



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Max Best, Planning Director 

DATE: April 25, 2017

SUBJECT: Vacate the 66-foot section line easement running through the east side of Tract E1 as shown on Folz Subdivision, Snowden Addition, Plat SW 98-33. The section line easement being vacated is unconstructed and located within the SE 1/4 Section 27 and SW 1/4 Section 26, T1N, R1W, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPBC Resolution 2017-13; KPB File 2017-026.

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 April 24, 2017, the Kenai Peninsula Borough Planning Commission granted approval of the proposed vacation by unanimous consent based on the following findings of fact. This petition is being sent to you for your consideration and action.

Findings

1. Per the abstract from the Bureau of Land Management, the original patentee for the property (William A. McPherson, Patent 526485) entered the land on September 15, 1914.
2. Section Line Easement law came into effect on April 6, 1923.
3. The subject property was not vacant, unreserved, unappropriated public land when the Section Line Easement law became effective; therefore, no section line easements were created by law within the property.
4. SW 98-33, which showed a 66-foot section line easement through Tract E1, was recorded on December 17, 1998.
5. The owner of SW 98-33 signed a notarized statement dedicating all rights-of-way and granting all easements to the use shown.
6. Per the exhibits provided by the surveyor, the northern portion of the 66-foot section line easement is in a pond.
7. The section line easements shown on SW 98-33 enter the Seward Highway at an odd angle on a curve of the highway.
8. Per the KPB Floodplain Administrator, the proposed vacation is within a mapped flood hazard zone and the flood way.
9. Per KPB GIS mapping, the proposed vacation was inundated in the 1986 and 2006 floods and partially affected by the 1995 flood.
10. The 66-foot section line easement as shown on SW 98-33 is wholly within Tract E1, Folz Subdivision Snowden Addition.
11. The 66-foot section line easement as shown on SW 98-33 does not provide public access to adjoining or adjacent acreage parcels.
12. Per the petition, the section line easement as shown on SW 98-33 is not constructed.

13. Per the petition, the section line easement as shown on SW 98-33 is not in use by pedestrians or vehicles.
14. Per the April 13, 2017 letter from the State Department of Natural Resources, there are no section line easements, therefore, no need to petition to vacate. Per AS 19.10.010, for public lands in the Territory of Alaska before April 6, 1923, section line easements did not arise by operation of statute.

The Assembly has 30 days from April 24, 2017 in which to veto the decision of the Planning Commission. If the Commission receives no veto within the 30-day period, the decision of the Commission will stand.

Draft, unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

cc: petitioners' w/minutes only

AGENDA ITEM F. PUBLIC HEARINGS

4. Vacate the 66-foot section line easement running through the east side of Tract E1 as shown on Folz Subdivision, Snowden Addition, Plat SW 98-33. The section line easement being vacated is unconstructed and located within the SE 1/4 Section 27 and SW 1/4 Section 26, T1N, R1W, Seward Meridian, Alaska, within the Kenai Peninsula Borough; PC Resolution 2017-13; KPB File 2017-026.

Staff Report given by Paul Voeller

PC Meeting: 4/24/17

Purpose as stated in petition:

- 1) The easement was incorrectly dedicated on the 1998 plat as a 66' total width Section Line Easement. The effective date of the patent is in the year 1914, well before Section Line Easement Law was in effect; therefore, this is not technically a statute "section line" easement;
- 2) Public access through this easement is impractical, and unlikely. It is unconstructed and partially passes through a pond; and
- 3) Equal or better access exists around Tract E1 in the form of a DOT Right of Way [Seward Highway].

Petitioners: Elliot Jackson and Toni L. Strauss of Anchorage, AK.

Public notice appeared in the April 12 issue of the Seward Journal as a separate ad and in the April 19 issue as part of the tentative agenda.

Per KPB 20.70.220, public hearing notices to adjoining and adjacent property owners may be sent by regular mail. Twelve public hearing notices were sent by regular mail to owners within 600 feet.

Public hearing notices were emailed to 12 agencies and interested parties and 12 KPB Departments. Notices were mailed to the Seward Post Office and Seward Community Library with a request to be posted in public locations. The public hearing notice and maps were posted on the Borough web site and bulletin board.

Comments Received

ENSTAR: No comments, recommendations, or objections.

GCI: No comments

KPB Addressing Officer: No objection to the vacation.

KPB Roads Department: No comments

River Center: The proposed vacation is within a mapped flood hazard zone (AE, X) and a flood way.

