

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

FROM: Melanie Aeschliman, Planning Director *MA*

DATE: March 18, 2021

RE: Vacate the 10' Utility Easement within Tract A, Alaska State Land Survey No 96-42, adjoining the former Seward Highway right of way, granted by Alaska State Land Survey No 96-42, Plat SW 99-1; within Section 22, Township 5 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2021-019V

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 March 15, 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 (10Yes, 0-No, 1-Absent).

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

March 15, 2021 Planning Commission Draft Meeting Minutes
March 15, 2021 Agenda Item E2 Meeting Packet Materials

AGENDA ITEM E. UTILITY EASEMENT VACATIONS

2. Vacate the 10' Utility Easement within Tract A, Alaska State Land Survey No 96-42, adjoining the former Seward Highway right of way, granted by Alaska State Land Survey No 96-42, Plat SW 99-1; within Section 22, Township 5 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2021-019V.

Staff report given by Scott Huff.

Purpose as stated in petition: The utility easements should be vacated because the original southern lot line for Tract A as shown on ASLS No 96-42, Plat SW 99-1, Seward Recording District is vacated as well, per recorded deed of vacation serial number SW 2016-001325-0, making this utility easement unnecessary since it was created to follow the edge of the highway right of way. Also, the utility easement is not utilized for any utilities and extends through the existing Hatchery Building.

Petitioners: State of Alaska - Department of Natural Resources - Division of Mining, Land and Water of Anchorage, AK.

Location: Milepost 32.5 of the Seward Highway

Notification: Notice of vacation mailings were sent by regular mail to 2 owners of property within 300 feet. Notice of the proposed vacation was emailed to 5 agencies and interested parties.

DFG	Dubour, Adam	E-MAIL	adam.dubour@alaska.gov
AK DNR	Horton, George	E-MAIL	george.horton@alaska.gov
AK DOT	Kastner, Lorraine	E-MAIL	lorraine.kastner@alaska.gov
AK DOT & PF	Biloon, Joselyn	E-MAIL	joselyn.biloon@alaska.gov
AK DOT & PF	Hooyer, Louise	E-MAIL	louise.hooyer@alaska.gov

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

Comments Received:

CEA: no objection.

ENSTAR Natural Gas: No objection, comments or recommendations to the ten foot wide utility easement vacation.

GCI: No objection to the proposed vacation of the utility easement as shown along the south edge of the original property line of Tract A ASLS No. 96-42 recorded on plat 99-1, Seward Recording District.

TelAlaska: (summarized) TelAlaska does not have any facilities that will be affected by the vacation. TelAlaska does have service connections to the site including access to the hatchery building and the two houses just to the north, however the services do not require this easement. No objections or concerns with the vacation of the utility easement shown.

KPB Roads: Within KPB jurisdiction, no comments.

SUPPORTING INFORMATION:

The current utility easement was created adjoining the right of way within the first 10 feet of the building setback. The vacation is proposed to be finalized by plat. The plat for ASLS No. 2019-34 has been received and is scheduled to be reviewed by the Plat Committee on March 15, 2021.

The petition refers to the 10 foot utility easement along the former right of way. The parent plat granted a 10 foot utility easement in the front ten feet of the building setback and the full setback within 5 feet from side lot lines. While the additional depth on the side lot lines is not mentioned, it is depicted correctly on the sketch. The 20 foot building setback will also be removed with the recording of the plat due to the relocation of the right of way boundary.

Per KPB Code 20.70.110, the vacation will require consent from the Kenai Peninsula Borough Assembly. The Assembly shall have 30 calendar days from the date of approval in which to veto the Planning Commission approval. If no veto is received within the specified period, the assembly shall be considered to have given consent to the vacation. Reviewing the Assembly schedule, this action shall be heard by the Assembly at their April 6, 2021 meeting. Additional information regarding the Assembly meeting may be acquired from the Kenai Peninsula Borough Clerk's Office.

Findings:

1. The petition does not state that the utility easement proposed to be vacated is in use by a utility company.
2. ENSTAR, GCI, TelAlaska and Chugach Electric provided written non-objection to the proposed vacation.
3. Tract A, Alaska State Land Survey No 96-42, Plat SW 99-1, granted a 10' wide utility easement adjoining the south boundary of Tract A for 769.86'.
4. A Commissioner's Deed of Vacation recorded November 16, 2016 as Serial No. 2016-001325-0 vacated a portion of the Seward Highway Right of Way easement.
5. No surrounding properties will be denied utilities.
6. The existing utility easement goes through existing structures.
7. Additional utility easements will be granted on the plat for ASLS No. 2019-34.

Staff reviewed the vacation request and recommends granting approval with Findings 1-7 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 and depicted on the sketch, subject to:

8. Consent by KPB Assembly
9. 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

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

MOTION: Commissioner Ecklund 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.

MOTION PASSED: Hearing no discussion or objection, the motion was carried by the following vote.

