

AGENDA ITEM F. PUBLIC HEARINGS

1. Vacate Mills Pond Avenue right-of-way, a 60-foot wide by 1,060 foot in length right-of-way as dedicated by Davis-Mills Subdivision (Plat KN 2007-57) and Toombs Subdivision #3 (Plat KN 2006-105). Also vacate a portion of Toombs Ave., a 33-foot wide by 90 feet in length east to west spur (overlying a Section Line Easement) also dedicated by Toombs Subdivision #3 (Plat KN 2006-105). This action also proposes to vacate all 10 foot utility easements along each right-of-way proposed for vacation as created by plat note on each plat. The Toombs Avenue Spur is located within the SE ¼ of Section 3, and Mills Pond Avenue is located within NE ¼ of Section 10; both within Township 2 North, Range 12 West, Seward Meridian, Alaska and within the Kenai Peninsula Borough; KPB File 2015-074.

Staff Report given by Max Best

PC Meeting: 8/10/15

Purpose as stated in petition: Applicant is moving the right-of-way from area that would be difficult to construct to adjacent areas where right-of-way is already constructed.

Petitioners: John & Pauline Mills of Kasilof, AK.

Notification: Public notice appeared in the July 30 and August 6, 2015 issues of the Peninsula Clarion.

Sixteen notices of public hearing were sent by certified mailing were sent to owners of property within 300 feet of the proposed vacation. Fourteen return receipts have been received to date. Notice of the public hearing was mailed to 23 owners within 600 feet of the proposed vacations by regular mail.

Notice of public hearing was sent by regular mail to two agencies. Notice of the public hearing was emailed to 13 agencies and interested parties. Notices were emailed to 11 KPB staff in various departments. Notices were mailed to the Kasilof Post Office and Kasilof Community Library and requested to be posted in public places. The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

Alaska Communications Systems: No objections.

Homer Electric Association: No comments or objections.

KPB Addressing Officer: No objection.

KPB Roads Department: The proposed dedicated ROW vacations and associated ROW dedications appear to make sense. No objections. Please note that Carol Road is RSA maintained but that both Toombs Avenue and Mills Pond Avenue are not.

River Center: No Habitat District concerns.

Staff Discussion:

The preliminary plat that will finalize the right-of-way and associated utility easement vacations is scheduled for the August 24, 2015 Plat Committee meeting.

Findings:

1. Sufficient rights-of-way exist to serve surrounding properties.
2. No surrounding properties will be denied access.
3. Per the submittal, the rights-of-way proposed for vacation are not in use for access.
4. Per the submittal, the right-of-way proposed for vacation have not been constructed.
5. The rights-of-way do not appear to be in use for utilities.
6. All subdivision plats finalizing vacations are sent to utility companies for review and easement

- requirements.
7. To date, two utility companies have provided written statements of non-objection.
 8. The associated plat that will finalize the vacation, if it is approved, provides an alternative right-of-way over an existing travel way.
 9. The proposed vacation of the existing Mills Pond Avenue moves a KPB right-of-way out of a low wet area.
 10. Vacation of the fee right-of-way will not vacate the underlying section line easement, which will be shown and labeled on the plat that will finalize the right-of-way vacations.
 11. KPB Roads Department provided a written statement of no objection to the proposed vacations.

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

1. The proposed alternative right-of-way for Mills Pond Avenue to be dedicated by Davis-Mills Subdivision No. 2 be a minimum 60 feet wide per KPB 20.30.120.
2. Submittal of a final plat in accordance with Chapter 20 of the KPB within one year of vacation consent.

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, Box 27, Clam Gulch
Mr. Johnson was the surveyor on the project and was available to answer questions.

Chairman Martin asked if there were questions for Mr. Johnson. Hearing none 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 Collins approval of the vacation of Mills Pond Avenue right-of-way, a 60-foot wide by 1,060 foot in length right-of-way as dedicated by Davis-Mills Subdivision and Toombs Subdivision #3 (Plat KN 2006-105). Also vacate a portion of Toombs Ave., a 33-foot wide by 90 feet in length east to west spur dedicated by Toombs Subdivision #3 and include staff recommendations.

