



# KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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MIKE NAVARRE  
BOROUGH MAYOR

## MEMORANDUM

**TO:** Blaine Gilman, Assembly President  
Kenai Peninsula Borough Assembly Members

**FROM:** Max Best, Planning Director *MB*

**DATE:** October 29, 2015

**SUBJECT:** Vacate the east 300 to 500-foot section, more or less, of the 66-foot wide Settle Ave. right-of-way and all associated utility easements as dedicated on the Ninilchik Natives Association Right-of-Way Map HM 84-115, also shown on Baikobros Subdivision Amended Plat HM 2001-48. The right-of-way being vacated is located within the SE ¼ of Section 25, Township 01 South, Range 12 West, Seward Meridian, Alaska and within the Kenai Peninsula Borough; KPB File 2015-116.

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 October 26, 2015 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:

#### *Findings*

1. Sufficient rights-of-way exist to serve surrounding properties.
2. No surrounding properties will be denied access.
3. Per the submittal, the right-of-way proposed for vacation is not in use for access.
4. Per the submittal, the right-of-way proposed for vacation has not been constructed.
5. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
6. To date, one utility company has provided a letter of non-objection.
7. Alternative right-of-way is proposed to be dedicated for the portion of Settle Avenue proposed to be vacated so the blocks will still comply with KPB 20.30.170.

The Assembly has 30 days from October 26, 2015 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**

1. Vacate the east 300 to 500-foot section, more or less, of the 66-foot wide Settle Ave. right-of-way and all associated utility easements as dedicated on the Ninilchik Natives Association Right-of-Way Map HM 84-115, also shown on Baikobros Subdivision Amended Plat HM 2001-48. The right-of-way being vacated is located within the SE ¼ of Section 25, Township 01 South, Range 12 West, Seward Meridian, Alaska and within the Kenai Peninsula Borough; KPB File 2015-116.

Staff Report given by Max Best

PC Meeting: 10/26/15

Purpose as stated in petition: Applicant would like to move a section of right-of-way to a new location farther away from house.

Petitioners: Elizabeth Kobylarz and James Matti of Ninilchik, Alaska

Notification:

Public notice was published as a separate ad in the October 15, 2015 issue of the Homer News. The public hearing notice was published as part of the tentative agenda in the October 22, 2015 issues of the Peninsula Clarion, Homer News, and Seward Journal.

Eleven certified mailings were sent to owners of property within 300 feet of the parcels. All receipts have been returned. Three public hearing notices were sent by regular mail to owners within 600 feet of the proposed vacation.

Twelve public hearing notices were emailed to agencies and interested parties. Three public hearing notices were sent by regular mail to agencies and interested parties.

Nine public hearing notices were emailed to KPB Departments. Notices were mailed to the Ninilchik Post Office and Ninilchik Community Library to be posted in public locations. The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ENSTAR: No comments, recommendations, or objections.

KPB Addressing Officer: No objection.

River Center: The proposed vacation is not within a mapped flood hazard area, and it is not in the Anadromous Habitat Protection District.

Staff Discussion: The submittal shows the alternative right-of-way proposed to be dedicated in lieu of the portion of Settle Avenue proposed to be vacated is affected by slopes greater than 20 percent. Staff will be recommending compliance with KPB 20.30.090 (Streets – maximum grade) and/or extra right-of-way or easement(s) for side slopes, if required, during the plat review.

The preliminary plat is scheduled for Plat Committee review on November 9, 2015.

**Findings:**

1. Sufficient rights-of-way exist to serve surrounding properties.
2. No surrounding properties will be denied access.
3. Per the submittal, the right-of-way proposed for vacation is not in use for access.
4. Per the submittal, the right-of-way proposed for vacation has not been constructed.
5. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
6. To date, one utility company has provided a letter of non-objection.
7. Alternative right-of-way is proposed to be dedicated for the portion of Settle Avenue proposed to be

vacated so the blocks will still comply with KPB 20.30.170.

**STAFF RECOMMENDATION:** Based on the above findings, staff recommends approval of the vacation as petitioned, subject to:

1. Grant utility easements per the utility providers' review.
2. Submittal of a final plat such that recording of the plat will occur within one year of vacation consent.
3. Compliance with conditions of approval by the Plat Committee.

**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.**

**KPB 20.70.130:**

**THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.**

**END OF STAFF REPORT**

Chairman Martin opened the meeting for public comment.

