

Kenai Peninsula Borough
Planning Department

MEMORANDUM

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

FROM: Robert Ruffner, Planning Director *RR*

DATE: September 28, 2022

RE: Right-Of-Way Vacation: Vacation of the cul-de-sac bulb of Ivy Avenue; KPB File 2022-130V

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 September 26, 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.

September 26, 2022 Draft PC Minutes
September 26, 2022 Meeting Packet Materials

**ITEM E2 - RIGHT OF WAY VACATION
CUL-DE-SAC BULB OF IVY AVENUE**

KPB File No.	2022-130V
Planning Commission Meeting:	September 26, 2022
Applicant / Owner:	Alain R and Virginia J Wilkinson of Ninilchik, AK
Surveyor:	Jason Schollenberg / Peninsula Surveying, LLC
General Location:	Lothrop Park Drive and Ivy Avenue, Ninilchik
Legal Description:	Ivy Avenue, Leisure Time Estates HM 80-32, Township 2 South, Range 14 West, Section 3

Staff report given by Platting Manager Vince Piagentini.

Chair Brantley opened the item for public comment.

Alain Wilkinson, Petitioner; P.O. Box 39404, Ninilchik, AK 99639: Mr. Wilkinson requested that staff's recommendation for a 30' x 30' portion of Ivy cul-de-sac bulb remain be removed. He would request that the commission approve the vacation of the entire cul-de-sac bulb. He noted that over time Deep Creek's alignment has moved. The realignment of Deep Creek has negatively affected his property by limiting the usable space on his lot. The only useable area left is the radius of the cul-de-sac bulb. He understands that staff is recommending leaving a 30' x 30' portion of the bulb for the possibility of a future dedication for Ivy Street, should the lot to the south ever be subdivided. He noted there is a slew on the adjacent property that runs down to the river. If the adjacent lot were to subdivide, and a road was built in the area that staff is proposing for a dedication, it would block the runoff from the slew and cause the area to flood. He stated it would not be a good area to build a road.

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

MOTION: Commissioner Staggs 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.

Commissioner Morgan stated she did not feel comfortable approving the petitioner's request without additional information. Platting Specialist Hindman then pulled up several maps and displayed them on the room screens and explained in greater detail what the petitioner was requesting. Commissioner Morgan then noted for the commission that on page E2-6 (page 3 of the staff report) of the packet materials there was a small map showing the area that the petitioner is referring to.

Commissioner Slaughter stated he would support the petitioner's request to vacate the entire bulb. The usable area of his lot is small and vacating the entire cul-de-sac bulb would give him more usable space and would not create any access issues for neighboring lots.

AMENDMENT MOTION: Commissioner Slaughter moved, seconded by Commissioner Taufest to remove staff's recommendation for a 30' x 30' portion of the Ivy Avenue dedication to remain.

Commissioner Gillham stated she is inclined to support the petitioner's request to vacate the entire cul-de-sac bulb. His property has been negatively affected by the realignment of Deep Creek, which is something that was beyond his control. She will be voting in support of the petitioner's request.

Commissioner Brantley stated he would be supporting the petitioner's request to vacate the entire cul-de-sac bulb. He understands staff's recommendation to keep the 30' x 30' area, on paper it makes sense and looks good. However, vacating the entire cul-de-sac bulb does not create any access issues. It also would not create any issues related to road maintenance or snow removal.

