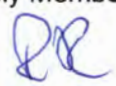


Kenai Peninsula Borough
Planning Department

MEMORANDUM

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

FROM: Robert Ruffner, Planning Director 

DATE: August 15, 2022

RE: Right-Of-Way Vacation: Fritz Creek Acres ROW Vacation of Mushroom Street

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 August 8 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 (12-Yes, 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.

August 8, 2022 Draft PC Minutes
August 8, 2022 Meeting Packet Materials

comment was closed and discussion was opened among the committee.

MOTION: Commissioner Staggs moved, seconded by Commissioner Fikes 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 Brantley asked staff if the applicant came back with a plat vacating the cul-de-sac and extending the 30-foot right-of-way, would that be consider a change of condition which would allow the petitioner to come back with these utility easement vacations. Ms. Hindman replied that yes, that would be a change in conditions. She also noted that depending on what changes are approved by the planning commission and then by the assembly the encroachment issue may no longer be valid.

Commissioner Staggs asked if the petitioner came back with the changes recommended by staff, could there still be a utility encroachment issue that would need to be resolved. Ms. Hindman replied that if after making the recommended changes and there was still an encroachment into the utility easement, they would need to file another petition to vacate and there would be an additional fee. However, it could be finalized by the other process and those fees could be absorbed by that process.

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

MOTION FAILED BY MAJORITY VOTE:

Yes - 2	Hooper, Venuti
No - 10	Brantley, Fikes, Gillham, Horton, Martin, Morgan, Slaughter, Staggs, Stutzer, Tautfest

**ITEM E10 - RIGHT OF WAY VACATION
Fritz Creek Acres Right of Way Vacation of Mushroom Street**

KPB File No.	2022-095V
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	Edward Gamble and Barbara Gamble and Sealevel Inc all of Homer, AK
Surveyor:	Kenton Bloom/ Seabright Surveys
General Location:	Mushroom Street and East End Road / Fritz Creek / Kachemak Bay APC
Legal Description:	Mushroom Street associated with Fritz Creek Acres Subdivision, Plat HM 77-37, Homer Recording District, Section 28 Township 5S Range 12W S.M.

Staff report given by Platting Specialist Julie Hindman.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

MOTION: Commissioner Venuti moved, seconded by Commissioner Fikes 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.

Chair Brantley noted that he will be supporting this vacation request. He then stated that this is the type of right-of-way vacation that he likes to see.

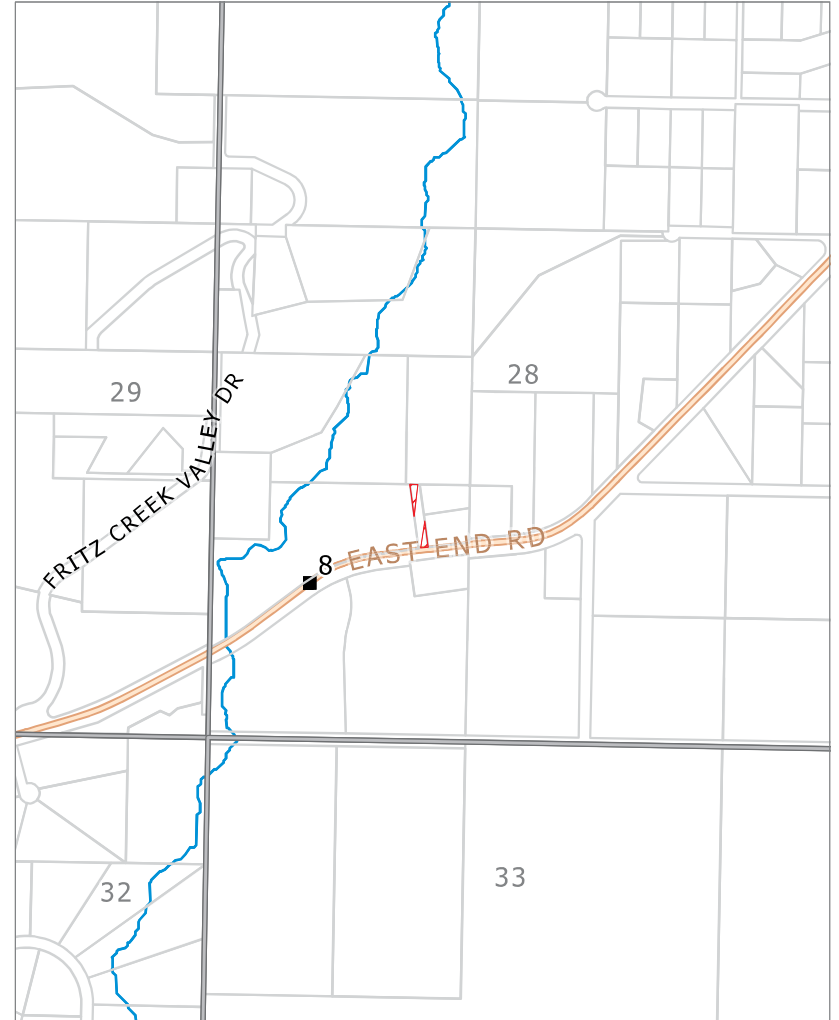
Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 12	Brantley, Fikes, Gillham, Hooper, Horton, Martin, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	

