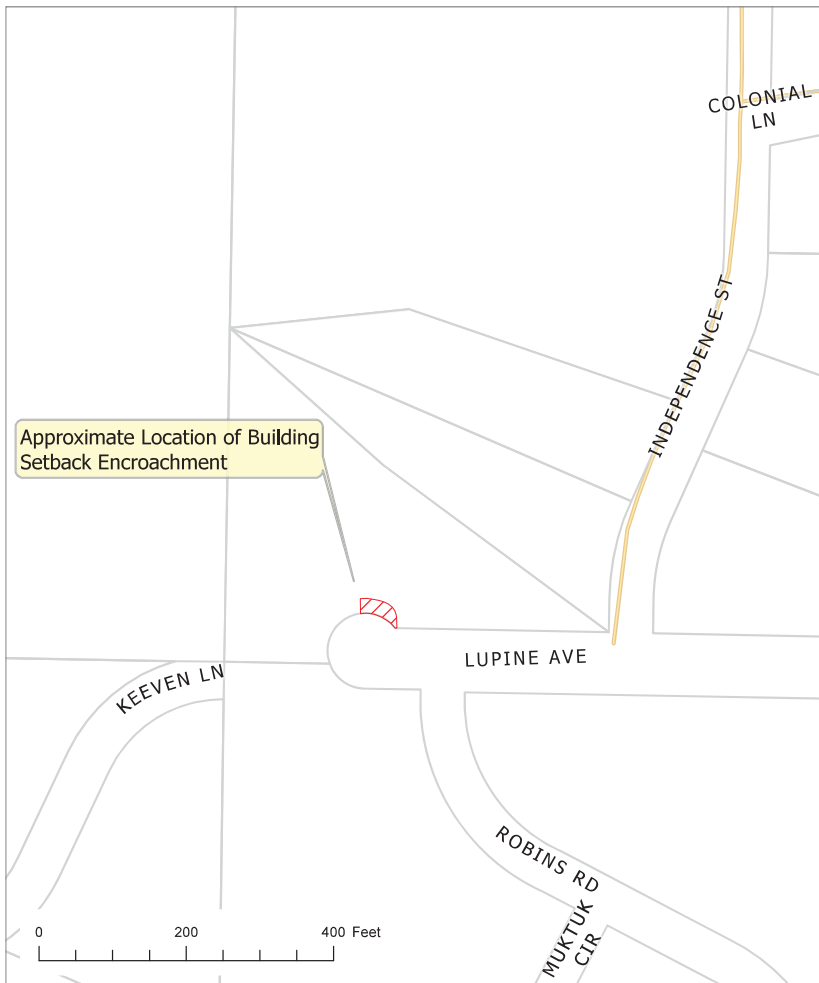
AUGUST 8, 2022 PC MEETING MATERIALS



Kenai Peninsula Borough Planning Department

Vicinity Map

7/13/2022

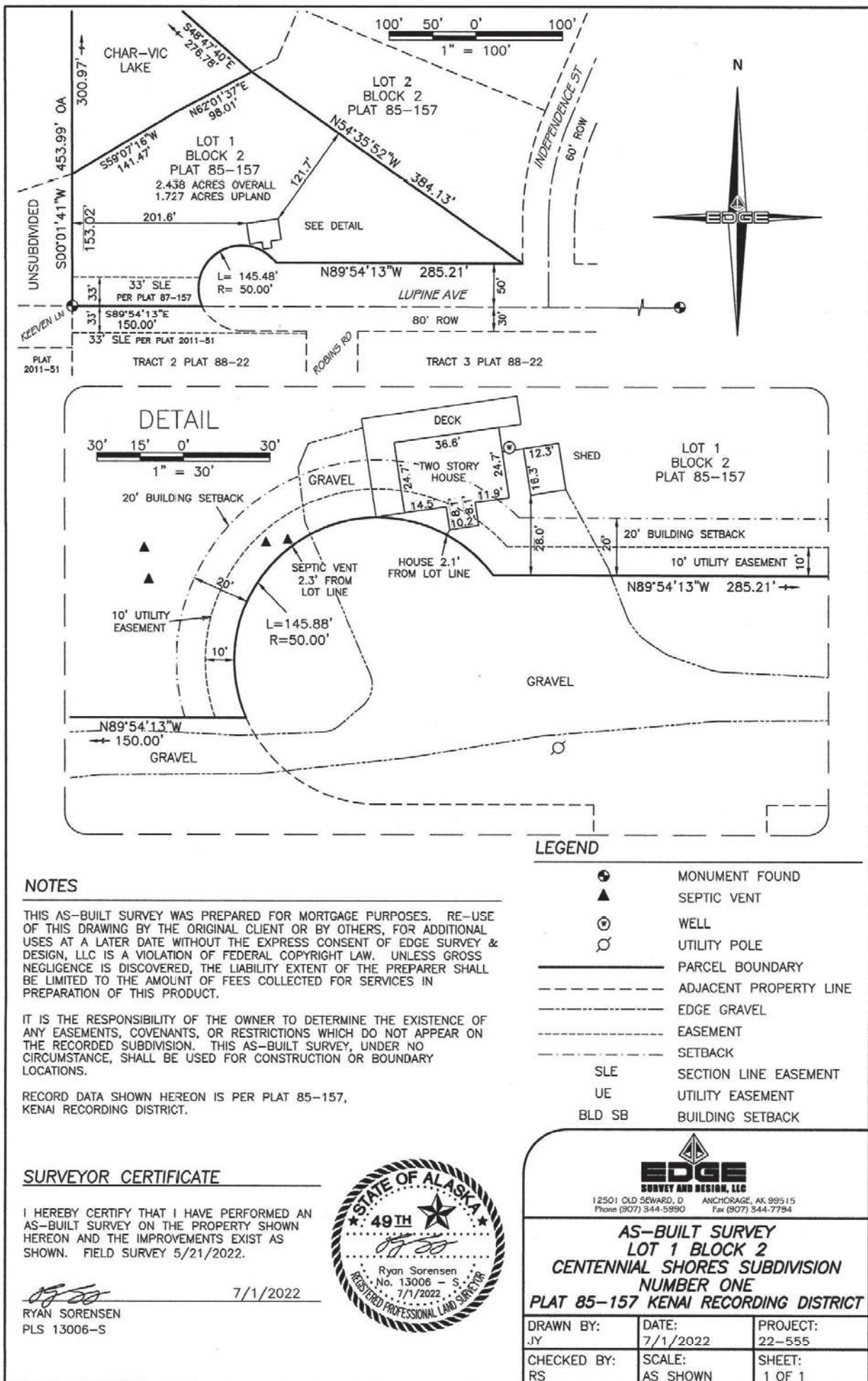


KPB File # 2022-100
S07 T07N R11W
Nikiski

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KPB 2022-100



C:\Users\Jason Young\Documents\1-Active Jobs 2022 05 27\22-555 Char Vic - Ronguette ASB\DWG\22-555 Char Vic Ronguette ASB.dwg PLOTTED: 6/30/2022 9:11:27 PM

AGENDA ITEM E. NEW BUSINESS

**ITEM 8. – BUILDING SETBACK ENCROACHMENT PERMIT
LOT 1 BLOCK 2 CENTENNIAL SHORES SUBDIVISION NUMBER ONE (KN 0850157)**

KPB File No.	2022-099
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	Eric Ranguette of Soldotna, Alaska
Surveyor:	Jason Young, Ryan Sorensen / Edge Survey and Design LLC
General Location:	Lupine Avenue, Keeven Lane, Nikiski area

Parent Parcel No.:	013-281-24
Legal Description:	Centennial Shores Subdivision Number 1, Lot 1 Block 2, KN 85-157
Assessing Use:	Residential
Zoning:	Rural Unrestricted

STAFF REPORT

Specific Request / Purpose as stated in the petition: House was purchased without setback encroachment disclosed. Easier and less expensive option than vacating or moving cul-de-sac.

Site Investigation: Per the as-built and submittal the house along with portions of the deck are within the building setback. The location is along the cul-de-sac bulb so with the angle of the house along with the curve of the right-of-way the encroachment varies. It appears no portions are within the right-of-way although portions of the deck are very close. A portion of the house is 2.1 feet from the lot line thus encroaching 17.9 feet in that location. Septic vents are also present within the setback but per KPB Code, are allowed within the setback.