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

AMENDMENT MOTION PASSED BY UNANIMOUS VOTE:

Yes - 10	Brantley, Fikes, Gillham, Hooper, Martin, Morgan, Slaughter, Staggs, Taufest, Venuti
No - 0	

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

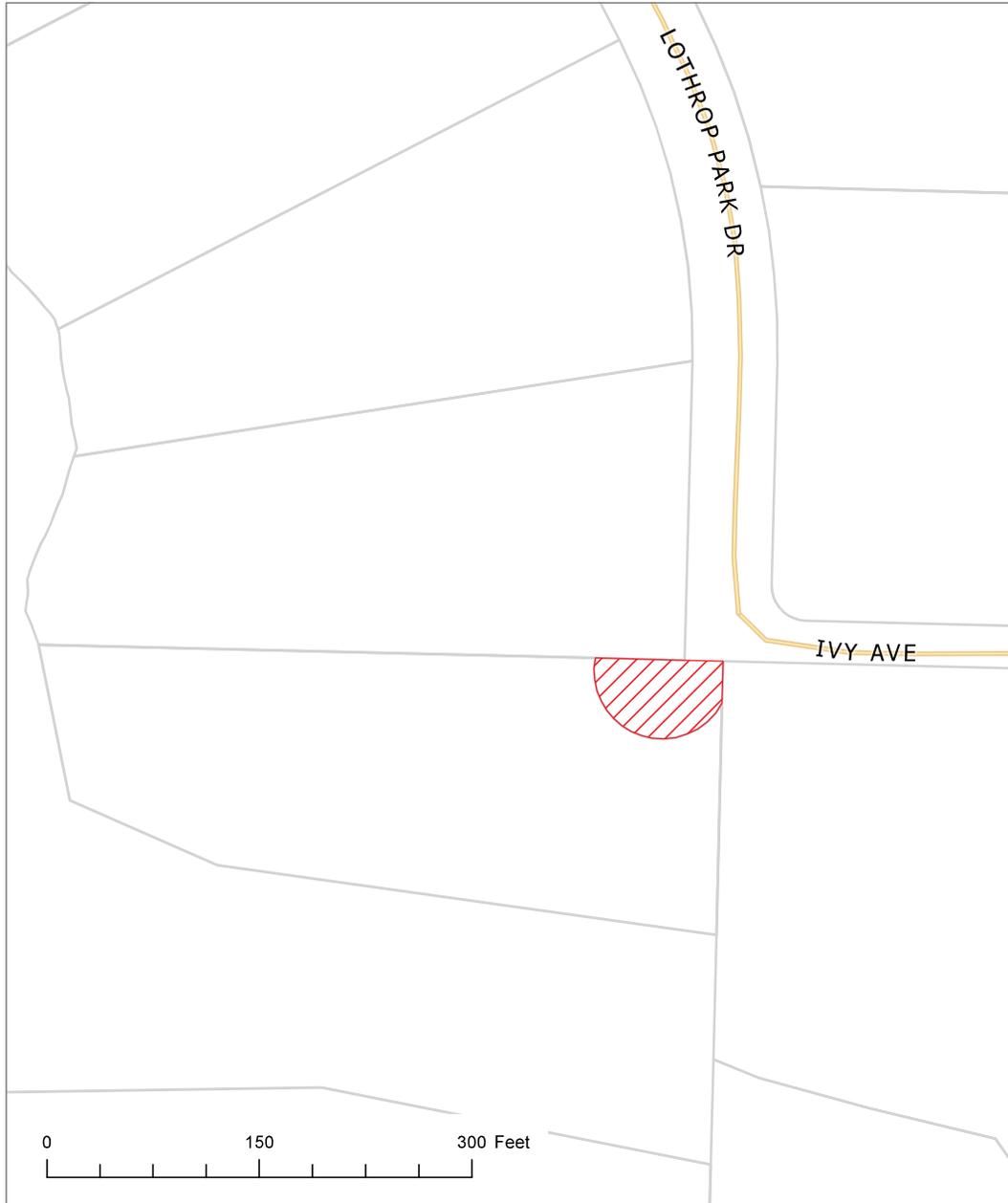
MOTION PASSED AS AMENDED BY UNANIMOUS VOTE:

Yes - 10	Brantley, Fikes, Gillham, Hooper, Martin, Morgan, Slaughter, Staggs, Taufest, Venuti
No - 0	