Findings:

1. Sufficient rights-of-way exist to serve surrounding properties.

2. No surrounding properties will be denied access.
3. Per the submittal, the rights-of-way proposed for vacation are not in use for access.
4. Per the submittal, the right-of-way proposed for vacation have not been constructed.
5. The rights-of-way do not appear to be in use for utilities.
6. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
7. To date, two utility companies have provided written statements of non-objection.
8. The associated plat that will finalize the vacation, if it is approved, provides an alternative right-of-way over an existing travel way.
9. The proposed vacation of the existing Mills Pond Avenue moves a KPB right-of-way out of a low wet area.
10. Vacation of the fee right-of-way will not vacate the underlying section line easement, which will be shown and labeled on the plat that will finalize the right-of-way vacations.
11. KPB Roads Department provided a written statement of no objection to the proposed vacations.

VOTE: The motion passed by unanimous consent.

CARLUCCIO YES	COLLINS YES	ECKLUND YES	ERNST YES	FOSTER YES	GLENDENING ABSENT	HOLSTEN YES
ISHAM YES	LOCKWOOD ABSENT	MARTIN YES	RUFFNER ABSENT	VENUTI YES	WHITNEY YES	10 YES 3 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS

1. Ordinance 2015-22, An Ordinance Amending KPB Chapter 14.40 Regarding the Use and Control of Borough Rights-of-Way and Enforcement of Right-of-Way Regulations

Staff Report given by Max Best

PC Meeting: July 13, 2015

Ordinance 2015-22 was postponed from the July 13, 2015 meeting so that the Advisory Planning Commissions and other interested parties could review the ordinance and so that the questions the Planning Commission had could be answered.

Mr. Best reviewed the following amendment memorandum that was submitted from Liz Leduc, Assistant Borough Attorney.

After the introduction of Ordinance 2015-22, amending KPB chapter 14.40, several needed changes came to light. We are requesting that the Planning Commission and the Road Service Area Board consider the amendments outlined below at your meetings on August 10 and August 11, respectively. New language is denoted by **bold** text.

➤ **Amend KPB 14.40.040(D).**

Encroachment permits. Encroachment permits [MAY BE] **are issued by the RSA director** for objects **existing or to be constructed**, installed or placed within a borough right-of-way by a private party or other non-borough entity.

Comment: The proposed amendment to 14.40.040 clarifies that encroachment permits are required for both existing and new encroachments.

➤ **Amend KPB 14.40.061(A)(2) and (5).**

...



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

PHONE: (907) 714-2200 • **FAX:** (907) 714-2378

Toll-free within the Borough: 1-800-478-4441, Ext. 2215

www.borough.kenai.ak.us

**MIKE NAVARRE
BOROUGH MAYOR**

August 13, 2015

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF DECISION MEETING OF AUGUST 10, 2015

RE: Vacate Mills Pond Avenue right-of-way, a 60-foot wide by 1,060 foot in length right-of-way as dedicated by Davis-Mills Subdivision (Plat KN 2007-57) and Toombs Subdivision #3 (Plat KN 2006-105). Also vacate a portion of Toombs Ave., a 33-foot wide by 90 feet in length east to west spur (overlying a Section Line Easement) also dedicated by Toombs Subdivision #3 (Plat KN 2006-105). This action also proposes to vacate all 10 foot utility easements along each right-of-way proposed for vacation as created by plat note on each plat. The Toombs Avenue Spur is located within the SE ¼ of Section 3, and Mills Pond Avenue is located within NE ¼ of Section 10; both within Township 2 North, Range 12 West, Seward Meridian, Alaska and within the Kenai Peninsula Borough; KPB File 2015-074.

