

AGENDA ITEM E. NEW BUSINESS

ITEM 5 - ENDICOTT DRIVE CUL-DE-SAC RIGHT OF WAY VACATION

KPB File No.	2021-151V
Planning Commission Meeting:	December 13, 2021
Applicant / Owner:	James Markley Willingham and Pandora Bane Willingham of Soldotna, AK
Surveyor:	James Hall / McLane Consulting, Inc.
General Location:	Kalifornsky Beach Road, Endicott Drive and Jan Avenue, City of Soldotna
Legal Description:	Lot 1 Block 1 Slikok Creek Alaska Subdivision Plat No K-1361

STAFF REPORT

Specific Request / Purpose as stated in the petition:

Right of way vacation: Endicott Drive as it extends north to the Kenai River has a 75 foot radius cul-de-sac that encumbers Lot 1 Block 1 K1361. KPB Code 20.30.100 requires a minimum 50 foot radius cul-de-sac design.

Current right of way width is 50 feet with additional 10 foot "walkway" per KN 79-21 for a 60 foot wide r/w for access to the Kenai River.

Proposed vacation is approximately 1,940 square feet.

No alternate r/w is being dedicated. The vacated r/w is a sliver edge of an of an over-size cul-de-sac that encumbers a smaller lot.

Reasoning: Property is encumbered by an over-sized cul-de-sac design that is not constructed nor used.

Property is situated between steep slopes to the Kenai River, 80 foot R/W of Endicott Drive on the south and 60 foot R/W of Endicott Drive on the east as it extends to the Kenai River.

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 Soldotna

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

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

Sixteen 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): The proposed vacation is a portion of an unnamed right of way that is in extension of Endicott Drive where the road intersects Kalifornsky Beach Road near mile 21. The dedicated right of way extends north from the intersection of Endicott Drive and Jan Avenue to the Kenai River.

At the intersection, the constructed Endicott Drive is located to the west while constructed Jan Avenue is to the east. The proposed vacation of the cul-de-sac bulb is to the north of the intersection. The road is being referred to as Endicott Drive although Endicott Drive turns to the west.

The vacation will remove of the 75 foot radius bulb located on the west side of the 50 foot wide dedicated right of way. This will result in the right of way extending to the Kenai River with a constant width of 50 feet with an adjoining 10 foot walkway right of way.

Per KPB data, a 50 foot section line easement coincides with the 50 foot dedication with a 33 foot section line easement adjoining to the east. This provides a 83 foot wide public access.

The block is not closed due to the Kenai River. The block length along Endicott Drive exceeds allowable lengths. The subject lot is a corner lot and is bordered by right of way along the south and east. The Kenai River borders along the north. This parcel cannot provide any additional right of way dedications to improve the block. The vacation of the portion of the cul-de-sac will not change the existing block configuration.

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

Site Investigation: Steep slopes are present to the north where sloping to the river edge. As this property is along the Kenai River, it will be subject to the Anadromous Waters Habitat Protection District. This is within the City of Soldotna; they do not participate in the FEMA program.

River Center Review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Within City of Soldotna/Kenai Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
---------------------	---

Staff Analysis: The right of way was dedicated on Slikok Creek Alaska Subdivision, K1361, recorded in 1963. It was dedicated as a 50 foot wide right of way with a 75 foot radius bulb at the end on the top of the river bank. K-Beach Park Subdivision Addition No. 2, KN 79-21, is located to the east of the dedication. That plat dedicated an additional 10 foot right of way designated as a walkway. The access width to the river to 60 feet.

While the bulb proposed to be vacated does provide a potential turn around area for vehicles, the 50 foot wide right of way adjacent to the bulb contains steep slopes making the construction of a turnaround area for vehicle use difficult within this portion of the right of way.

The parent plat did not grant utility easements adjoining the rights of way. Per plat note 2 of the preliminary plat, a 10 foot utility easement will be granted adjoining all right of ways.

Per KPB GIS imagery from 2021, it appears that improvements, (possibly a raised bed garden) on Lot 1 may be very close to the right of way or possibly within the portion to be vacated. Additionally, a set of stairs appear to be constructed with a platform along the river. Staff is unable to determine if the walkway is within the right of way or within the boundary of Lot 1.

The proposed lot is showing an increase in acreage that is more than the area within the vacated right of way. This is due to the meander line information used on the original plat. K1361 states, "The natural meanders along the Kenai River form the bounds of the lots adjoining the river. The traverse line, as shown, is for survey computations and data only. All corners, as set on said traverse line, are witness corners being on the extension of lot lines and the natural meanders." Due to the steep terrain, the additional portion of the lot was not designated nor were any additional measurements or bearings given to help make the depiction more accurate. The surveyor is showing more recent meander information from the west and east and using that to compute a more accurate meander for this lot.

The City of Soldotna Planning and Zoning Commission heard the vacation at their November 3, 2021 meeting. Per the staff report prepared for that meeting, the Director of Public Works had no objection and stated the 75 foot radius was excessive. That 50 foot is usually good in commercial areas while 30 foot in residential areas can be done. The Director of Streets and Maintenance had no objection to the vacation and stated an important culvert is in that area to drain parts of Kalifornsky Beach Road and Endicott Drive and could cause some issues with development. The City of Soldotna Planning and Zoning Commission approved the vacation.

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 public is not using the area proposed to be vacated.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: A 83 foot wide public access will remain to the river. Steep terrain is located within the right of way where near the proposed vacation. Endicott Drive and Jan Avenue are constructed streets and provide a turnaround area.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: 10 foot utility easements will be granted along dedicated right of ways. Additional requests were not made by the City of Soldotna Streets and Maintenance. Owners are to work with the utility companies to ensure all utility easement needs are met. Dedicated right of way provides legal access to all nearby 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 83 foot wide access to the Kenai River will remain in place.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;

Staff comments: The right of way ends at the Kenai River and will not connect with other right of ways.

6. Other public access, other than general road use, exist or are feasible for the right-of-way;

Staff comments: Although affected by steep terrain, the public can use this access to the Kenai River.

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: Grant requested utility easements.

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

Staff comments: This is a right of way managed by the City of Soldotna and the State of Alaska DNR. Any vacation of the Section Line Easement would require review and approval by the State of Alaska.

If approved, a right of way vacation plat (Slikok Creek 2021 Replat) will finalize the proposed right of way vacation. As allowed under KPB 20.10.080, the planning director may review the preliminary vacation plat. If for any reason, the preliminary plat may not be reviewed as a vacation plat it will be scheduled for review by the Plat Committee.

If approved by the Kenai Peninsula Borough Planning Commission, the decision will be forwarded to the City of Soldotna to be heard by their City Council. They will have 30 days to review the decision and either consent or veto the vacation.

KPB department / agency review:

Planner	
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: 476 ENDICOTT DR Existing Street Names are Correct: Yes List of Correct Street Names: ENDICOTT DR Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: City of Soldotna will advise on affected address.
Assessing	Reviewer: Wilcox, Adeena Comments: Property improvements appear to be in the public right of way. This parcel is not considered river frontage.

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 Soldotna City Council.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the Soldotna City Council and 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

- *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*

- *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*

- *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