UNAPPROVED

E. NEW BUSINESS

- 2. Right-of-Way Vacation – KPB 2022-130V
Peninsula Surveying, LLC / Wilkinson, Leonard & Johnson
Request: Vacate the entire cul-de-sac where Lothrop
Park Dr. & Ivy Ave. meet at Lot 1, Block 4 of
Leisure Time Estates HM 80-32
Ninilchik Area**

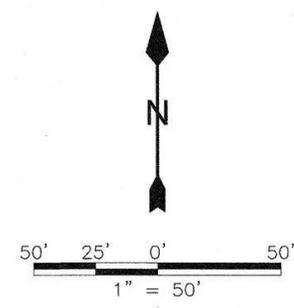
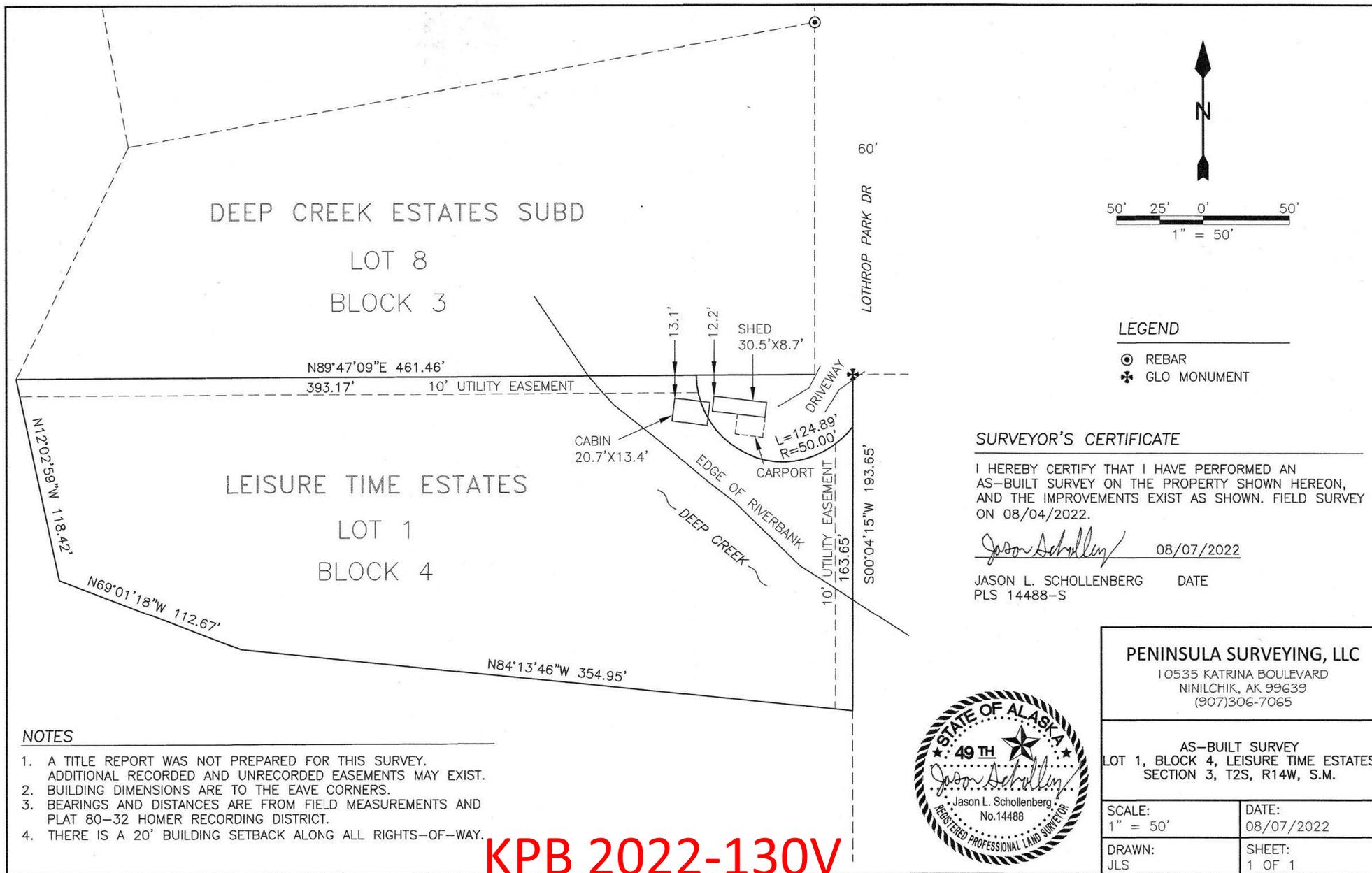


