

AGENDA ITEM E. NEW BUSINESS

**ITEM 6 - KOTO COURT RIGHT OF WAY VACATION
AND ASSOCIATED UTILITY EASEMENTS**

KPB File No.	2021-154V
Planning Commission Meeting:	December 13, 2021
Applicant / Owner:	Marshall Martin of Soldotna, Alaska
Surveyor:	John Segesser / Segesser Surveys, Inc.
General Location:	Murray Lane, Sterling area
Legal Description:	Lots B1 AND B2 Murray Subdivision Buck Addition, Plat KN 2017-59

STAFF REPORT

Specific Request / Purpose as stated in the petition: My client, Marshall Martin, wants to vacate the line between Lots B1 and B2 and include the vacation of Koto Court. Koto Court was dedicated to provide legal access to Lot B2 and does not provide access to the adjoining property.

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 Soldotna Post Office of Sterling

Twenty-five certified mailings were sent to owners of property within 300 feet of the proposed vacation. Eleven receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 20 owners within 600 feet of the proposed vacation.

Seventeen public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game	Alaska Communication Systems (ACS)
State of Alaska DNR	ENSTAR Natural Gas
State of Alaska DOT	General Communications Inc. (GCI)
State of Alaska DNR Forestry	Homer Electric Association (HEA)
Central Emergency Services	
Ninilchik Traditional Council	

Legal Access (existing and proposed): The proposed vacation is for Koto Court, a 60 foot wide right of way that is approximately 275 feet long and ends with a cul-de-sac. Koto Court is currently unconstructed and not maintained. Three lots abut Koto Court, Lots B1 and B2 of Murray Subdivision Buck Addition, KN 2017-59, and Lot 2D of Murray Subdivision Reed Addition, KN 2003-17.

If approved, Murry Lane will be the legal access for Lot 2D as well as proposed Lot B1A. Lot B1A will be the combined parcels of Lot B1 and Lot B2.

Murray Lane is a dedicated right of way with varying width. The portion abutting the area included in the petition is 100 foot wide. Murray Lane is constructed and maintained by the State of Alaska. Murray Lane connects to the Sterling Highway near mile post 89.

No new dedications are proposed. Lot 2D, adjoining the north boundary of Koto Court, has a driveway to Murray Lane.

The block is not closed and is not compliant. Murray Lane, Dudley Avenue, Dayspring Street, and Hallelujah Drive define the block. A vacation has removed the section line easements that would have provided a closed and compliant block. Murray Lane ends at an intersection with Lakeshore Drive while Hallelujah Drive ends at a lot. This block is bordered by Longmere Lake and the ability to get a closed block will be difficult due to existing structures and low wet areas. The distance along Dayspring Street exceed allowable lengths. When the plat is reviewed, staff will request that the plat committee concur that an exception to block length requirements is not required as this subdivision will not be able to provide any dedications to improve the block length. Koto Court is a cul-de-sac and by KPB code definitions is to be permanently closed. Approval or denial of the vacation of Koto Court will not affect block compliance.

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

Site Investigation: The right of way area and the lots abutting do not contain any low wet areas. Steep slopes are not present.

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: Koto Court was dedicated on Murray Subdivision Buck Addition, Plat KN 2017-59. That plat dedicated the right of way and created the current lot configurations for Lots B1 and B2. The land within this proposal has been part of past subdivisions starting with the creation of a 16 acre tract with Murray Tract "A", Plat KN 76-26. Several subdivisions that subdivided that original Tract A and then lot reconfigurations have occurred until Plat KN 2017-59 created the current configuration.

Murray Subdivision Buck Addition, Plat KN 2017-59, dedicated Koto Court as a 60 foot wide cul-de-sac. Three lots abut the right of way, Lot 2D of Murray Subdivision Reed Addition (Plat KN 2003-17), and Lot B1 and Lot B2 of Murray Subdivision Buck Addition.

Murray Subdivision Buck Addition, Plat KN 2017-59, granted 15 foot utility easements along dedicated right of ways. The proposed vacation includes the associated utility easements. All utility easements along the Koto Court dedication will be vacated. A 15 foot wide utility easement adjoining Murray Lane will remain in place including the area within the vacated Koto Court right of way.

Murray Subdivision Replat of Lot 2 and Martin 1986 Subdivision of Tract A-1 and Replat of Tract D, Plat KN 88-38, granted a 20 foot utility easement centered on the common boundary of Lot 2D and former Lot 5D. This 10 foot utility easement was carried forward on Murray Subdivision Martin Addition No. 2, Plat KN 2007-85, and Murray Subdivision Martin Addition No. 3, Plat KN 2013-124. The dedication of Koto Court was atop the utility easement. Utilities within a right of way are allowable with the correct permitting.

This application requests all associated utility easements to be vacated and that would include the easement granted by Plat KN 88-38 located on the north 10 feet of Koto Ct. If the owners wish to leave that easement intact or a utility provider requests the easement remain, it must be depicted and noted. **Staff recommends that a plat note be added that states, 'The 10 foot utility easement granted per KN 88-38, where located within Koto Court, will be vacated with the recording of this plat.'**

The proposed vacation is not within an advisory planning commission boundary.

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 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: Koto Court is possible to construct as it is not affected by steep terrain or wetlands. No alternative access is proposed as all lots, and proposed lots, abutting Koto Court will have access via Murray Lane.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The area has been subdivided with all sufficient right of way dedications to provide legal access to all 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: The right of way does not provide access to any public interest area or water body.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: This is a cul-de-sac with no intention to be further extended and will not limit interconnectivity.
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Other use is not needed. The current right of way provides access to private lands and does not connect to any public lands or provide connection to walkways or pedestrian easements.
 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: 15 foot wide utility easements will remain along Murray Lane. The 10 foot utility easement per KN 88-38, where located within Koto Court, will be vacated with this platting action. The utility providers did not request any additional utility easement.

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

Staff comments: The proposed lot configuration will provide that all lots front on a dedicated right of way.

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 or City Council will hear the vacation at their scheduled January 4, 2022 meeting.

If approved, a subdivision plat will finalize the proposed right of way vacations. A preliminary plat has not been submitted at this time.

KPB department / agency review:

Planner	
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: None Existing Street Names are Correct: Yes List of Correct Street Names: SEWARD AVE LENORA CT DAYSPRING ST MURRAY LN KOTO CT Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: No addresses affected.
Assessing	Reviewer: Wilcox, Adeena Comments: No comment

Utility provider review:

HEA	No comments
ENSTAR	No comments or objections
ACS	
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).
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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