

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

FROM: Melanie Aeschliman, Planning Director 

DATE: April 13, 2021

RE: Vacate a 10' by 30' Utility Easement located within Lot 6 Green Forest Subdivision adjoining Pembroke Drive, granted by Green Forest Subdivision KN 84-309; within Section 4, Township 7 North, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File No. 2021-010V; Fineline Surveys, Inc. / Black, Johnson

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 12, 2021 the Kenai Peninsula Borough Planning Commission granted approval of the above vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70 by unanimous vote (9-Yes, 0-No, 2-Absent).

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

April 12, 2021 Planning Commission Draft Meeting Minutes
April 12, 2021 Agenda Item E3 Meeting Packet Materials

MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	9	No	0	Absent	2
Yes	Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Bentz, Martin				

AGENDA ITEM E. UTILITY EASEMENT VACATIONS

- Vacate a 10' by 30' Utility Easement located within Lot 6 Green Forest Subdivision adjoining Pembroke Drive, granted by Green Forest Subdivision KN 84-309; within Section 4, Township 7 North, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File No. 2021-010V; Fineline Surveys, Inc. / Black, Johnson

Staff report given by Scott Huff.

Purpose as stated in petition: Well placed in utility easement.

Petitioners: Ronald F. Black of Nikiski, AK

Location: Pembroke Drive, from Koala Lane, from Halbouty Road, Nikiski area

Notification: Notice of vacation mailings were sent by regular mail to 13 owners of property within 300 feet. Notice of the proposed vacation was emailed to ___ agencies and interested parties.

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

Comments Received:

HEA: No objection.

ENSTAR Natural Gas: No objection.

GCI: No response.

ACS: No objection.

KPB Roads: n/a

SUPPORTING INFORMATION:

The utility easement petitioned for vacation was granted in 1984 per the parent plat. The location of the easement aligns with the boundary line on the opposite side of the right of way, where a 20 foot utility easement exists.

The utility easement is not is use by any utility provider.

A subdivision plat has been submitted to the planning department that will combine Lots 5 and 6 as well as adjust the lot line between Lot 6 and Lot 7. The preliminary plat was approved by the plat committee at the March 15th meeting.

Findings:

- The petition states that the well is in the utility easement.
- The easement petitioned for vacation is not in use by a utility company.
- ACS, ENSTAR, and HEA provided written non-objection to the proposed vacation.
- GCI has not responded to the surveyor and no comment could be provided.
- Green Forest Subdivision Plat KN 84-309, granted a 10' by 30' wide utility easement within Lot 6.

6. The preliminary plat will grant a 10 foot utility easement adjoining Pembroke Drive and Koala Lane.
7. Homer Electric has installed a primary overhead utility line on the west side of Pembroke Dr.
8. A underground service line provides electricity to Lot 6.
9. No surrounding properties will be denied utilities.

Staff reviewed the vacation request and recommends granting approval with Findings 1-9 supporting the vacation request.

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff findings, staff recommends approval of the vacations as petitioned, subject to:

1. Consent by KPB Assembly
2. Finalize the approval of the vacation by either
 - a. 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).
OR
 - b. Recording of a resolution within 90 days of adoption of the resolution by the Planning Commission, with the following requirements
 - i. Provide an exhibit drawing, prepared by a licensed land surveyor, clearly indicating the portion of the utility easement being vacated to be recorded with KPB Planning Commission Resolution 2020-18, becoming Page 2 of 2.
 - ii. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
 - iii. The Planning Department is responsible for filing the Planning Commission resolution.

KPB 20.70.110:

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:

- 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

Vice Chair Ruffner opened the item for public comment. Hearing no one wishing to comment, Vice Chair Ruffner closed public comment and opened discussion among the Commission.

MOTION: Commissioner Gillham moved, seconded by Commissioner Ecklund 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.

MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	9	No	0	Absent	2
Yes	Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Morgan, Ruffner, Veruti				
Absent	Bentz, Martin				



Planning Department

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

PETITION TO VACATE UTILITY EASEMENT

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.

SUBMITTAL REQUIREMENTS

A utility easement vacation application will be scheduled for the next available planning commission meeting after a complete application has been received.

- \$75 non-refundable fee to help defray costs of advertising public hearing.
- Utility easement requested to be vacated was granted by subdivision plat, files as Plat No. _____ in _____ Recording District. **OR**
- Utility easement requested to be vacated was granted by green forest Subdivision, filed as Plat No. 84-309 in the kenal Recording District.
- Utility easement requested to be vacated was granted by _____ (specify type of document) as recorded under _____ in _____ Recording District.
(Copy of recorded document must be submitted with petition.)
- Comments from HOMER Electric Association attached.
- Comments from ENSTAR Gas Company attached.
- Comments from _____ Telephone Company attached.
- Comments from _____ Cable Company attached.
- Comments from KP8 Roads Department attached.
- Comments from City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- 1 copy of the plat or map showing the utility easement to be vacated. Must not exceed 11 x 17 inches in size. Area to be vacated shall be marked clearly with cross hatching or other identifiable markings.
- If an existing improvement is encroaching into the easement, an As-Built drawing showing the encroachment must be attached.
- Yes No Is the right of way/utility easement in use by any utility company? If yes, which utility?

REASON FOR VACATING The petitioner must attach a statement with reasonable justification for the vacation of the section line easement. WELL PLACED IN EASEMENT.

LEGAL DESCRIPTION OF PARCEL CONTAINING THE UTILITY EASEMENT TO BE VACATED:

LOT 6 GREEN FOREST SUBD	
Section, township, range SECTION 4, T 7N, R 11W	
City (if applicable)	General area NIKISKI

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

Submitted by: Petitioner Representative

Name (printed): Ronald F. Black	Signature: <u>Ronald F. Black</u>
e-mail:	Address: PO BOX 7521, NIKISKI, AK. 99635
Owner of: LOT 6, GREEN FOREST SUBD	

Petitioners:

Name (printed): <u>Ronald F. Black</u>	Signature: <u>Ronald F. Black</u>
e-mail: <u>rblack@law.com</u>	Address:
Owner of: <u>LOT 6, GREEN FOREST</u>	