Yes	10	No	0	Absent	1
Yes	Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					
Absent	Bentz				

~~AGENDA ITEM E. STREET NAME CHANGE~~

- 3. ~~Street Name Change: Beadford Avenue, a public right of way, named by plat KN 84-8; Section 17, T5N, R10W; Seward Meridian, Kenai Peninsula Borough, AK; in the Ridgeway Community; ESN 302~~

~~Staff report given by Scott Huff.~~

~~Applicant: Steve and Tesa Sturman of Kenai, Alaska~~

~~Existing right-of-way names: Beadford Avenue~~

~~Name proposed by petitioner: Brothers Avenue~~

~~Reason for Change: Petition from property owner~~

~~Background:~~

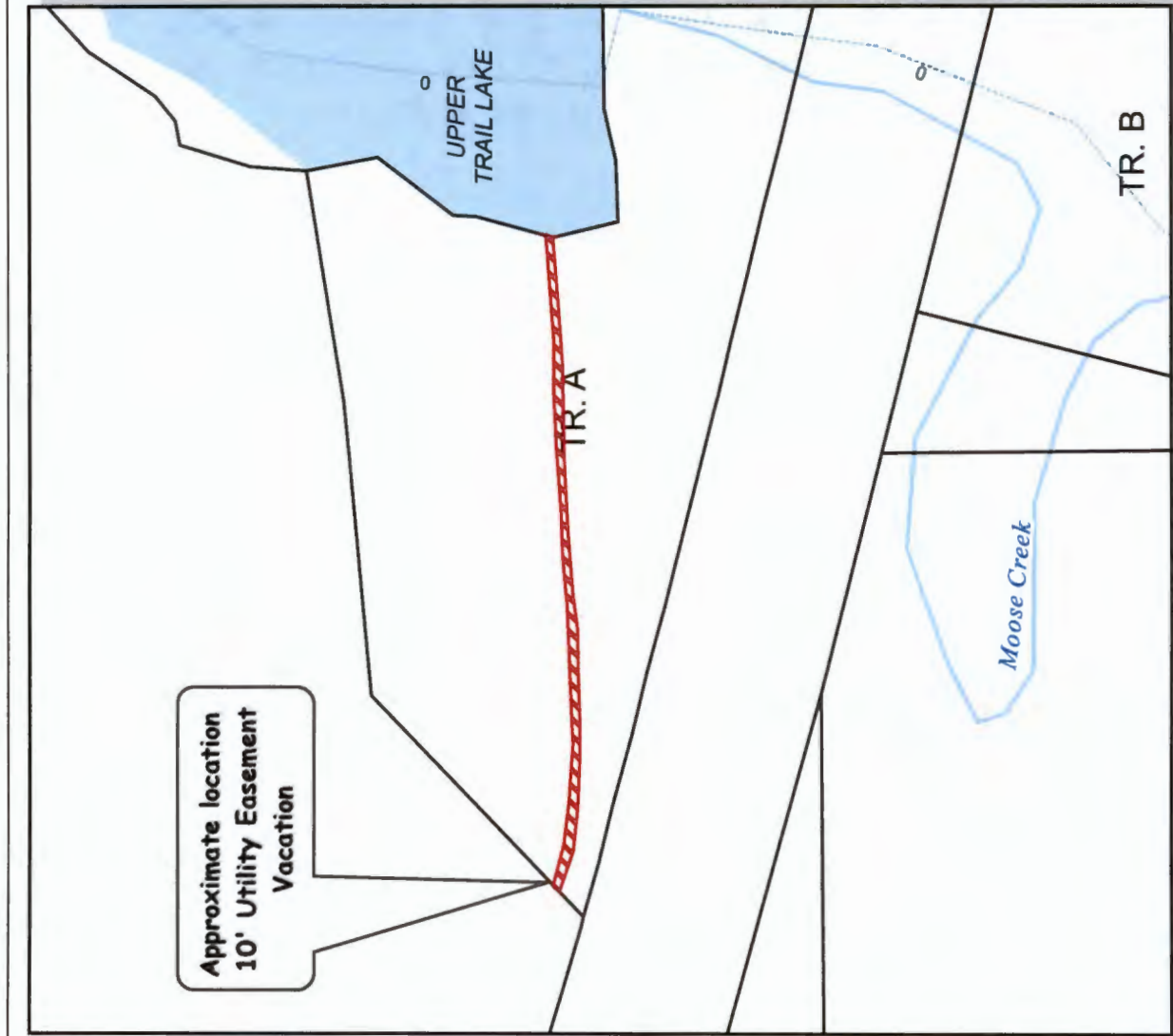
Name	BEADFORD AVE
ESN (emergency service number)	302
Community	Ridgeway
YR Named	1984
Constructed	Partially
Total Lots	8
Residential	7
Commercial	1
E911 Address	2
Mailing	0
Decision	Rename