E. NEW BUSINESS

- 10. Right-of-Way Vacation; KPB File 2022-095V
Realignment of Mushroom Street a 60' ROW
Seabright Surveying / Gamble & Sealevel Inc.
Fritz Creek Area**



KPB File # 2022-095V
 S28 T05S R12W
 Fritz Creek

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.

S1/2 NW1/4
SW1/4 EXCLUDING
FRITZ CREEK ACRES

LOT 1 BLK 2
HM 77-37

LOT 1
HM 85-56

LOT LINE TO BE VACATED

N90°00'00"W 330.05'

SW 1/16

ROW AREA TO BE VACATED
(3717 SQ FT)

ROW AREA TO BE DEDICATED
(5429 SQ FT)

LOT 1 BLK 1
(HM 77-37)



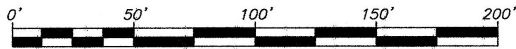
THAT PORTION OF THE
SW1/4 SW1/4 LYING NORTH
OF EAST RD EXCLUDING
FRITZ CREEK ACRES

60' WIDE ROW
DEDICATED THIS PLAT TO
KENAI PENINSULA BOROUGH

LOT LINE TO BE VACATED

LOT 2 BLK 1
(HM 77-37)

ROW AREA TO BE VACATED
(2176 SQ FT)



GRAPHIC SCALE

ROW AREA TO BE DEDICATED
(3952 SQ FT)

20' WIDE FEE ROW
TO BE DEDICATED TO
THE STATE OF ALASKA
(29364 SQ FT)

MUSHROOM ST.
60' WIDE ROW

**FRITZ CREEK ACRES & MUSHROOM STREET
ROW VACATION DIAGRAM**

A REPLAT OF MUSHROOM STREET ROW, THAT PORTION OF THE
SW1/4 SW1/4 SEC 28 LYING NORTH OF EAST ROAD EXCLUDING
FRITZ CREEK ACRES, THE S1/2 NW1/4 SW1/4 SEC 28
EXCLUDING FRITZ CREEK ACRES, FRITZ CREEK ACRES SUBDIVISION
LOT 1 BLOCK 1 & LOT 2 BLOCK 1 (HM 77-37), LOCATED WITHIN
THE SW 1/4 SEC 28, T. 5 S., R. 12 W., SEWARD MERIDIAN,
KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, ALASKA

CONTAINING 19.384 ACRES

SEABRIGHT SURVEY + DESIGN
KENTON T. BLOOM, P.L.S.

1044 EAST ROAD, SUITE A
HOMER, ALASKA 99603
(907) 299-1091

EAST END ROAD
ROW WIDTH VARIES

LOT 1 BLK 2
HM 77-37

N0°05'04"E 283.30'

LOT 3
HM 85-56

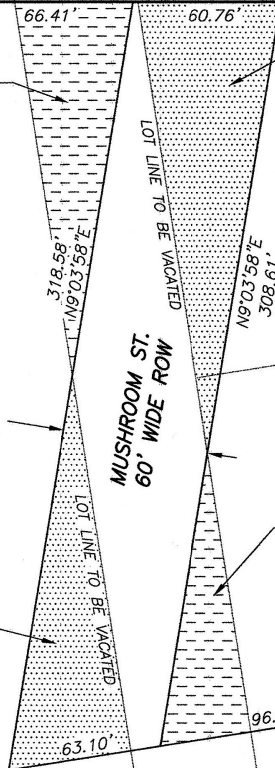
273.18'