FOR OFFICE USE ONLY

RECEIVED BY _____ DATE SUBMITTED _____ KP8 FILE # _____

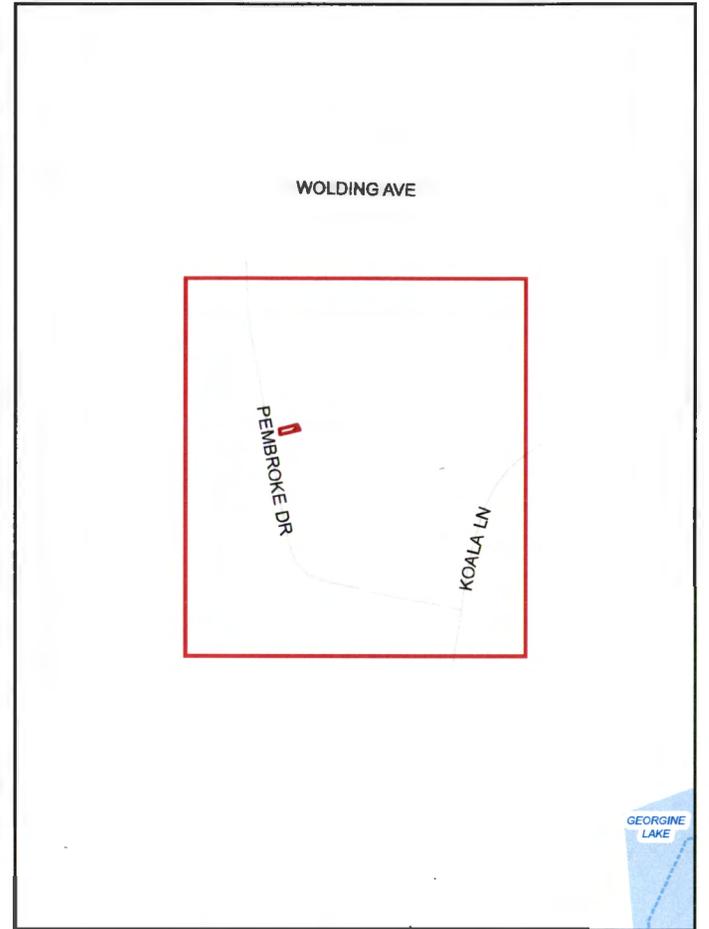
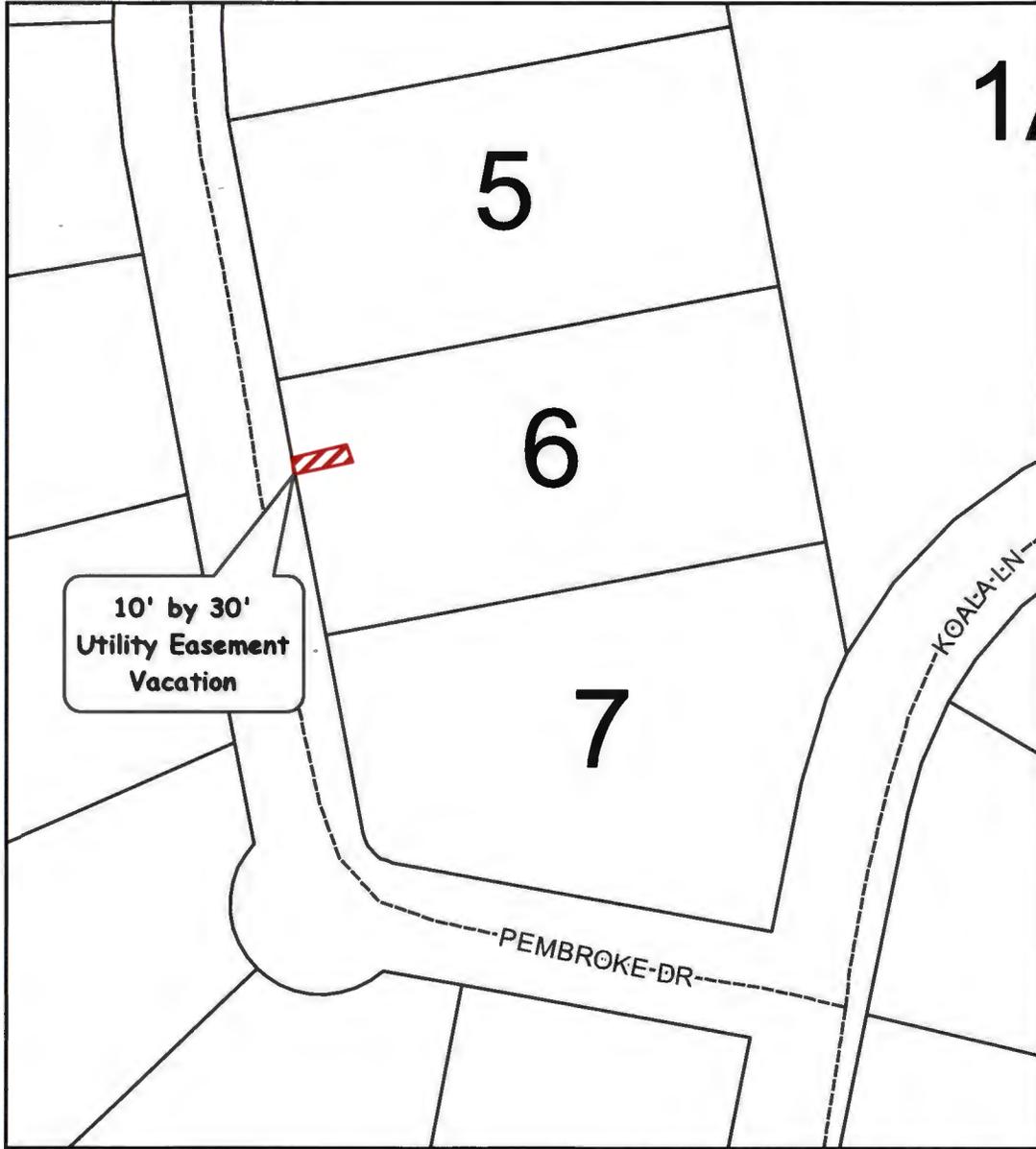
E. NEW BUSINESS