The encroachment is located on the bulb of Lupine Avenue, a 80 foot wide right-of-way. Lupine Avenue is cleared and in use but is not maintained by the borough. Borough road maintenance ends at the end of Independence Street when it intersects Lupine Avenue. Lupine Avenue continues through the cul-de-sac bulb through this property and then connects to the 60 foot wide dedication of Keeven Lane. The lots using Lupine Avenue to access Keeven Lane should have other access from the south but the dedication are not complete and some go through wetlands. The dedication of Lupine Avenue coincides with section line easements. KPB GIS data indicates that it is 66 feet wide section line easements and these are being used for the connection between Lupine Avenue and Keeven Lane.

There do not appear to be any wetlands affecting the subject area or the right-of-way in this area. There are no steep slopes within the subject area or surrounding right-of-way.

There are no street views available for this area. Per the KPB GIS Imagery, the area is cleared as they enter onto their property and the right-of-way veers south slightly before continuing to the west. The distance from the travel way does not appear to create any sight issues.

Staff Analysis: The property was originally subdivided by Centennial Shores Subdivision Number one, Plat KN 85-157. The plat created Lot 1 Block 2 as well as dedicated Lupine Avenue, originally named Dog Bone Avenue, as a 50 foot wide right-of-way that ended with a partial bulb as an existing roadway continued to the south. Setbacks were not depicted but plat note 2 stated “*BUILDING SET BACK – A building set back of 20 ft. is required from all street rights of ways unless a lesser standard is approved by resolution of the appropriate Planning Commission.*”

Staff worked with the KPB Assessing department to determine if the structures in question may have been built prior to the creation of the setback and utility easements. Records do indicate a structure was present before the

creation of the setback but the deck was improved after the setback was put into place. It is also unknown if any other improvements on the house were done prior or after. For those reasons staff has drafted this to include all portions encroaching to make sure there is no confusion or issues in the future.

The plat also created 10 foot utility easements and a separate petition has been received to be reviewed by the Planning Commission at the August 8, 2022 meeting.

The property to the south was originally subdivided by Robins Subdivision No. 1, KN 79-139. It did not dedicate any portion of Lupine Avenue but did indicate a section line easement was present. The property was then replatted by Kenai Timbers, Plat KN 86-133, which was amended by KN 86-195. That plat vacated the original dedication of Robins Road and dedicated the new location as currently exists. The plat also dedicated the southern portion of Lupine Avenue by granting 30 feet to 33 feet of dedication. The plat indicates 30 feet at the western portion with 33 feet on the eastern portion with a 33 foot section line easement still in place. Kenai Timbers Replat, KN 88-22, was recorded which removed lot lines to create larger tracts but the dedications remained as granted by the parent plats.

The current configuration is a 80 to 83 foot wide right of way atop section line easements. The cul-de-sac bulb has been broke through to provide access to the properties to the west by the use of the section line easements. The owner has stated that they are requesting this as it is a less expensive option. Staff has no objection if the Planning Commission wishes to grant this exception but staff would rather see a plan to vacate the bulb, reduce the right-of-way width only if needed to bring the lot into compliance with the setback, and have a dedication be granted over the existing travel way.

Findings:

1. A building setback along Lupine Avenue was created by Centennial Shores Subdivision Number 1, KN 85-157.
2. Per the as-built portions of the deck are almost to the edge of the right-of-way.
3. Per the as-built portions of the house are 17.8 feet within the setback.
4. Lupine Avenue is an 80 foot wide dedicated right-of-way.
5. Lupine Avenue is constructed and in use but not maintained by the borough.
6. The encroachments are along a cul-de-sac but access continues through the bulb within the section line easements.
7. Majority of the road is in the lower part of the right-of-way and the driveway in the bulb of the right-of-way.
8. There does not appear to be any line of sight issues due to the clearing done in the area.
9. The Kenai Peninsula Borough Roads Department gave no comment.

20.10.110. – Building setback encroachment permits.