156.66'

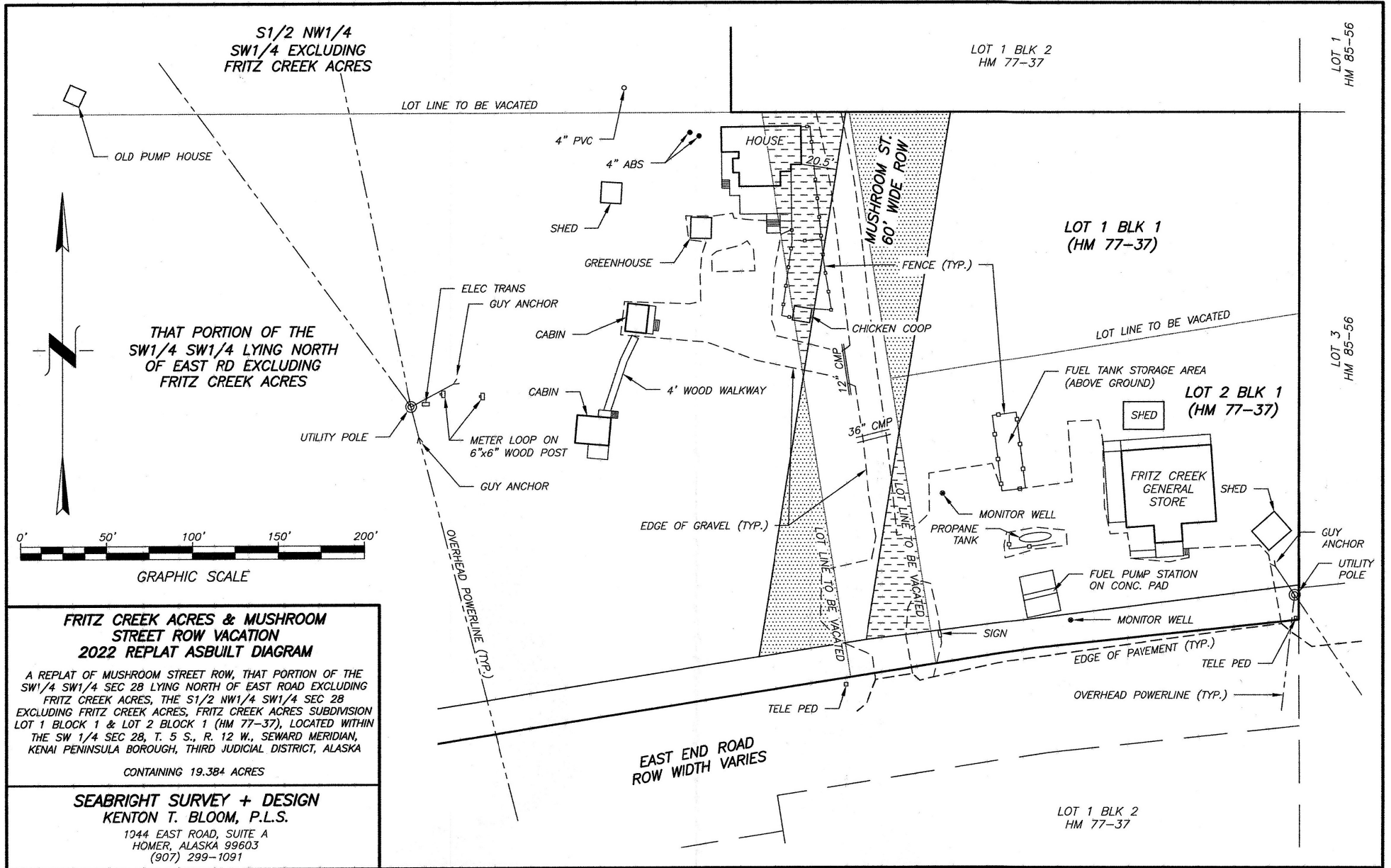
20.12'

N83°56'54"E
154.00'

180.70'
N81°01'32"E 339.79'