Seward Electric: Foltz Subdivision Snowden Addn. Plat #98-33 clearly shows the overhead electric lines as center of a 60 foot utility easement. This easement is in straight line sections between poles varying between 0 and 5+ or – feet into the lot. This is not what I see depicted on the section line easement exhibit. I am concerned that this may mislead the new owner of this property as to the true width of the easement. Therefore, if Plat 98-33 description holds or the line there depicted is transferred to this exhibit, I will have no issues with the exhibit. Furthermore, easements still apply from Bk 42R P194, 212, and 213.

State Department of Natural Resources: Based on the date of entry and Federal Patent #526485, there would be no section line easements, therefore, no need to petition to vacate. Per AS 19.10.010, for public lands in the Territory of Alaska before April 6, 1923, section line easements did not arise by operation of statute.

State Parks: No comments.

Staff Discussion: KPB records concur with the petitioners' statement that the property was entered in 1914. Section line easement law was enacted in 1923. Recordation of SW 98-33 created some type of easement based on the owner's notarized grant of all easements to the use shown.

The surveyor discussed the section line easements as shown on SW 98-33 with the State Department of Natural Resources. On April 13, 2017, DNR provided a letter to the surveyor confirming the 66-foot section line easements shown on SW 98-33 were not created by statute, and a section line easement vacation petition did not have to be submitted to DNR.

Since the section line easements shown on SW 98-33 were not created by statute, the proposed vacation can be finalized by KPB with no further involvement by DNR. The surveyor opted to finalize the vacation, if it is approved, by Planning Commission Resolution.

Findings for the Proposed Vacation

1. Per the abstract from the Bureau of Land Management, the original patentee for the property (William A. McPherson, Patent 526485) entered the land on September 15, 1914.
2. Section Line Easement law came into effect on April 6, 1923.
3. The subject property was not vacant, unreserved, unappropriated public land when the Section-Line Easement law became effective; therefore, no section line easements were created by law within the property.
4. SW 98-33, which showed a 66-foot section line easement through Tract E1, was recorded on December 17, 1998.
5. The owner of SW 98-33 signed a notarized statement dedicating all rights-of-way and granting all easements to the use shown.
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8. Per the KPB Floodplain Administrator, the proposed vacation is within a mapped flood hazard zone and the flood way.
9. Per KPB GIS mapping, the proposed vacation was inundated in the 1986 and 2006 floods and partially affected by the 1995 flood.
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11. The 66-foot section line easement as shown on SW 98-33 does not provide public access to adjoining or adjacent acreage parcels.
12. Per the petition, the section line easement as shown on SW 98-33 is not constructed.
13. Per the petition, the section line easement as shown on SW 98-33 is not in use by pedestrians or vehicles.
14. Per the April 13, 2017 letter from the State Department of Natural Resources, there are no section line easements, therefore, no need to petition to vacate. Per AS 19.10.010, for public lands in the Territory of Alaska before April 6, 1923, section line easements did not arise by operation of statute.

STAFF RECOMMENDATION: Based on Findings 1-14, staff recommends granting approval of the vacation as submitted, subject to:

1. Concurrence of the proposed vacation by the KPB Assembly.
2. Place a statement on the exhibit that clarifies only the 66-foot section line easement as shown on SW 98-33 is being vacated, and it is not the intent to vacate any other dedicated public rights-of-way or easements. The final wording can be worked out with the Platting Officer.
3. The Planning Department is responsible for filing the Planning Commission resolution.
4. The petitioners will provide the recording fee for the resolution and its attachment to the Planning Department.

NOTE:

KPB 20.70.110. - Vacation consent—assembly.

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly. The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If

no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120. - Action after denial of vacation petition.

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, 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.**

END OF STAFF REPORT

Chairman Martin opened the meeting for public comment. Seeing and hearing no one wishing to speak Chairman Martin closed the public comment period and opened discussion among the Commission.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Glendening approval of the vacation of the section line easement in the Bear Creek area as stated and according to staff recommendations based on the following findings of fact thereby adopting PC Resolution 2017-13.

Findings

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VOTE: The motion passed by unanimous consent.

CARLUCCIO YES	ECKLUND YES	ERNST YES	FOSTER ABSENT	GLENDENING YES	ISHAM YES	LOCKWOOD YES
MARTIN YES	MORGAN YES	RUFFNER YES	VENUTI YES	WHITNEY YES		11 YES 1 ABSENT