During their regularly scheduled meeting of August 10, 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 rights-of-way proposed for vacation are not in use for access.
4. Per the submittal, the right-of-way proposed for vacation has not been constructed.
5. The rights-of-way do not appear to be in use for utilities.
6. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
7. To date, two utility companies have provided written statements of non-objection.
8. The associated plat that will finalize the vacation, if it is approved, provides an alternative right-of-way over an existing travel way.
9. The proposed vacation of the existing Mills Pond Avenue moves a KPB right-of-way out of a low wet area.
10. Vacation of the fee right-of-way will not vacate the underlying section line easement, which will be shown and labeled on the plat that will finalize the right-of-way vacations.
11. KPB Roads Department provided a written statement of no objection to the proposed vacations.

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 (August 10, 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 August 13, 2015 to:

John & Pauline Mills
PO Box 260
Kasilof, AK 99610-0260

Johnson Surveying
Box 27
Clam Gulch, AK 99568

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STAFF REPORT

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Comments Received:

Alaska Communications Systems: No objections.

Homer Electric Association: No comments or objections.

KPB Addressing Officer: No objection.

KPB Roads Department: The proposed dedicated ROW vacations and associated ROW dedications appear to make sense. No objections. Please note that Carol Road is RSA maintained but that both Toombs Avenue and Mills Pond Avenue are not.

River Center: No Habitat District concerns.

Staff Discussion:

The preliminary plat that will finalize the right-of-way and associated utility easement vacations is scheduled for the August 24, 2015 Plat Committee meeting.

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

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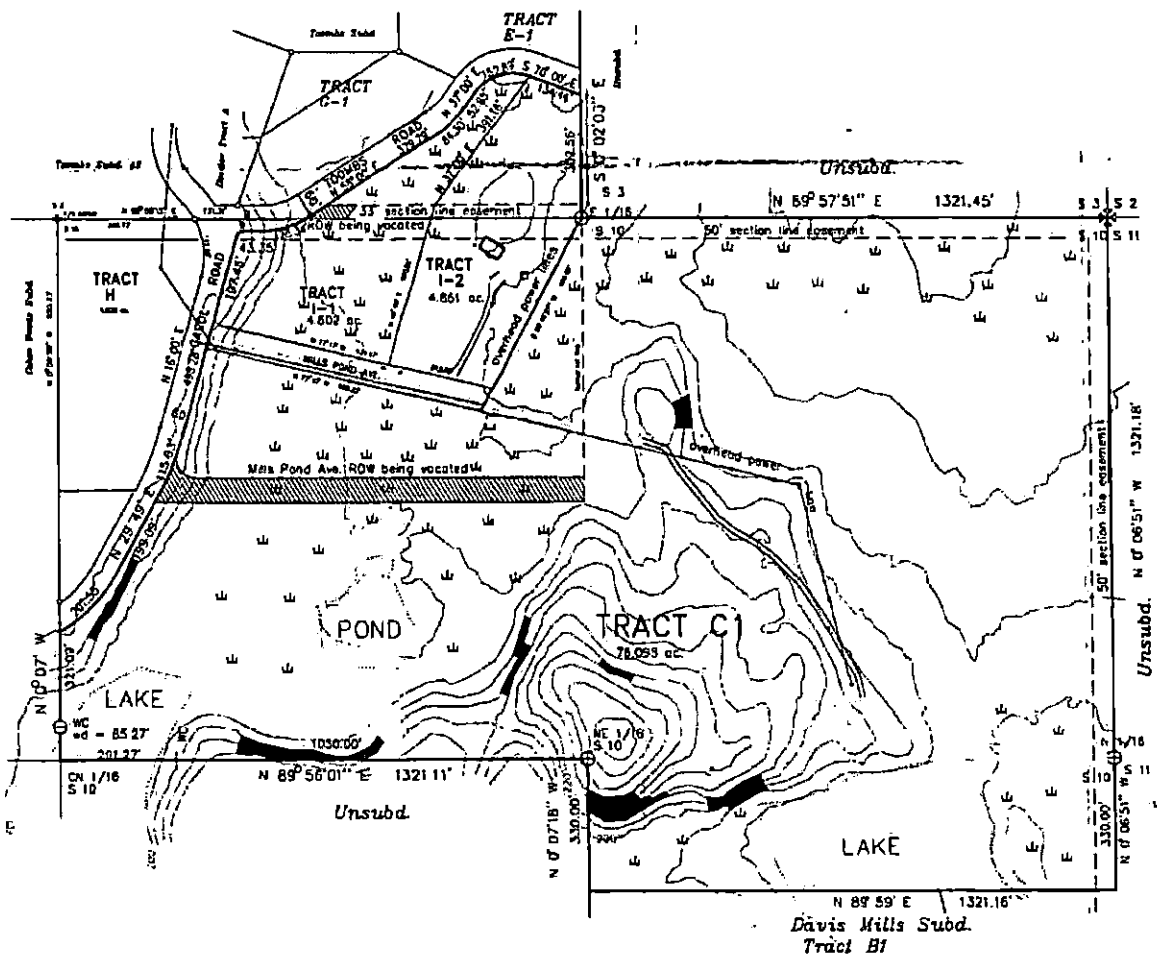
END OF STAFF REPORT