KPB 2022-095V



S1/2 NW1/4
SW1/4 EXCLUDING
FRITZ CREEK ACRES

LOT 1 BLK 2
HM 77-37

LOT 1
HM 85-56

LOT LINE TO BE VACATED

OLD PUMP HOUSE

4" PVC
4" ABS
SHED

HOUSE

MUSHROOM ST.
60' WIDE ROW

LOT 1 BLK 1
(HM 77-37)

THAT PORTION OF THE
SW1/4 SW1/4 LYING NORTH
OF EAST RD EXCLUDING
FRITZ CREEK ACRES

ELEC TRANS
GUY ANCHOR

GREENHOUSE

FENCE (TYP.)

LOT LINE TO BE VACATED

CABIN

CHICKEN COOP

FUEL TANK STORAGE AREA
(ABOVE GROUND)

LOT 2 BLK 1
(HM 77-37)

CABIN

4' WOOD WALKWAY

12" CMP

SHED

UTILITY POLE

METER LOOP ON
6"x6" WOOD POST

GUY ANCHOR

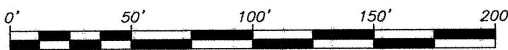
EDGE OF GRAVEL (TYP.)

MONITOR WELL

FRITZ CREEK
GENERAL STORE

SHED

GUY ANCHOR
UTILITY POLE



GRAPHIC SCALE

**FRITZ CREEK ACRES & MUSHROOM
STREET ROW VACATION
2022 REPLAT ASBUILT DIAGRAM**

A REPLAT OF MUSHROOM STREET ROW, THAT PORTION OF THE SW1/4 SW1/4 SEC 28 LYING NORTH OF EAST ROAD EXCLUDING FRITZ CREEK ACRES, THE S1/2 NW1/4 SW1/4 SEC 28 EXCLUDING FRITZ CREEK ACRES, FRITZ CREEK ACRES SUBDIVISION LOT 1 BLOCK 1 & LOT 2 BLOCK 1 (HM 77-37), LOCATED WITHIN THE SW 1/4 SEC 28, T. 5 S., R. 12 W., SEWARD MERIDIAN, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, ALASKA

CONTAINING 19.384 ACRES

**SEABRIGHT SURVEY + DESIGN
KENTON T. BLOOM, P.L.S.**

1044 EAST ROAD, SUITE A
HOMER, ALASKA 99603
(907) 299-1091

EAST END ROAD
ROW WIDTH VARIES

LOT 1 BLK 2
HM 77-37

LOT 3
HM 85-56

AGENDA ITEM E. NEW BUSINESS

ITEM 10 - RIGHT OF WAY VACATION
Fritz Creek Acres Right of Way Vacation of Mushroom Street

KPB File No.	2022-095V
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	Edward Gamble and Barbara Gamble and Sealevel Inc all of Homer, AK
Surveyor:	Kenton Bloom/ Seabright Surveys
General Location:	Mushroom Street and East End Road / Fritz Creek / Kachemak Bay APC
Legal Description:	Mushroom Street associated with Fritz Creek Acres Subdivision, Plat HM 77-37, Homer Recording District, Section 28 Township 5S Range 12W S.M.

STAFF REPORT

Specific Request / Purpose as stated in the petition:

Notification: Public notice appeared in the July 28, 2022 issue of the Homer News as a separate ad. The public hearing notice was published in the August 4, 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 Homer

Post Office of Homer

Twenty seven certified mailings were sent to owners of property within 600 feet of the proposed vacation. 14 receipts had been returned when the staff report was prepared.

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
Kachemak Bay Advisory Planning Commission
Emergency Services of Kachemak

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 to realign Mushroom Street a 50-foot dedication due to a house encroaching into the right of way. When the realignment is complete Mushroom Street will be a 60 foot dedicated right of way accessed from state maintained East End Road. This realignment will vacate 3,717 square feet on the northwest portion and 2,176 square feet on the southeast portion. Mushroom Street was dedicated as a 50 foot right of way with a 50 foot temporary cul-de-sac on Fritz Creek Acres Plat HM 77-37.

The existing gravel road providing access to Tract C of Fritz Creek Acres Plat HM 77-37 will be outside of the dedicated right of way if the vacation is approved.

