

# **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

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**MIKE NAVARRE**  
**BOROUGH MAYOR**

## **M E M O R A N D U M**

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

**FROM:** Max Best, Planning Director 

**DATE:** April 25, 2017

**SUBJECT:** Vacate that portion of the 33-foot wide Section Line Easement within the NE 1/4 NE 1/4 Section 23, T05N, R09W, lying north of Scout Lake Loop Road and east of Mountain Ridge Heights Subdivision (KN 77-162). The portion of easement being vacated is unconstructed and located within the NE 1/4 NE 1/4 of Section 23, T5N, R9W, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2017-028

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. The State Department of Natural Resources issued a preliminary decision of approval (EV-3-254) for the proposed section line easement vacation on November 29, 2016.
2. The adjoining 66-foot section line easement to the west was vacated by EV-2-034.
3. The adjoining 50-foot section line easement to the north within the 17-acre KPB owned parcel will remain in place.
4. Lots within Mountain Ridge Heights Subdivision Part One to the west through which the 66-foot section line easement to the west was vacated front State maintained Scout Lake Loop Road.
5. State Department of Natural Resources survey staff conducted a field inspection of the proposed vacation on January 21, 2016.
6. DNR survey staff found the subject section line easement is not constructed, and they found no evidence that vehicles, pedestrians, or other public interests have been or are using the section line easement proposed for vacation.
7. Scout Lake Loop Road, a 100-foot wide, paved, State maintained right-of-way, provides looped access for the neighborhood.
8. If the section line easement were constructed, it would enter Scout Lake Loop Road at an odd angle on a curve, requiring a large radius curve return or an exception to be in compliance with KPB 20.30.150.
9. Per KPB Roads Department, the section line proposed for vacation is not needed for the Road Service Area.
10. GCI and Homer Electric Association submitted statements of no comments.
11. Sufficient rights-of-way exist to serve the surrounding properties.
12. No surrounding properties will be denied access.

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

5. Vacate that portion of the 33-foot wide Section Line Easement within the NE 1/4 NE 1/4 Section 23, T05N, R09W, lying north of Scout Lake Loop Road and east of Mountain Ridge Heights Subdivision (KN 77-162). The portion of easement being vacated is unconstructed and located within the NE 1/4 NE 1/4 of Section 23, T5N, R9W, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2017-028

Staff Report given by Paul Voeller

PC Meeting: 4/24/17

Purpose as stated in petition:

- 1) The constructed house and septic system extend into the easement;
- 2) A portion of the easement to the west has already been vacated so this easement dead-ends to the west; and
- 3) Scout Lake Loop Road runs parallel to this easement, which provides better access through the area that is already constructed.

Petitioners: Sam and Sheryl Christner of Soldotna, AK and Marcus Mueller, KPB Land Manager, of Soldotna, AK

Notification: The public hearing notice was published in the April 13, 2017 issue of the Peninsula Clarion as a separate ad and on April 20 as part of the tentative agenda.

Public hearing notices were sent to 16 owners within 600 feet by regular mail per KPB 20.70.220.

Public hearing notices were emailed to 11 KPB Departments and 12 agencies and interested parties.

The public hearing notice was mailed to the Soldotna Library and the Sterling Post Office with a request to post it in a public place.

The notice and maps were posted on the Borough web site and bulletin board.

Comments Received:

GCI: No comments.

Homer Electric Association: Reviewed/no comments.

KPB Addressing Officer: No objection.

KPB Roads Department: The section line to be vacated is not needed for the Road Service Area. I defer to the KPB Planning Department to determine if adequate access from Scout Lake Loop Road is available to the adjacent Borough-owned parcel.

River Center: The proposed vacation is not within a mapped flood hazard zone, and it is not within the 50-foot Anadromous Habitat Protection District.

State Parks: No comments.

Staff Discussion: The State Department of Natural Resources issued a preliminary decision of approval (EV-3-254) for the proposed section line easement vacation on November 29, 2016. The mylar must be submitted to DNR within two years from the date of approval of the Final Decision unless extended by DMLW, Survey Section.

The preliminary plat for the Section Line Easement Vacation has not yet been scheduled for Plat Committee review.

### **Findings for the Proposed Vacation**

1. The State Department of Natural Resources issued a preliminary decision of approval (EV-3-254) for the proposed section line easement vacation on November 29, 2016.
2. The adjoining 66-foot section line easement to the west was vacated by EV-2-034.
3. The adjoining 50-foot section line easement to the north within the 17-acre KPB owned parcel will remain in place.
4. Lots within Mountain Ridge Heights Subdivision Part One to the west through which the 66-foot section line easement to the west was vacated front State maintained Scout Lake Loop Road.
5. State Department of Natural Resources survey staff conducted a field inspection of the proposed vacation on January 21, 2016.
6. DNR survey staff found the subject section line easement is not constructed, and they found no evidence that vehicles, pedestrians, or other public interests have been or are using the section line easement proposed for vacation.
7. Scout Lake Loop Road, a 100-foot wide, paved, State maintained right-of-way, provides looped access for the neighborhood.
8. If the section line easement were constructed, it would enter Scout Lake Loop Road at an odd angle on a curve, requiring a large radius curve return or an exception to be in compliance with KPB 20.30.150.
9. Per KPB Roads Department, the section line proposed for vacation is not needed for the Road Service Area.
10. GCI and Homer Electric Association submitted statements of no comments.
11. Sufficient rights-of-way exist to serve the surrounding properties.
12. No surrounding properties will be denied access.

**STAFF RECOMMENDATION:** Based on Findings 1-12 and KPB 20.25.110, staff recommends granting a four-year approval for the vacation as submitted, subject to:

1. Submittal of the preliminary plat for Plat Committee review per KPB Title 20 within one year of Planning Commission approval.
2. Compliance with any State requirements for the section line easement vacation.

### **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.

1. Jerry Johnson, Johnson Surveying  
Mr. Johnson is the surveyor on the project and was available to answer questions. He stated the landowner was also present and was available to answer questions.

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

Commissioner Glendening asked why the timeframe of four years. Mr. Johnson deferred to staff. Mr. Voeller replied that it has taken up to four years to get these vacation petitions through the State review process.

There being no further comments or questions, the public hearing continued.

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

**MOTION:** Commissioner Ecklund moved, seconded by Commissioner Isham approval of the vacation of the section line easement per staff recommendations, conditions and based on the following findings of fact.

*Findings*

1. The State Department of Natural Resources issued a preliminary decision of approval (EV-3-254) for the proposed section line easement vacation on November 29, 2016.
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9. Per KPB Roads Department, the section line proposed for vacation is not needed for the Road Service Area.
10. GCI and Homer Electric Association submitted statements of no comments.
11. Sufficient rights-of-way exist to serve the surrounding properties.
12. No surrounding properties will be denied access.

**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

AGENDA ITEM F. PUBLIC HEARINGS

6. Vacate those portions of the 33-foot section line easements each side of the Section Line centered along the boundary between Tract C, Hibbert Subdivision (Plat KN 2008-99) and Lots 21, 22, 23, and 24, Hall Subdivision No. 8 Addition No. One (Plat KN 82-123); located within the NE 1/4 NW 1/4 of Section 26, T5N, R11W, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2017-025V

Staff Report given by Paul Voeller

PC Meeting: 4/24/17

Purpose as stated in petition:

- 1) Access to parcels immediately east is available via Kristina Way (200' North) & West Point Avenue