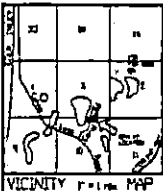
Prepared by
Johnson Surveying
Box 27
Clam Gulch, Ak 99568

2015-074

NOTES

1. A building setback of 20' from all street ROWs is required unless a lesser standard is approved by a resolution of the appropriate planning commission.
- From 15' of building setback is also a utility easement, as is the entire setback within 5' of side lot lines.
2. No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
3. Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program.
4. Contour interval 4'. Shaded areas indicate grades over 20%.





TOOMBS SUBDIVISION #3

A report of Tracts E & G Toombs Subd. I KRD 87-109 I and Parcel I of KRD Plat Varter Resolution 95-1
Located in the SE1/4 Section 3 and NE1/4 Section 10 T24N R12W, S1
Cokee, Alaska
Kenai Recording District KPB File 2006-145

Prepared for

John & Joanne Toombs
20043 Cord Road
Kenai, Alaska 99558

Prepared by

Johnson Surveying
Box 27
Kenai, Alaska 99558



SCALE 1" = 100'
27 May, 2008

AREA = 31.572 acres

LEGEND

- 24" 10000 brass cap monument, 1000' found
- 24" 10000 brass cap monument, 2000' found
- 24" 10000 brass cap monument, 3000' found
- 1/2" 10000 brass cap monument, 1000' found
- 1/2" 10000 brass cap monument, 2000' found
- 1/2" 10000 brass cap monument, 3000' found
- 1/2" 10000 brass cap monument, 4000' found
- 1/2" 10000 brass cap monument, 5000' found
- 1/2" 10000 brass cap monument, 6000' found
- 1/2" 10000 brass cap monument, 7000' found
- 1/2" 10000 brass cap monument, 8000' found
- 1/2" 10000 brass cap monument, 9000' found
- 1/2" 10000 brass cap monument, 10000' found

NOTES

- A building setback of 20' from all street R.O.W.s is required unless a lesser standard is approved by the appropriate planning commission. From 10' of building setback is also a utility easement as is the case with a 20' setback with 5' of side lot line.
- No permanent structure shall be constructed or placed upon an easement, which would interfere with the ability of a utility to use the easement.
- Water overhead powerlines shown are the centerline of a 20' wide electrical distribution line easement.
- An exception to KRS 20.20.020 re: curve radius for a R.O.W. curve along Toombs Road, was granted by the APD Planning Commission at the meeting of 26 June, 2008.
- Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program.
- 6.40.205.100. 40' wide access road is located within Cord Road dedication.

PLAT APPROVAL

The plat was approved at the Kenai Planning Commission meeting of 26 June, 2008.

Kenai Planning Commission

Approved: *[Signature]* Date: 11/1/2008
Approved: *[Signature]* Date: 11/1/2008

WASTEWATER DISPOSAL

TRACTS E & G:
These lots are at least 200,000 square feet or 4.6 acres in size and therefore may not be subject to a local wastewater treatment and disposal system. Any wastewater treatment and disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

TRACTS E & G:
Set concrete in the sub-area have been found unsuitable for conventional onsite wastewater treatment and disposal systems. For a typical alternate wastewater disposal system for use on lots in this subdivision are included in the Engineering Subdivision and Sub-Parcel and are available from the Kenai Portable Sanitary. All alternate onsite wastewater treatment and disposal systems must be designed by a professional engineer registered to practice in Alaska and the design must be approved by the Alaska Dept. of Environmental Conservation prior to construction.