3. Utility Easement Vacation

KPB File 2021-010V

Petitioner: Ronald F. Black of Nikiski, AK

**Vacate a 10' x 30' utility easement within Lot 6, adjoining
Pembroke Drive, granted by Green Forest Subdivision;
Plat KN 84-309**



KPB 2021-010V
S04 T07N R11W
NIKISKI



Date: 2/26/2021
 PClements, KPB 2021-010



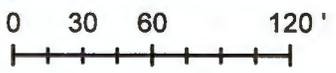
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.





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Aerial View



 Utility Easement Vacation

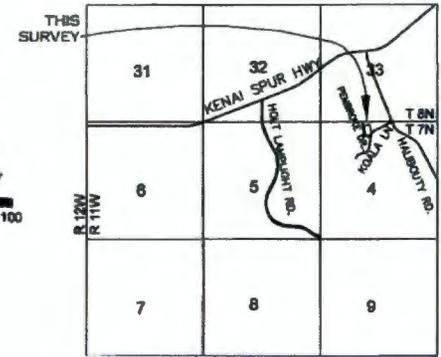
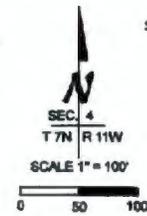
PClements, KPB 2021-010V
Date: 2/26/2021
Imagery World

NOTES:

1. A BUILDING SETBACK OF 20 FEET IS REQUIRED FROM ALL STREET RIGHTS OF WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION.
2. THE FRONT 10 FEET OF THE 20 FOOT BUILDING SET BACK AND THE ENTIRE SETBACK WITHIN 5 FEET OF THE SIDE LOT LINES IS A UTILITY EASEMENT. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN THE UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF THE UTILITY TO USE THE EASEMENT.
3. THIS PROPERTY MAY BE SUBJECT TO COVENANTS, CONDITIONS AND RESTRICTIONS. (BOOK 276, PAGE 568. 12/5/1995)

LEGEND:

- FOUND 3 1/2" ALUMINUM MONUMENT (3808-S 2010) 1/4 CORNER S4
- ⊕ FOUND 3 1/2" ALUMINUM MONUMENT (3832-S 1982)
- FOUND 1/2" REBAR
- SET REBAR WITH ALUMINUM CAP (10771-S 2021)



PLAT APPROVAL:
 THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING DATED, _____

KENAI PENINSULA BOROUGH
 BY: _____
 AUTHORIZED OFFICIAL:

CERTIFICATE OF OWNERSHIP:

I, THE UNDERSIGNED, HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREIN, AND I HEREBY ADOPT THIS SUBDIVISION PLAN AND BY MY FREE CONSENT GRANT ALL EASEMENTS TO USE SHOWN.