KPB Roads Dept. comments	Out of jurisdiction: No Roads Director: Painter, Jed Comments: No Comments
SOA DOT comments	

Site Investigation: Wetlands are present through portions of the proposal. The terrain is relatively flat within the existing right of way and within the proposed dedications.

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 NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis:

Mushroom Street was dedicated as a 50-foot right-of-way by Fritz Creek Acres HM 77-37. There is a house located in the west part of the right-of-way of Mushroom Street, along with a chicken coop and some fencing. Fritz Creek Acres created a 20-foot building setback along all rights-of-way with a 5' foot underground or overhead clearing easement along streets for Homer Electric Association also.

Mushroom Street provides access to Tract C and Lot 1 Block 1 from East End Road. Lot 1 Block 1 has since been purchased by the owners of Lot 2 Block 1 located in front of it. The current road accessing Tract C is located in the existing Mushroom Street.

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: The right of way is constructed as a gravel road. The portion to be vacated provides access to one additional lot other than included in the replat. The existing travel surface will be located outside of the dedication.
 - 2. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: Commercial and large acreage lots, that are wanting to combine lots to allow expansions of their business and alleviate encroachments into the right of way. New dedications are proposed.

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 2022 meeting.

If approved, Fritz Creek Acres 2022 Replat will finalize the proposed right of way vacations. A complete submittal was received when this staff report was prepared. The Plat Committee is scheduled to review Fritz Creek Acres 2022 Replat KPB 2022-095 on August 8, 2022.

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: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: 55770 EAST END RD 38775 MUSHROOM ST Existing Street Names are Correct: Yes List of Correct Street Names: EAST END RD MUSHROOM ST Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: 55770 EAST END RD will remain with lot 1-A. 38775 MUSHROOM ST will remain with tract A.
Assessing	Reviewer: Windsor, Heather Comments: No comment
Advisory Planning Commission	

Utility provider review:

HEA	Provide note the 5' Electric Clearing Easement along per plat HM77-37 is also being vacated
ENSTAR	
ACS	No objections
GCI	Approved as shown
SEWARD ELECTRIC	
CHUGACH ELECTRIC	

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



Wetlands



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.

Fritz Creek Acres

LOCATED IN W 1/2 SW 1/4 SEC. 28, SE 1/4 SE 1/4 SEC. 29, T5S-R12W S-M; HOMER, ALASKA
 SCALE = 1" = 200' AREA = 28-153 AC APRIL 12, 1977