[Signature] 2300-5 10/11/08
Engineer License # Date

OWNERSHIP CERTIFICATE & DEDICATION

We hereby certify that we are the owners of the real property shown and described herein and that we hereby accept the plan of subdivision and by our true consent dedicate all R.O.W.s and grant all easements to the use shown.

[Signature]
John & Joanne Toombs
20043 Cord Road Kenai, Alaska 99558

[Signature]
John & Joanne Toombs
20043 Cord Road Kenai, Alaska 99558

We further certify that Deed of Trust offering this property on has certain restrictions which would protect the subdivision or require approval and approval of beneficiaries.

[Signature]
John & Joanne Toombs
20043 Cord Road Kenai, Alaska 99558

[Signature]
John & Joanne Toombs
20043 Cord Road Kenai, Alaska 99558

NOTARY ACKNOWLEDGMENT

For John & Joanne Toombs

Subscribed and sworn to before me this 27th

day of May, 2008.

My commission expires 10/1/2010

Notary Public for Alaska



NOTARY ACKNOWLEDGMENT

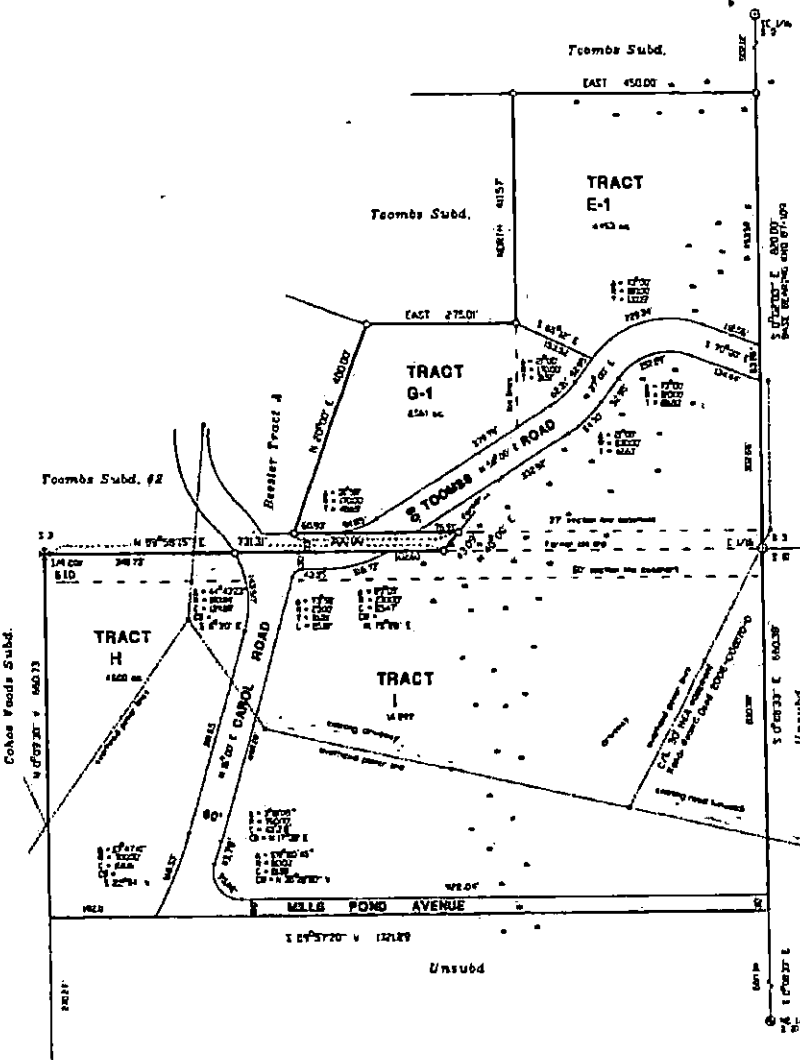
For John & Joanne Toombs

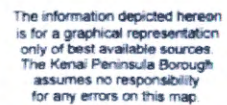
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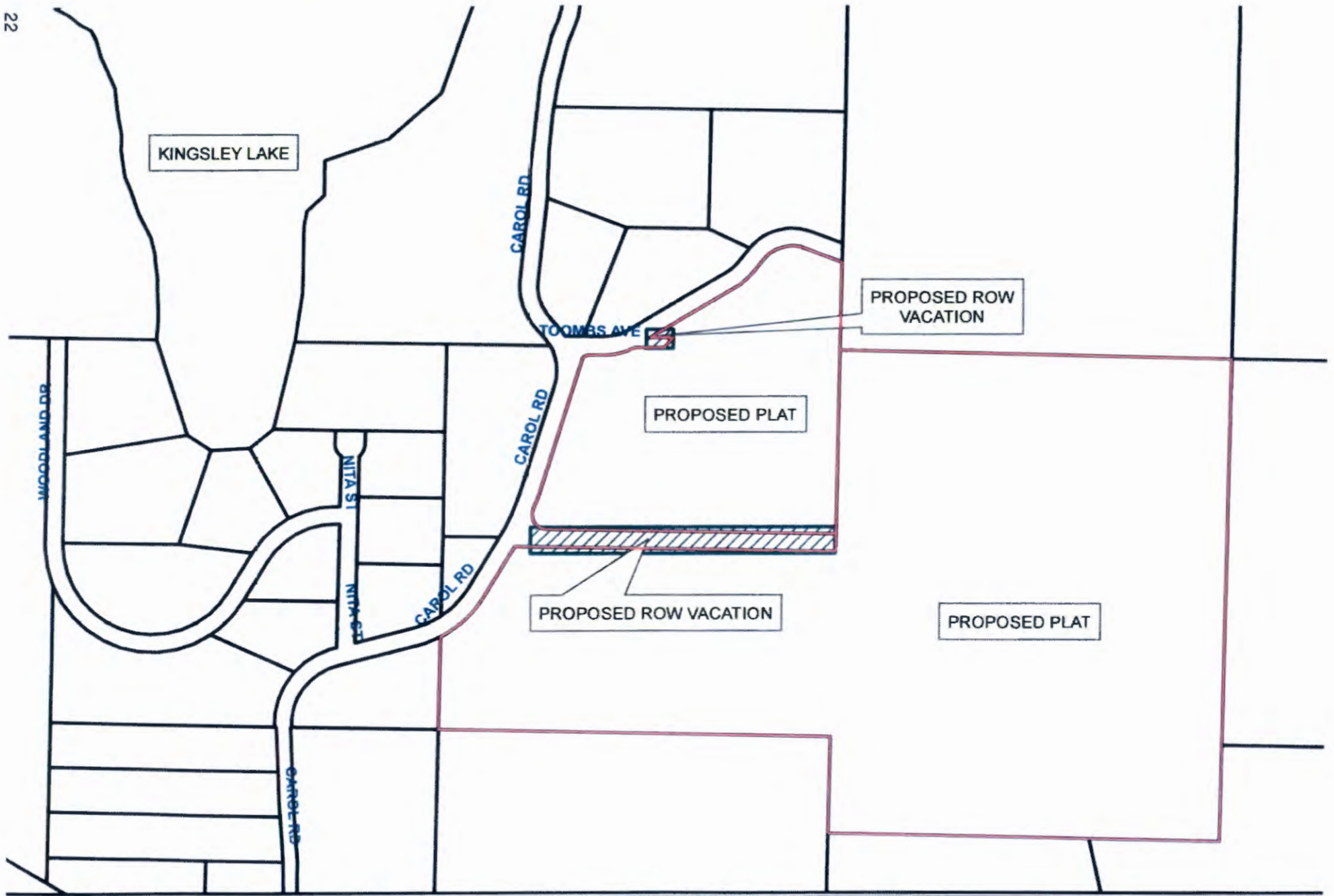
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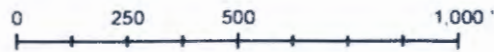
Notary Public for Alaska