KPB File # 2022-130V
S03 T02S R14W
Ninilchik

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.



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.



LEGEND

- ⊙ REBAR
- ⊕ GLO MONUMENT

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE PERFORMED AN AS-BUILT SURVEY ON THE PROPERTY SHOWN HEREON, AND THE IMPROVEMENTS EXIST AS SHOWN. FIELD SURVEY ON 08/04/2022.

Jason Schollenberg 08/07/2022

JASON L. SCHOLLENBERG DATE
PLS 14488-S

PENINSULA SURVEYING, LLC
 10535 KATRINA BOULEVARD
 NINILCHIK, AK 99639
 (907)306-7065

AS-BUILT SURVEY
 LOT 1, BLOCK 4, LEISURE TIME ESTATES
 SECTION 3, T2S, R14W, S.M.

SCALE: 1" = 50'	DATE: 08/07/2022
DRAWN: JLS	SHEET: 1 OF 1



KPB 2022-130V

**ITEM 2 - RIGHT OF WAY VACATION
CUL-DE-SAC BULB OF IVY AVENUE**

KPB File No.	2022-130V
Planning Commission Meeting:	September 26, 2022
Applicant / Owner:	Alain R and Virginia J Wilkinson of Ninilchik, AK
Surveyor:	Jason Schollenberg / Peninsula Surveying, LLC
General Location:	Lothrop Park Drive and Ivy Avenue, Ninilchik
Legal Description:	Ivy Avenue, Leisure Time Estates HM 80-32, Township 2 South, Range 14 West, Section 3

STAFF REPORT

Specific Request / Purpose as stated in the petition: Lot 1, Blk 4, Leisure Time Estate, sits on the edge of Deep Creek at the intersection of Ivy Avenue and Lothrop Park Drive. In 2002, there was a flood that drastically moved the alignment of the river. Deep Creek now flows only 30 feet from Ivy Avenue as it crosses this property. With such limited usable space on the lot, the owner’s cabin encroaches in the right-of-way. There is also a shed that is entirely within the right-of-way.

This portion of Ivy Avenue is only used to access Lot 1. The lots to the north and to the east have more practical access that is not affected by this part of Ivy Avenue near Lot 1.

Notification: Public notice appeared in the September 14, 2022 issue of the Homer News as a separate ad. The public hearing notice was published in the September 21, 2022 issue of the Homer News 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 Ninilchik

Post Office of Ninilchik

Sixteen certified mailings were sent to owners of property within 300 feet of the proposed vacation. Ten receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to seven owners within 600 feet of the proposed vacation. One receipt had been returned when the staff report was prepared.

Eighteen 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
 Emergency Services of Ninilchik
 Kenai Peninsula Borough Office

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

Legal Access (existing and proposed): The proposed vacation is located at the intersection of Lothrop Park Drive, a 60 foot wide borough maintained right-of-way, and Ivy Avenue, a 30 foot wide borough maintained right-

of-way. Ivy Avenue is located at the end of borough maintained Bluff Drive that is off state maintained Oil Well Road that is near mile 136 of the Sterling Highway.

