

**ITEM 2 - RIGHT OF WAY VACATION
PORTION OF WANDA AVENUE AND ASSOCIATED UTILITY EASEMENTS**

KPB File No.	2021-168V
Planning Commission Meeting:	January 24, 2022
Applicant / Owner:	Kim M. Hansen of Soldotna, Alaska
Surveyor:	Jason Young, Mark Aimonetti / Edge Survey & Design, LLC
General Location:	Funny River area, Salmon Run Drive Sirius Street, Iceberg Street, Wanda Avenue
Legal Description:	Lot 3, Block 4, King Rapids Subdivision, Plat No. 76-173 and Lot 2-D, Brown's Lake Subdivision, Plat No 77-166, Kenai Recording District, Third Judicial District, State of Alaska.

STAFF REPORT

Specific Request / Purpose as stated in the petition: The right of way is undeveloped. The right of way is steep terrain over 20% incline. House and development near the proposed vacated right of way.

Notification: Public notice appeared in the January 13, 2022 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the issue of the January 20, 2022 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

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

Public hearing notices were sent by regular mail to twelve 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	Central Emergency Services
State of Alaska DNR	Alaska Communication Systems (ACS)
State of Alaska DOT	ENSTAR Natural Gas
State of Alaska DNR Forestry	General Communications Inc. (GCI)
Funny River Advisory Planning Commission	Homer Electric Association (HEA)

Legal Access (existing and proposed): Wanda Avenue is accessed from the end of Funny River Road to Salmon Run Drive to either Sirius Street or Iceberg Street. Salmon Run Drive is a 100 foot wide right of way maintained by KPB. Sirius Street and Iceberg Street are north-south right of ways that are located on the south side of Salmon Run Drive. Sirius Street and Iceberg Street are dedicated as 60 foot wide north of Wanda Avenue and 30 feet wide south of Wanda Avenue. Sirius Street appears to be partially cleared but neither it nor Iceberg Street are maintained by KPB.

Wanda Avenue is an east-west 60 foot wide right of way located between Sirius Street and Iceberg Street. Wanda Avenue is not improved or maintained by KPB.

The plat submitted to finalize the vacation indicates the intent is continue having two lots and to add the vacated portion of the right of way equally to each adjoining lot. The lots located to the east and west will have legal access from Wanda Avenue. If the vacation is approved, Wanda Avenue will no longer be a through right of way.

Turnaround areas are prosed at both ends of Wanda Avenue by dedicating a 30 foot by 40 foot right of way on the south side of the right of way. Existing improvements are located on the north side of Wanda Avenue. The proposed turnaround dedications will provide an offset hammerhead type turnaround.

The vacation will change the design of the block. Salmon Run Drive, Iceberg Street, Kara Megan Avenue, and Sirius Street will define the new block. It will be closed and all block lengths are compliant to KPB Code.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: The RSA has no comment at this time.
SOA DOT comments	No comments.

Site Investigation: The plat provided for review of the vacation depicts the contour information. Slopes greater than 20 percent are located within both lots and within the existing dedicated right of way.

The low wet areas are depicted and labeled within the southeast corner of Lot 2-D, proposed Lot 2E. There do not appear to be any low wet areas within the proposed right of way vacation area. Low wet areas are present within Wanda Avenue to the east.

KPB 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: Wanda Avenue was granted by two plats. Brown's Lake Subdivision, Plat KN 76-55, granted the southern 30 feet of the entire length of Wanda Avenue. King Rapids Subdivision, Plat KN 76-173, granted the northern 30 feet of the entire length of Wanda Avenue. Plat KN 77-166 further subdivided the lots created by Brown's Lake Subdivision, Plat KN 76-55. That plat created the current configuration of parent Lot 2-D and the lots within that block.

The vacation will be eliminate a connection between Iceberg Street and Sirius Street. Kara Megan Avenue is located to the south and provides a connection between Iceberg Street and Sirius Street. The block defined by Salmon Run Drive, Iceberg Street, Kara Megan Avenue and Sirius Street will be a closed block that complies with the block length requirements.

Access will not be denied to any adjoining parcels as all parcels will front on a dedicated right of way. Lot 3A will have legal access to Salmon Drive on the north boundary and Wanda Avenue in the southeast and southwest corner. Lot 2E is not developed and will have legal access to Wanda Avenue at the northeast and northwest corner.

The proposed turnarounds will allow possible future dedications if Lot 2E is further subdivided. Lot 3A can be further subdivided and the proposed design will provide for multiple access points.

Per the submittal, and reviewing the KPB GIS imagery, a building is within the right of way or very close to the right of way. The same owner owns the lots north and south of the proposed vacation.

The right of way vacation application includes the associated utility easements. The parent plats established 20 foot building setbacks adjoining the dedicated right of ways but there are no notes regarding utility easements being granted adjoining the right of ways. The plat that will finalize the subdivision will be required to grant a minimum 10 foot utility easement adjoining all dedicated right of ways. There is an easement granted by document to Homer Electric Association but no definite location disclosed. A plat note for the easement of record will be required with the easement information.

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: Steep terrain affects the right of way but the terrain would not prohibit the construction of a road. A structure appears to be very close to, or encroaching within, the right of way. The alternative access between Sirius Street and Iceberg Street is Kara Megan Avenue.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The surrounding is not fully developed. Right of ways and utility easements have been provided to allow for future development. Large acreage parcels are located to the east and west of Wanda Avenue and when further subdivided will be required to provide the matching right of way for Iceberg Street and Sirius Street.
 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 public interest areas or waterbodies.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: This vacation will break one connection between Iceberg Street and Sirius Street. Kara Megan Avenue, located to the south, provides a connection between Iceberg Street and Sirius Street. All nearby lots will have legal access from a dedicated right of way.
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Other public access, such as pedestrian use, is feasible within the right of way. Other dedicated right of ways provide adequate access.

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 were not granted along the right of way. With proper permitting, utility lines can be placed in the outer 10 feet of dedicated of ways. The proposed plat will grant utility easements along any dedicated right of ways.

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

Staff comments: There is a structure within or near the 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.

If the vacation is approved, the Assembly will hear the vacation at their scheduled February 15, 2022 meeting.

If approved, a plat will finalize the proposed right of way vacations. The plat is scheduled to be reviewed by the Planning Commission on January 24, 2022 as the surveyor has requested both the plat and this right of way vacation be heard at the same meeting.

KPB department / agency review:

Planner	Reviewer: Aldridge, Morgan There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: 32351 SALMON RUN DR Existing Street Names are Correct: Yes List of Correct Street Names: SALMON RUN DR WANDA AVE Existing Street Name Corrections Needed: All New Street Names are Approved: Yes List of Approved Street Names: List of Street Names Denied: Comments: 32351 SALMON RUN DR will remain with lot 3A.
Assessing	Reviewer: Bruns, Matthew Comments: Assessing concern that adjacent parcel 06633004 will have access from Iceberg Street (currently platted) and width of road may not meet KPB road standards.
Advisory Planning Commission	The minutes were not available when the staff report was prepared.

Utility provider review:

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

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(D) 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*
 - *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