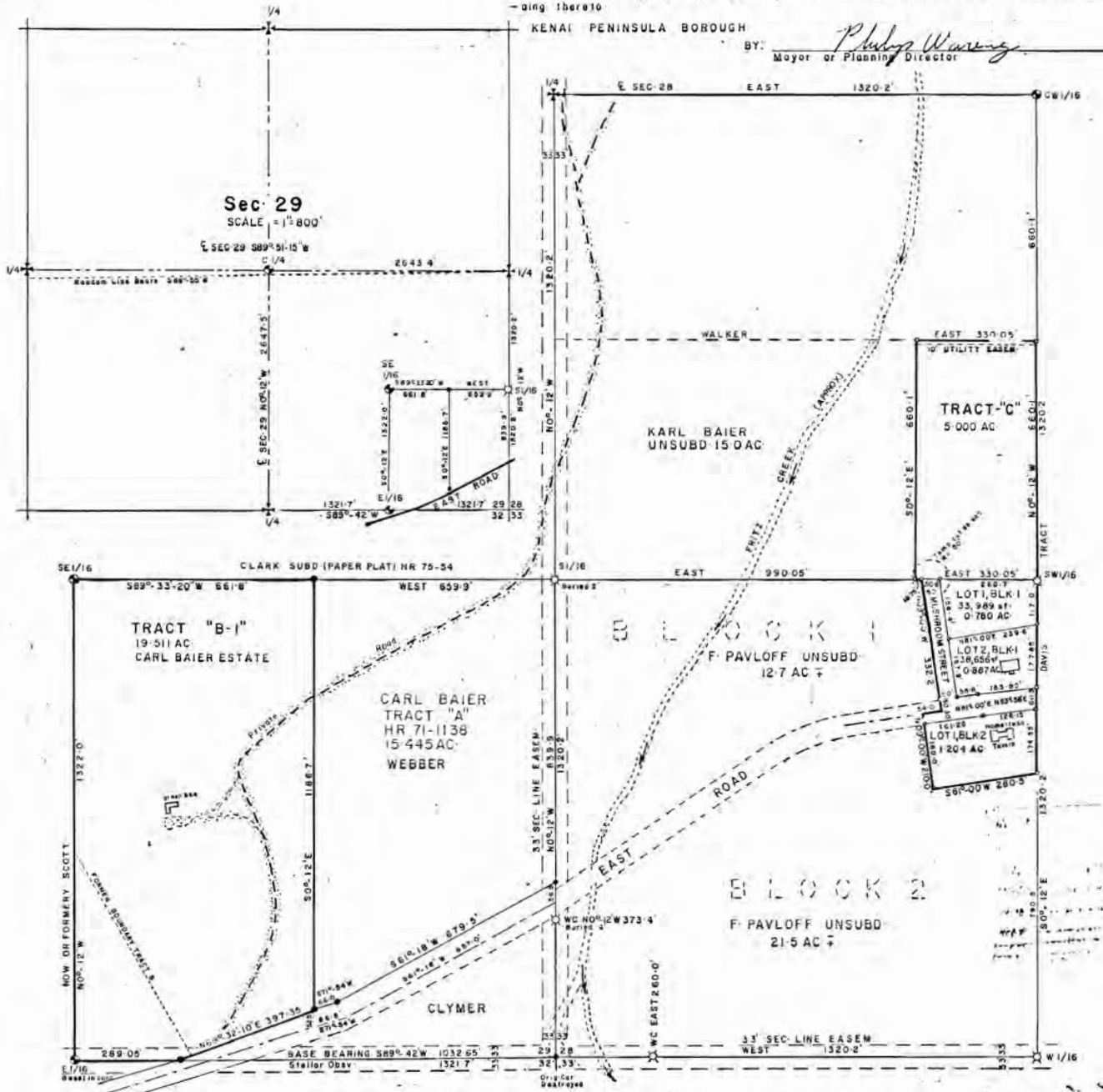
- LEGEND**
- ✦ - Indicates GLO man found as described in record
 - ⊗ - Stems man found, 268-S, 1958
 - ⊙ - 3/4" X 3' G-I P / W brass cap set
 - - 1/2" X 2' rebar found
 - - 5/8" X 2' rebar set
 - ⊠ - 2" X 3" X 3" stake set 1958

SHOWING REPLAT OF CARL BAIER TRACT "B" (HR 76-21) AS TRACT "B-1", CARL BAIER ESTATE BY: KARL BAIER AND FRANCES PAVLOFF P.O. BOX 485 HOMER, ALASKA 99603
 Note a 20' building set back line along all dedicated streets.
 A 5' underground or overhead clearing easement along streets for Homer Elect. Assoc.
 All waste water disposal systems shall comply with existing laws at time of construction.

PLAT APPROVAL

This plat having been approved by the Kenai Peninsula Borough Planning Commission as recorded in the official minutes of the meeting of April 2, 1977, 1977, is hereby acknowledged and accepted as the official plat, subject to any and all conditions and requirements of ordinances and law appearing thereto.

KENAI PENINSULA BOROUGH
 BY: Philip Waring
 Mayor or Planning Director



CERTIFICATE OF OWNERSHIP AND DEDICATION

We the undersigned, hereby certify that we are the owners of the property shown and described hereon, and that we hereby adopt this plan of subdivision, and dedicate all streets to public use, and to the use of public utilities:

Karl Baier Jane Baier
 KARL BAIER JANE BAIER
Frances Pavloff P.O. BOX 485 HOMER, ALASKA 99603
Hilda Bauer
 HILDA BAUER
 Administratrix, for Carl Baier estate -

STATE OF ALASKA, THIRD JUDICIAL DISTRICT

Subscribed and sworn before me this 12 day of April, 1977
Margaret J. Pata
 NOTARY PUBLIC FOR ALASKA

My commission expires 12/8/1977
 77-37
 RECEIVED
 HARRIS
 DATE 6-14-1977
 TIME 2:11 P.M.
 FILED BY H.B.
[Signature]



BOX 27 CLAM GULCH, ALASKA 99568