E. The following standards shall be considered for all building setback encroachment permit applications:

1. The building setback encroachment may not interfere with road maintenance.

Findings 4-8 appear to support this standard.

2. The building setback encroachment may not interfere with sight lines or distances.

Findings 4-8 appear to support this standard.

3. The building setback encroachment may not create a safety hazard.

Findings 4-8 appear to support this standard.

- F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.

- G. The Planning Commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

KPB department / agency review:

KPB Roads Dept. comments	No comment
SOA DOT comments	
KPB River Center review	<p>A. Floodplain Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Comments: No Comments</p>
State of Alaska Fish and Game	No comment
Addressing	<p>Affected Addresses: 51200 LUPINE AVE Existing Street Names are Correct: Yes List of Correct Street Names: LUPINE AVE ROBINS RD INDEPENDENCE RD All New Street Names are Approved: No Comments: 51200 LUPINE AVE will remain with lot 1.</p>
Code Compliance	It appears that a portion of the structure is in the 20' set back
Planner	<p>There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat.</p>
Assessing	No comment
Advisory Planning Commission	

Utility provider review:

Addressing	
Code Compliance	
Planner	
Assessing	
Advisory Planning Commission	

RECOMMENDATION:

Based on the standards to grant a building setback encroachment permit, **staff recommends**

- 1) To adopt Resolution 2022-39, subject to compliance with KPB 20.10.110 sections F and G and grant the building setback permit.

- 2) To deny the building setback permit and recommend petitioner return with a subdivision vacating a portion of Lupine Avenue, thereby moving and relocating the 20' building setback and also dedicating a portion of Lot 1 Block 2 Centennial Shores Subdivision No 1 85-157 on the southwesterly side as new roadway. This would begin to fix the issue of the roadway crossing and continuing west and connecting to Keeven Lane.

NOTE:

20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

END OF STAFF REPORT



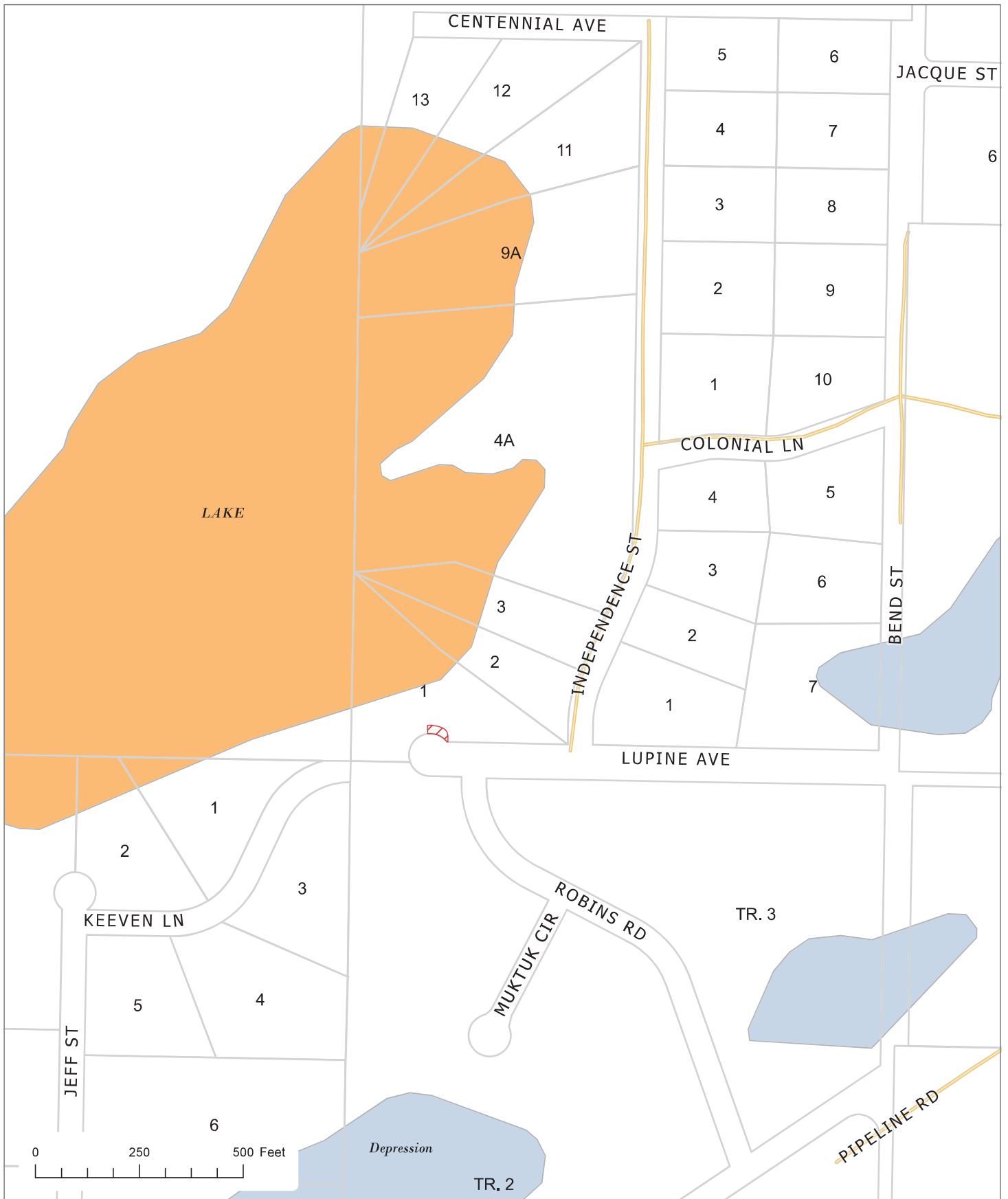
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Wetlands



