

AGENDA ITEM E. NEW BUSINESS

**ITEM 3 - FAUERBACH COURT RIGHT OF WAY VACATION AND
ASSOCIATED UTILITY EASEMENTS AND ANCHOR EASEMENT**

KPB File No.	2021-150V
Planning Commission Meeting:	December 13, 2021
Applicant / Owner:	James E. Glendening of Kenai, Alaska and Daniel John Sims of Columbia Falls, Montana
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Russell Avenue, Keener Drive, and Bartolowitz Street / Clam Gulch
Legal Description:	Lots 4, 5, 6 and 27, Clam Gulch Heights Glendening 1979 Subdivision Plat No 81-135

STAFF REPORT

Specific Request / Purpose as stated in the petition: Lots are being combined with an associated replat, eliminating the need for this ROW.

Notification: Public notice appeared in the December 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 9, 2021 issue of the Peninsula Clarion 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 Clam Gulch

Post Office of Clam Gulch

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

Seventeen 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
Central Emergency Services

Ninilchik Traditional Council
Alaska Communication Systems (ACS)
ENSTAR Natural Gas
General Communications Inc, (GCI)
Homer Electric Association (HEA)

Legal Access (existing and proposed): Fauerbach Court a 60 foot wide and 350 feet in length right of way that ends in a cul-de-sac. Fauerbach Court is unconstructed and not maintained by KPB Roads Department. It is located off of Bartolowitz Street, a 60 foot wide right of way that is only partially constructed and not maintained by the borough.

A replat has been submitted that will reconfigure four lots into three. Proposed Lot 4A and 27A will have access via Bartolowitz Street. Lots 5 and 6 will be combined into proposed Lot 5A and will have access from Keener Drive. Keener Drive is a 50 foot wide borough maintained right of way. Both Keener Drive and Bartolowitz Street are located off Russell Avenue, a 60 foot wide borough maintained right of way located near mile 117 of the Sterling Highway.

No new dedications are proposed.

The block is irregular in design. The block does close but the block length exceeds code requirements. Sterling Highway, Russell Avenue, Bartolowitz Street, Kizer Avenue, Glendening Street, and Sesame Avenue define the block. As the right of way proposed for vacation is a cul-de-sac, it does not improve block lengths or help provide a closed block. The vacation will not affect the block requirements.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	

Site Investigation: The right of way and lots adjoining this right of way are not affected by low wet areas. The right of way is free of any steep slopes. There are steep slopes that will divide the newly proposed Lot 5A and access to the northern portion may be more difficult without the right of way. Vacating the right of way may reduce the ability or design options for Lot 5A to be further subdivided.

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: The subdivision is located in the Clam Gulch area and is not within an advisory planning commission boundary. It is located near mile 117 of the Sterling Highway.

The subject parcels and right of way were originally subdivided by Clam Gulch Heights, Plat KN 72-61. That plat created aliquot description lots. Clam Gulch Heights Glendening 1979 Subdivision, Plat KN 81-135, further subdivided the parcels and dedicated Shady Court. Resolution SN 2005-07 renamed Shady Court to Fauerbach Court.

Fauerbach Court provides the only legal access to Lot 5 and provides a secondary access to Lots 4, 6, and 27. A replat, Clam Gulch Heights 2021 Addition KPB File 2021-150, has been submitted. The proposed plat will combine Lots 5 and 6 into one lot with access from Keener Drive. Lot 4 and Lot 27 will continue to have access via Bartolowitz Street.

A 20 foot building setback was put in place adjoining Fauerbach Court. The parent plat granted the full setback as a utility easement. A 10 foot by 30 foot anchor easement was also granted within Lot 5 along the cul-de-sac, which extends beyond the granted easement by 10 feet. The proposal includes vacating the associated utility easement and the anchor easement. A 20 foot utility easement will be granted along the new lot line boundaries abutting Bartolowitz Street. Review has been sent to the utility companies for comment and staff recommends that requested easements be worked out with the utility companies and be granted.

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 currently not constructed and does not appear to be used.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: The road is relatively flat and contains no wet lands. Alternative access is provided by previously dedicated right of ways.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: Additional right of ways are in place, as well as utility easements, to provide adequate access and utilities to all surrounding parcels.
 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: This right of way does not provide access to any water body or area with public interest.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: The proposed vacation will not limit opportunities for interconnectivity with adjacent parcels and adequate right of ways and utility easements have been dedicated.
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Other public access does not appear to be needed as the cul-de-sac provides access to private property.
 7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.
Staff comments: Utility easements will be provided that exceed requirements but follows the parent plat dedications. Any requested easements from utility providers shall be worked out with the land owners before final plat approval.
 8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: The right of way provided access to four lots. The reconfiguration proposed will allow all lots to have adequate access.

If approved, the plat Clam Gulch Heights 2021 Addition will finalize the proposed right of way vacations. The Planning Commission is scheduled to review the plat on December 13, 2021. If the vacation is approved, the consent by the Kenai Peninsula Borough Assembly is required. The Assembly must hear the vacation within thirty days of the Planning Commission decision. The Assembly should hear the vacation at their January 4, 2022 meeting.

KPB department / agency review:

Planner	
Code Compliance	Reviewer: Ogren, Eric

	Comments: No comments
Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 55450 FAUERBACH CT 17635 BARTOLOWITZ ST 17610 KEENER DR 17615 BARTOLOWITZ ST</p> <p>Existing Street Names are Correct: Yes List of Correct Street Names: FAUERBACH CT BARTOLOWITZ ST KEENER DR KIZER AVE</p> <p>Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: 55450 FAUERBACH CT will be deleted. 17635 BARTOLOWITZ ST will remain with lot 4A. 17610 KEENER DR will remain with lot 5A. 17615 BARTOLOWITZ ST will remain with lot 27A.</p>
Assessing	<p>Reviewer: Wilcox, Adeena Comments: No comment</p>

Utility provider review:

HEA	No comments.
ENSTAR	No comments or objections.
ACS	No objections
GCI	Approved as shown.

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(F) 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