~~Review and Comments:~~

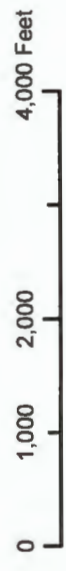
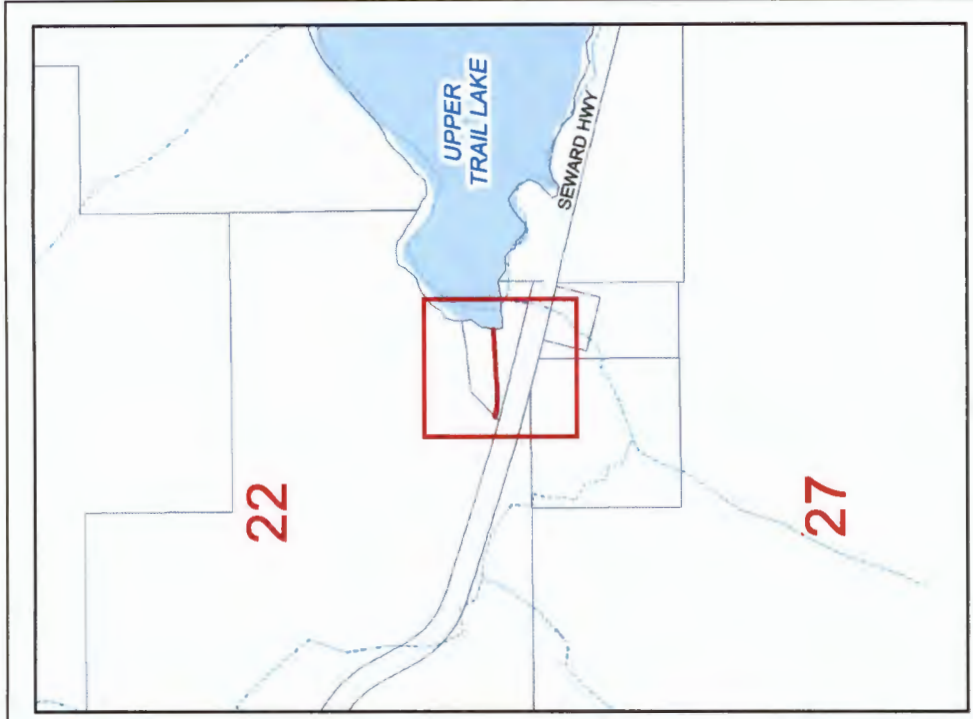
~~Notice was sent by regular mail to the six property owners of the eight parcels fronting Beadford Avenue, as listed on the KPB tax roll.~~

E. NEW BUSINESS

- 2. Utility Easement Vacation: Vacating the 10' Utility Easement adjoining the former south boundary of Tract A, Alaska Land Survey No. 96-42, granted by Alaska State Land Survey No 96-42, Plat SW 99-1; within Section 22, Township 5 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2021-019V**



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.



KPB 2021-019V
S22 T05N R01W
MOOSE PASS



Date: 2/19/2021
 PClements, KPB 2021-019V



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Aerial View



 Utility Easement Vacation

PClements, KPB 2021-019V
Date: 2/19/2021
Imagery Seward 2020

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STAFF REPORT

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AK DOT	Kastner, Lorraine	E-MAIL	lorraine.kastner@alaska.gov
AK DOT & PF	Biloon, Joselyn	E-MAIL	joselyn.biloon@alaska.gov
AK DOT & PF	Hooyer, Louise	E-MAIL	louise.hooyer@alaska.gov

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Findings:

1. The petition does not state that the utility easement proposed to be vacated is in use by a utility company.
2. ENSTAR, GCI, TelAlaska and Chugach Electric provided written non-objection to the proposed vacation.
3. Tract A, Alaska State Land Survey No 96-42, Plat SW 99-1, granted a 10' wide utility easement adjoining the south boundary of Tract A for 769.86'.
4. A Commissioner's Deed of Vacation recorded November 16, 2016 as Serial No. 2016-001325-0 vacated a portion of the Seward Highway Right of Way easement.
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END OF STAFF REPORT



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. 99-1 in Seward Recording District. **OR**
- Utility easement requested to be vacated was granted by _____ Subdivision, filed as Plat No. _____ in the _____ 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 Chugach Electric Association attached.
- Comments from Enstar Gas Company attached.
- Comments from TelAlaska Telephone Company attached.
- Comments from GCI Cable Company attached.
- Comments from KPB 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.

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

ASLS 96-42, Plat 99-1, Seward Recording District	
Section, township, range <u>Sec 22, T5N, R1W</u>	
City (if applicable)	General area <u>Upper Trail Lake</u>

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): Gwen Gervelis DNR	Signature <u>Gwen Gervelis</u> <small>Digitally signed by Gwen Gervelis Date: 2021.02.02 12:38:38 -09'00'</small>
e-mail: gwen.gervelis@alaska.gov	Address: 550 West 7th Ave, Suite 650 Anchorage, AK 99501-3576
Owner of: Tract A, ASLS 96-42	

Petitioners:

Name (printed): Michael Jokela, CRW Engineering Group	Signature <u>[Signature]</u>
e-mail: mjokela@crweng.com	Address: 3940 Arctic Blvd. Suite 300 Anchorage, AK 99503
Owner of: Representative	

FOR OFFICE USE ONLY

RECEIVED BY _____ DATE SUBMITTED _____ KPB FILE # _____