



## **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

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**MIKE NAVARRE  
BOROUGH MAYOR**

October 29, 2015

### **KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF DECISION**

#### **MEETING OF OCTOBER 26, 2015**

**RE:** 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.

During their regularly scheduled meeting of October 26, 2015 the Kenai Peninsula Borough Planning Commission granted approval of the proposed vacation based on the following findings of fact.

#### *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.

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. The proposed vacation will be forwarded to the Borough Assembly. The Assembly shall have 30 calendar days from the date of approval (October 29, 2015) in which to veto the Planning Commission decision. If the Planning Director receives no veto within the specified period, the Assembly shall be considered to have given consent to the vacation.

Please contact the Borough Clerk's office (907-714-2160 or 1-800-478-4441 toll-free within the borough) for additional information.

This notice and unapproved minutes of the subject portion of the meeting were sent October 29, 2015 to:

Johnson Surveying  
Box 27  
Clam Gulch, AK 99668

James Matti  
PO Box 39736  
Ninilchik, AK 99639

Elizabeth Kobylarz  
246 N. Binkley St.  
Soldotna, AK 99669

## 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

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**