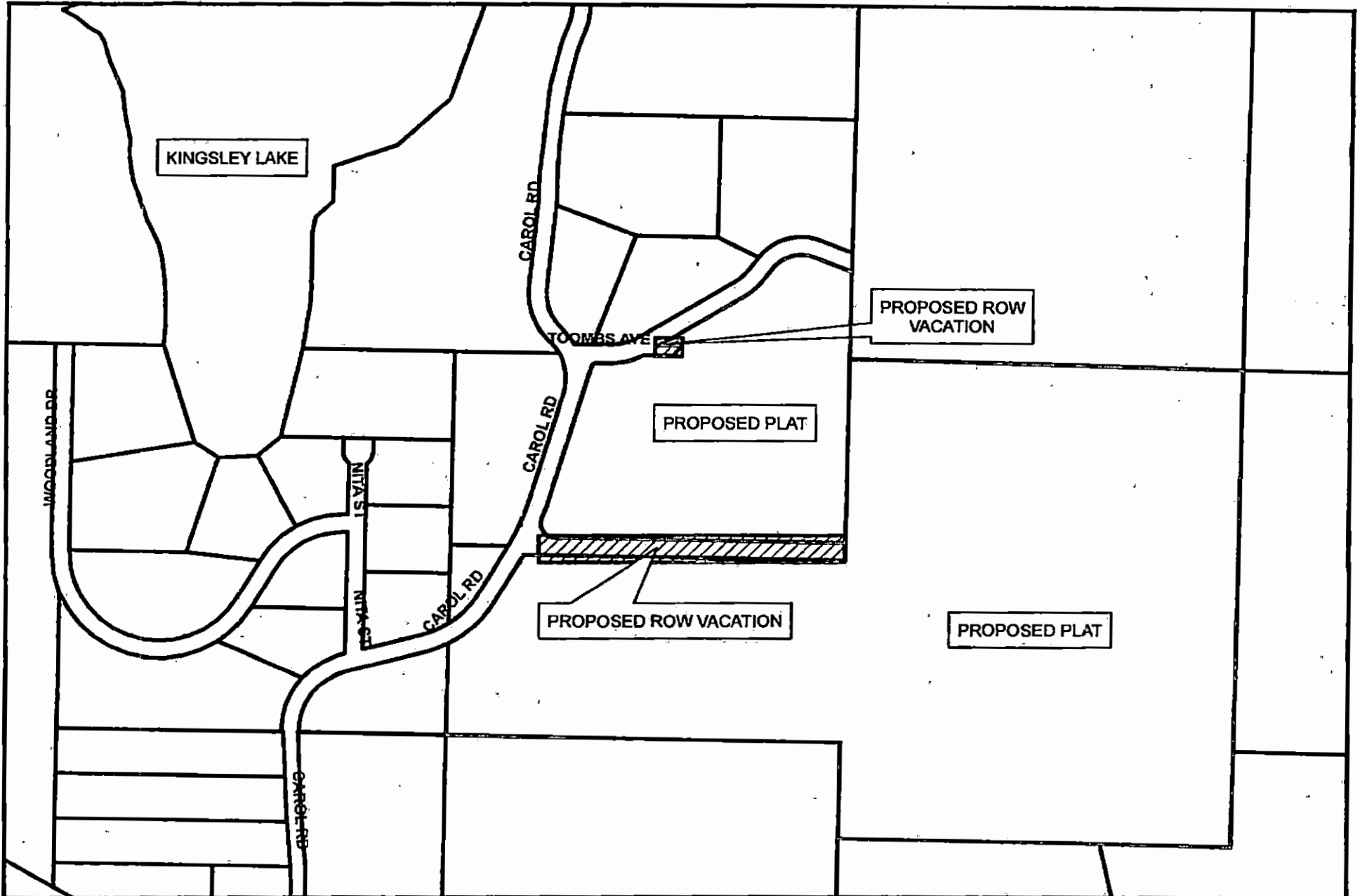
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