1. Jerry Johnson, Johnson Surveying, Box 27, Clam Gulch  
Mr. Johnson was available to answer questions. He requested an exception to the maximum grade requirements as the existing right-of-way exceeds the maximum grade requirements. Also, he doesn't know if the property was going to allow extra right-of-way or easements to meet additional side slope and cut & fill requirements.

Chairman Martin asked if there were questions for Mr. Johnson.

Commissioner Holsten asked if the right-of-way that was being proposed wasn't going to meet the 20% grade. She asked if it was coming close to where the current right-of-way was located. Mr. Johnson replied that it was just as close. The intersection part will be a big improvement because it was quite a steep area where the existing intersection was located. It was still continuing down Settle Ave to the west. It would be exceeding 10% street grade for quite a distance. Commissioner Holsten asked if it would be an improvement over where the current right-of-way was located according to his professional estimation. Mr. Johnson replied yes, that was what he believed.

Mr. Best stated the exception request will be addressed during the Platting process.

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

**MOTION:** Commissioner Foster moved, seconded by Commissioner Holsten to approve the vacation as petitioned based on the following findings and staff recommendations.

**Findings**

1. Sufficient rights-of-way exist to serve surrounding properties.
2. No surrounding properties will be denied access.
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4. Per the submittal, the right-of-way proposed for vacation has not been constructed.
5. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
6. To date, one utility company has provided a letter of non-objection.
7. Alternative right-of-way is proposed to be dedicated for the portion of Settle Avenue proposed to be vacated so the blocks will still comply with KPB 20.30.170.

**VOTE:** The motion passed by unanimous consent.

CARLUCCIO YES	COLLINS YES	ECKLUND YES	ERNST YES	FOSTER YES	GLENDENING YES	HOLSTEN YES
ISHAM YES	LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	13 YES

**AGENDA ITEM F. PUBLIC HEARINGS**

2. Ordinance 2014-32 (Substitute); An ordinance authorizing the sale of Borough property to Dan and Teresa Sterchi subject to a drainage easement and the acquisition of a 4.3 acre drainage easement on property along Kalifornsky Beach Road from Paula & Timothy Keohane.

Memorandum / Staff Report given by Marcus Mueller

PC Meeting: 10/26/15

During the fall flooding in 2013 it became evident that the Karluk Avenue ditch system had no outlet except an old gravel pit on Tract 1, Kingswood Estates Subdivision, immediately adjacent to the lowest extent of the ditch. The administration communicated with the Tract 1 owners, Paula and Timothy Keohane, who permitted use of the property for drainage purposes. The location became known as the "Karluk Basin." A pipe was installed under K-Beach Road and a hose was stretched along the section line to Cook Inlet, making it possible to mechanically pump water out of the basin once it reached its estimated 3 million gallon capacity.

Since that time, longer term solutions have been discussed with Keohanes. Those discussions led to the proposal outlined in the letter dated August 1, 2014. This proposal would exchange a 1.84 acre borough-owned parcel (known as N 1/2 of Government Lot 13) for the drainage easement that would make the Karluk Basin a permanent drainage asset for the Karluk Avenue ditch system.

The N 1/2 of Government Lot 13 parcel at mile 12.1 K-Beach Road also has its own drainage functions present, which was the basis for it being classified as "Government" by Resolution 94-055. Ordinance 2014-32 would have preserved the management intent of the government classification by reserving a drainage outlet easement that would encumber approximately half of the N 1/2 of Government Lot 13 parcel. In the context of the parcel being used in part as consideration (or trade) for the 4.3 acre Karluk Avenue drainage easement, the management intent of the borough-owned parcel was expanded to accomplish the larger goals of drainage for the area.

During review and public testimony on what was then Ordinance 2014-32, Dan Sterchi testified that he had, many years ago, made a request to buy the lot known as the N 1/2 of Government Lot 13, which is adjacent to property he owns with his wife, Teresa. In Resolution 94-055 the borough determined that it should retain an easement on the property for potential drainage needs. No action was subsequently taken on selling the portion of the N 1/2 of Government Lot 13 that was in excess of easements. Mr. Sterchi testified that he and his wife were still very interested in purchasing this property.

Keohanes didn't want to sell their tract because it had been a family possession for many years, but they were willing to trade for the usable portion of the N 1/2 of Government Lot 13. Sterchis, however, had owned their lot adjacent to the N 1/2 of Government Lot 13 for over 30 years and opposed the land exchange between the