RONALD F. BLACK
 PO BOX 7521
 HELENA, AK 99635

NOTARY'S ACKNOWLEDGEMENT:

FOR: RONALD F. BLACK
 ACKNOWLEDGED BEFORE ME THIS DAY OF _____ 20__

NOTARY PUBLIC FOR ALASKA
 MY COMMISSION EXPIRES _____

CERTIFICATE OF OWNERSHIP:

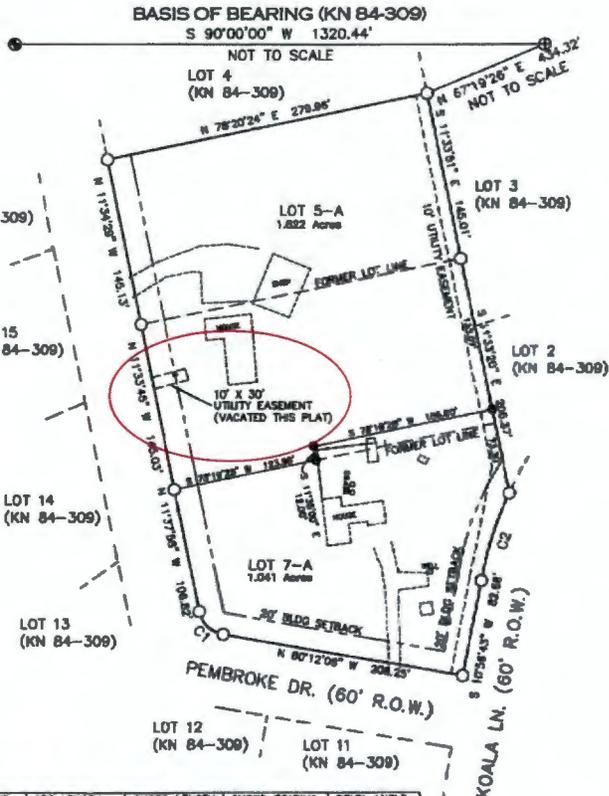
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MATHEW WEBSTER JOHNSON
 588 LAKE NELSON LN
 ARLINGTON, VA 22222

NOTARY'S ACKNOWLEDGEMENT:

FOR: MATHEW WEBSTER JOHNSON
 ACKNOWLEDGED BEFORE ME THIS DAY OF _____ 20__

NOTARY PUBLIC FOR ALASKA
 MY COMMISSION EXPIRES _____



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	23'	30.13'	28.34'	N 49°04'20" W	89°53'04"
C2	299.84'	78.98'	78.79'	N 17°23'40" E	19°05'12"

CURVES ARE NON-RADIAL

WASTEWATER DISPOSAL:
 THE PARENT SUBDIVISION FOR LOTS RESULTING FROM THIS PLATTING ACTION WAS APPROVED BY THE KENAI PENINSULA BOROUGH (8/13/94). WASTEWATER TREATMENT AND DISPOSAL SYSTEMS MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

KPB 2021-010V

GREEN FOREST SUBDIVISION - BLACK ADDITION,
 K.P.S. FILE # 2021-
 A REPLATTING OF LOTS 6 & 7, GREEN FOREST SUBDIVISION (KN84-309), SECTION 4, TOWNSHIP 7 NORTH, RANGE 11 WEST, SEWARD MERIDIAN, KENAI PENINSULA BOROUGH, ALASKA. KENAI RECORDING DISTRICT. containing 2.863 acres.

MATHEW WEBSTER JOHNSON
 588 LAKE NELSON LN
 ARLINGTON, VA 22222

RONALD F. BLACK
 PO BOX 7521
 HELENA, AK 99635

FINELINE SURVEYS
 P.O. Box 774
 ANCHOR POINT, ALASKA 99556
 DMITRI D. KIMBRELL, RLS (907) 360 6382

SCALE: 1"=100' DATE: 10/20/2020

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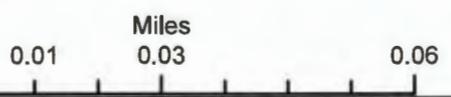
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END OF STAFF REPORT



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.



Kenai Watershed Form wetland information

Date: 3/11/2021
 10:52 AM
 Scott Huff,
 Platting Manager,