The portion to be vacated is a partial right-of-way bulb located to the southwest of the Lothrop Park Drive and Ivy Avenue intersection. Three lots abut portions of the bulb. The lot to the north and east have existing access from Lothrop Park Drive and Ivy Avenue respectively. The lot to which the land would revert back to, uses the right-of-way as their access. The vacation of the right-of-way will not impact the others access as it is only Lot 1 driveway within the dedication. The lot will continue to have access to Ivy Avenue. The access width appears to be around 22 feet in width.

The bulb was dedicated on Leisure Time Estates, Plat HM 80-32. The dedications of Ivy Avenue and Lothrop Park Drive had already been dedicated by previous plats. The southern 30 foot dedication for Ivy Avenue has not yet been granted. If the lot located to the east of this proposal is ever subdivided, a 30 foot dedication of Ivy Avenue will be required per KPB code. This will provide additional access to the lot.

The block length is not compliant due to the location of Deep Creek. The right-of-way bulb as it exists does not improve the block length. The vacation will not change the status of the block compliance.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: This partial cul-de-sac is not necessary. RSA supports the vacation
SOA DOT comments	

Site Investigation: The proposed vacation is for a partial right-of-way bulb that currently has encroachments within the dedication. When the lot was created in 1980 Deep Creek, an anadromous stream, defined the western and southern boundary of the lot. Staff reviewed older available imagery for the area and between 2000 and 2003, Deep Creek changed course and has split the lot. This resulted in the portion with the proposed vacation to be the only portion accessible by right-of-way. Per KPB Assessing data, the structures on the property were added in 2009 and 2014. Due to the location of Deep Creek, the lot has minimal area for improvements.

Per the supplied as-built, there is a cabin and shed located on the property. The shed is completely within the right-of-way and the cabin has a portion within the cul-de-sac. The location of the cabin appears to be closer than allowed to the edge of Deep Creek. The owner has stated to staff that he has documentation that allowed the location. This is an issue to be reviewed by the River Center and KPB Code Compliance.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: i:0#.w kpb\maldridge</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
-------------------------	---

Staff Analysis: The right-of-way was dedicated by Leisure Time Estates, Plat HM 80-32. The dedication occurred at the end of Lothrop Park Drive and Ivy Avenue. Both of those rights-of-way were dedicated as currently exists by Deep Creek Estates, Plat HM 76-84. Staff is not aware of the intent of the dedication. Lot 8 Block 3 of Deep Creek

Estates did not provide a portion of the bulb when created. Staff has reviewed the bulb and does not see an advantage to the area existing as the rights-of-way in the area are dedicated, constructed, and borough maintained.

Due to the location of Deep Creek, both when the dedication occurred and as it is now, there is no need for access for the bulb. There does not appear to have a future continuation of right-of-way in this area.

Ivy Avenue was dedicated as a 30 foot wide right-of-way by Deep Creek Estates, Plat HM 76-84. The lot south of the dedication and east of the proposal is an unsubdivided piece of property. If this thirty-one acre parcel is ever subdivided, a 30 foot wide dedication will be required by KPB Code. The future dedication will result in an offset if this area is vacated. **Staff recommends a portion of the right-of-way remain that will be in line with existing Lothrop Park Drive dedication that goes south 30 feet in line with the future Ivey Avenue dedication.** (Please see image for approximate location.)



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: *It is currently being used as driveway to the subject lot.*
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: *Construction is possible as currently used as a driveway. No other lots require this for access.*
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: *Lots surrounding or abutting the proposed vacation currently have improvements and utility easements will be requested along the new lot lines adjacent to rights-of-way and any requests for easements will 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: *The cul-de-sac provides access to private property and does not abut or provide access to Deep Creek.*
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: *This is a partial bulb that does not impact or limit adjacent parcels.*
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: *Would not provide access to any public use areas to justify other public use.*
 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: Provide for requested easements and grant easements along any portions of right-of-way as outlined in KPB Code 20.30.060(D).

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

Staff comments: This will provide more useable area for a lot that has been greatly impacted by an unforeseen natural occurrence of the Deep Creek meandering.