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Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

PETITION TO VACATE PLATTED RIGHT OF WAY / PLATTED PUBLIC EASEMENT / PLATTED PUBLIC AREA

PUBLIC HEARING REQUIRED

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

Initially, a sketch may be included with the vacation petition for review by the Planning Commission. After the Planning Commission takes action on the vacation, a Subdivision Plat must be prepared by a licensed land surveyor. The plat will be processed in accordance with KPB 20.10.080. Platting authority is vested in the Planning Director.

SUBMITTAL REQUIREMENTS

A platted right of way vacation (ROWV) application will be scheduled for the next available planning commission meeting after a complete application has been received.

- ☒ - \$500 non-refundable fee to help defray costs of advertising public hearing. Plat fees will be in addition to the vacation fees.
- ☐ - City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- ☐ Lupin Ave _____ platted public right of way proposed to be vacated was dedicated by the plat of Centennial Shores SD No. 1 _____ Subdivision, filed as Plat No. 85-157 in the Kenai _____ Recording District.
- ☒ - 3 copies of the plat or map showing the platted right of way to be vacated. Must not exceed 11 x 17 inches in size. Area to be vacated must be clearly depicted. Proposed alternative public access to be shown and labeled on the sketch.
- ☒ - **REASON FOR VACATING** The petitioner must attach a statement with reasonable justification for the vacation of the platted right of way / platted easement / platted public area.

Has the platted right of way been fully or partially constructed?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
Is the platted right of way used by vehicles / pedestrians / other?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
Is alternative right-of-way being provided?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
Are there utility easements associated with the right of way to be vacated?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
Is the platted right of way and or associated utility easement in use by any utility company?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
If so, which utility provider?				

LEGAL DESCRIPTION ADJOINING LAND:

Lot, Block, Subd. or street address Centennial Shores SD No. 1 Block 2 Lot 1 Parcel ID 01321824	
Section, township, range T7N R11W Section 7	
City (if applicable)	General area Char-Vic Lake

The petition must be signed by owners of a majority of the land affected by the platted right of way proposed to be vacated. Each petitioner must include address and legal description of his/her property. Attach additional signature sheets if needed.

Submitted by:

Land Owner

Name (printed): Eric Ranguette	Signature <i>Eric</i>
e-mail:	Address:
Owner of: Lot 1	

Land Owner:

Name (printed):	Signature
e-mail:	Address:
Owner of: Lot 1	

FOR OFFICE USE ONLY

RECEIVED BY _____

DATE SUBMITTED _____

KPB FILE # _____