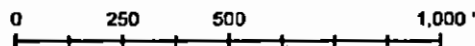
Vicinity Map



Date 6/30/2015



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Vicinity Map



Date: 6/30/2015

Sweppy, Maria

From: Knackstedt, Henry
Sent: Tuesday, July 07, 2015 9:38 AM
To: Sweppy, Maria
Cc: Malone, Patrick
Subject: RE: notice of public hearing/Proposed Vacation of Mills Pond Avenue and Toombs Avenue

Maria

The proposed dedicated ROW vacations and associated ROW dedications appear to make sense. I have no objections. Please note that Carol Road is RSA-maintained but that both Toombs and Mills Pond are not.

Henry Knackstedt
RSA Engineer

From: Sweppy, Maria
Sent: Monday, July 06, 2015 3:18 PM
To: Henson, Carrie; Dearlove, Tom; Aldridge, Morgan; Curtis, Harmony; Carver, Nancy; Malone, Patrick; Knackstedt, Henry; Fuller, Karen; Mattson, Stacey; Russel, Pam - State Address; Wall, Bruce
Subject: notice of public hearing/Proposed Vacation of Mills Pond Avenue and Toombs Avenue

Good afternoon:

The attached petition to vacate Mills Pond Avenue, Toombs Avenue, and associated utility easements will be considered by the Planning Commission on August 10, 2015. Please note the proposed vacation will not eliminate the section line easement underlying Toombs Avenue.

If the vacation is approved by the Planning Commission and Assembly, the preliminary plat will be scheduled as soon as possible for Plat Committee review. The plat that will accomplish the vacation will provide an alternate right-of-way for Mills Pond Avenue over an existing travel way.

Comments for the proposed vacation are requested to be submitted to the Planning Department by Friday, August 7.

Maria Elena Sweppy
Platting Specialist

2015-74



Kenai Peninsula Borough Planning Department
144 North Binkley
Soldotna, Alaska 99669-7599
Toll free within the Borough 1-800-478-4441, extension 2200
(907) 714-2200

Petition to Vacate Public Right-of-Way/Easement/Platted Public Area
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.

- ☒ \$500 non-refundable fee to help defray costs of advertising public hearing.
- ☐ City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- ☒ Name of public right-of-way proposed to be vacated is dedicated by the plat of Davis Mills Subdivision, filed as Plat No. 2007-57 in Kenai Recording District.
- ☒ Are there associated utility easements to be vacated? ☒ Yes ☐ No
- ☐ Are easements in use by any utility company? If so, which company _____
- ☐ Easement for public road or right-of-way as set out in (specify type of document) _____ as recorded in Book _____ Page _____ of the _____ Recording District. (Copy of recorded document must be submitted with petition.)
- ☒ Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11x17 inches in size. In the case of public right-of-way, the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch.
- Has right-of-way been fully or partially constructed? ☐ Yes ☒ No
- Is right-of-way used by vehicles / pedestrians / other? ☐ Yes ☒ No
- Is alternative right-of-way being provided? ☒ Yes ☐ No

The petitioner must provide reasonable justification for the vacation. Reason for vacating:

Moving ROW from area that would be difficult to construct to adjacent area where ROW is already constructed

The petition must be signed (written signature) by owners of the majority of land fronting the right-of-way, easement, or platted public area proposed to be vacated. Each petitioner must include address and legal description of his/her property.

Submitted By:

Name: Gerard Johnson, Johnson Surveying

Signature as:

☐ Petitioner

☒ Representative

Address Box 27

Clam Gulch, AK 99568

Phone 262-5772

Petitioners:

Signature [Signature]

Name John Mills

Address P.O. Box 260

Kasilof, AK 99610

Signature _____

Name _____

Address _____

Owner of Tract I & Tract C

Owner of _____

Signature [Signature]

Name Patricia Mills

Address P.O. Box 260

Kasilof, AK 99610

Signature _____

Name _____

Address _____

Owner of Tract I & Tract C

Owner of _____