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 will hear the vacation at their scheduled October 11, 2022 meeting.

If approved, the vacation will need to be finalized by a plat. A right-of-way vacation plat does not require a hearing by the Plat Committee but due to the requests and some of the issues with the subject property, staff will bring the preliminary plat before the Plat Committee once a complete application is submitted.

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: Is currently a Code Compliance case for structure in the ROW and In the 20ft Building Setback
Addressing	Reviewer: Haws, Derek Affected Addresses: 66247 IVY AVE Existing Street Names are Correct: Yes List of Correct Street Names: LOTHROP PARK DR Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: 66247 IVY AVE will remain with lot 1 block 4.
Assessing	Reviewer: Windsor, Heather Comments: No comment

Utility provider review:

HEA	Provide a 10 foot wide easement adjoining the right of way dedication that extends 20 feet west of Lothrop Park ROW to coincide with the 20 foot platted utility easement within Lot 8 Block 3.
ENSTAR	No requests 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. Provide an approximate 30 by 30 portion of right-of-way to remain.
5. 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*
 - *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.*

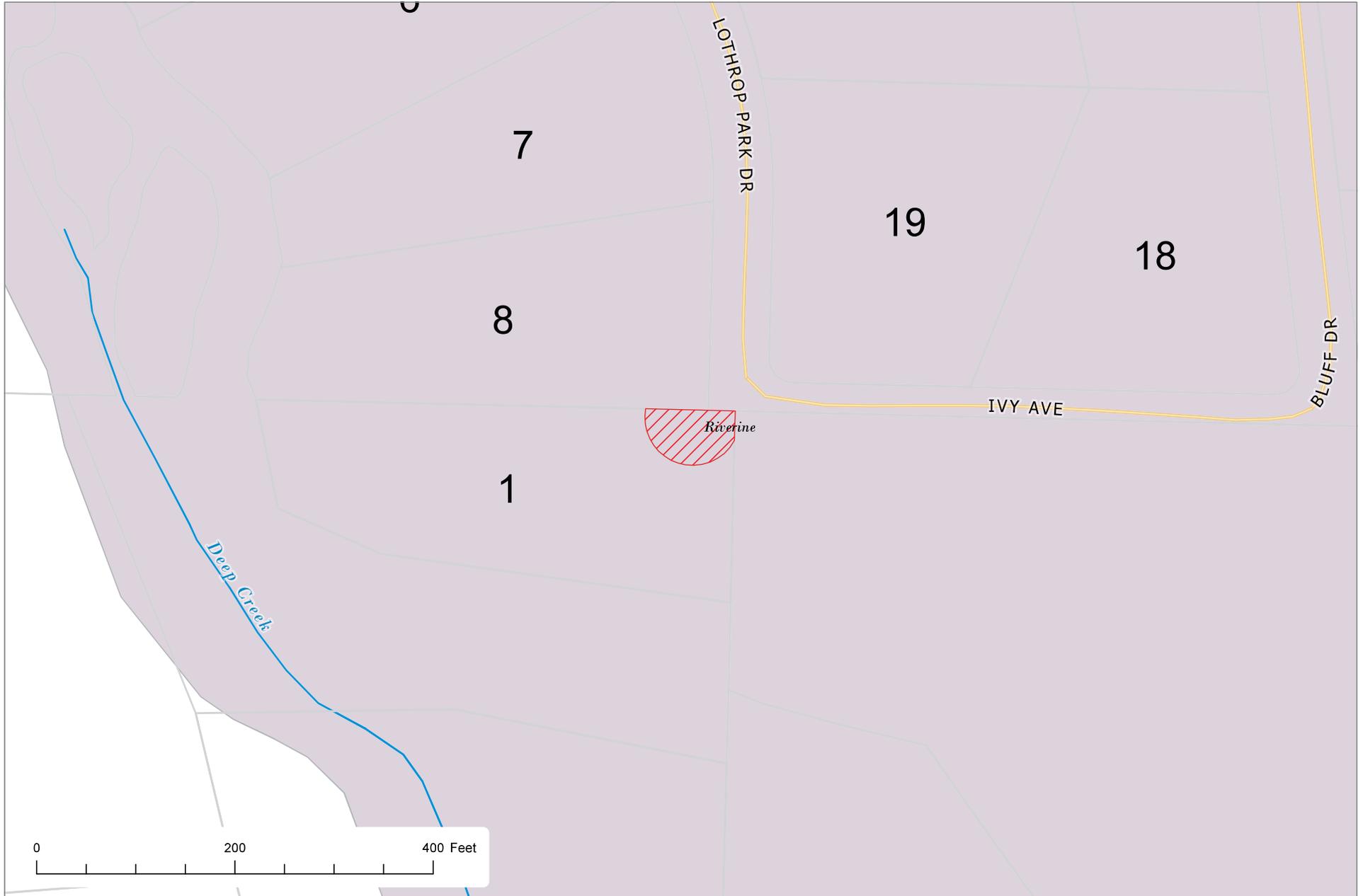
Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *Focus Area: Transportation*
 - *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



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.



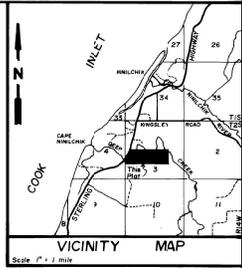
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



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

KPB NOTE: See PC Resolutions 84-8 Amended and 95-14

CURVE	DELTA	RADIUS	LENGTH	TANGENT
1	49°00'00"	300.00'	256.87'	136.73'
2	43°00'00"	397.86'	298.59'	156.72'
3	44°00'00"	300.00'	157.18'	127.34'
4	42°00'00"	300.00'	219.91'	115.16'
5	43°00'00"	300.00'	225.18'	118.17'



LEGEND AND NOTES

- Found Brass Cap monument
 - Found Iron Pipe
 - Set 1/2" x 30" steel rebar.
 - Set 1/2" aluminum cap monument (1300-S 1979)
- All lots are subject to a 20' bog setback along all dedicated R/W's.
- All datum of record shown thus ().
- All wastewater disposal and treatment systems shall comply with existing law at time of construction.
- Lots 1 and 2, Block 1 shall share a single common drive.
- Tract A cannot be conveyed separately except as a portion of Tract B.

80-32
ACCEPTED FILED
DATE 3-25-80
TIME 11:09 AM
REGISTERED BY
ADDRESS

PLAT APPROVAL

This plat having been approved by the Kenai Peninsula Borough Planning Commission as recorded in the official minutes of the meeting of December 4, 1979, is hereby acknowledged and accepted as the official plat, subject to any and all conditions and requirements of ordinances and law pertaining thereto.

KENAI PENINSULA BOROUGH
By: *Philip Warriner*

CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of the property shown and described herein and that we hereby adopt this plan of subdivision, and dedicate all streets, alleys, walks, parks, utility easements, and other open spaces to public use.

William J. Foutoux Sharon L. Foutoux
William J. Foutoux, Reg. 1 Box 205, Sharon L. Foutoux
Kenai, AK 99611

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this 9th day of January, 1980.
Carlton L. Thompson
Notary Public for Alaska
My Commission Expires: 9-21-80

SCALE



LEISURE TIME ESTATES

DESCRIPTION: Located within the NW1/4SE1/4 and the NW2SW1/4 1/2 Easement of the Sterling Highway in Sec. 3, T15, R14W, S1E, AK and the Kenai Peninsula Borough containing 119.771 acres more or less

OWNER: William J. and Sharon L. Foutoux
Rte. 1 Box 205
Kenai, AK 99611

30 Box 478 Kenai, Alaska 99609
Geologist Registered Land Surveyor
Date Surveyed November 1979 Scale 1" = 800' Sh. No.