

AGENDA ITEM E. NEW BUSINESS

**ITEM 1 - RIGHT OF WAY VACATION
VACATE 20' PUBLIC STREET EASEMENTS ADJOINING THE SOUTH BOUNDARY AND NORTHWEST
BOUNDARY OF LOT 1 TOYON SUBDIVISION AS GRANTED BY PLAT K-1592.**

KPB File No.	2022-011V
Planning Commission Meeting:	February 28, 2022
Applicant / Owner:	Kenaitze Indian Tribe IRA of Kenai, Alaska
Surveyor:	Jason Young, Mark Aimonetti / Edgy Survey and Design LLC
General Location:	Mission Avenue, City of Kenai
Legal Description:	20' public street easements adjoining the south boundary and northwest boundary of Lot 1 Toyon Subdivision as granted by plat K-1592.

STAFF REPORT

Specific Request / Purpose as stated in the petition: None stated. A preliminary plat has been submitted that depicts two lots being combined. The access easements proposed for vacation provide access to the back lot and will encumber the new lot.

Notification: Public notice appeared in the February 17, 2022 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the February 23, 2022 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 Kenai

Post Office of Kenai

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

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

Eleven 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
City of Kenai
Emergency Services of Kenai

Kenai Peninsula Borough Office
Alaska Communication Systems (ACS)
ENSTAR Natural Gas
General Communications Inc, (GCI)
Homer Electric Association (HEA)

Legal Access (existing and proposed): The public street easements are located in 'Old Town' Kenai. Access is available from Mission Avenue and Alaska Avenue. Both right of ways have varying widths and are maintained by the City of Kenai. A 10 foot public access easement is also present at the end of Alaska Avenue and extends south towards the bluffs. .

There are no new proposed public dedications. The block is compliant but irregular in size. Due to the steep bluff and the intertidal wetlands, the ability to obtain a closed block is unlikely.

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

Site Investigation: The parcels are improved with a large apartment building located on former Lot 1. Lot 2 contains several structures with the majority of the lot as a parking area. Lot 2 contains a lodge with cabins and has been improved as a site for RV camping.

The land where the access easements are present is relatively flat and contains no low wet areas. The southern boundary of Lot 2 is located just over the top of the bluff.

KPB River Center review	<p>A. Floodplain</p> <p>Reviewer: Carver, Nancy Floodplain Status: Within City of Soldotna/Kenai Comments: No comments</p> <p>B. Habitat Protection</p> <p>Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks</p> <p>Reviewer: Russell, Pam Comments: No Comments</p>
Alaska State Fish and Game	No objections to the proposed platting actions. The proposed actions will not affect public access to public lands and waters.

Staff Analysis: The property involved with this petition was originally surveyed under the Townsite of Kenai, U.S. Survey No. 2970B in 1950. The survey dedicated Alaska Avenue as a through right of way. US Survey 2970B also dedicated Mission Avenue.

In 1968 Toyon Subdivision, Plat KN 1592, was recorded. KN 1592 created Lots 1 and 2 and created the current right of way configuration by vacating a portion of Alaska Avenue. Lot 2 continued to have access via Alaska Avenue but the plat also granted 20 foot easements within Lot 1 that provided additional access to Lot 2.

Both access easements were granted to provide secondary access to Lot 2. The eastern 20 foot access easement was granted atop a portion of Alaska Avenue that was being vacated. The northern 20 foot easement was granted on Lot 1 for the benefit of Lot 2.

A preliminary plat has been submitted to be reviewed by the Plat Committee on February 28, 2022. In addition to finalizing the access easement vacations, the plat proposed to combine Lot 1 and 2 of Toyon Subdivision. The 20 foot access easements through former Lot 1 to provide access to former Lot 2 will not be required as it will be one lot. Access will be from Mission Avenue and Alaska Avenue. Plat KN 1592 granted an additional 5 foot public street easement along a portion of Mission Avenue and will remain in place.

Staff is requesting that the plat provide a turnaround area for the end of Alaska Avenue. The layout could be a Y or T type turn around and will need to be approved by the City of Kenai.

Per Toyon Subdivision, Plat KN 1592, and the original U.S. Survey, there were no utility easements granted within those areas. The plat will be required to grant utility easements requested by the City of Kenai and utility providers.

The City of Kenai Planning and Zoning Commission reviewed the subdivision plat along with the vacations at their January 26, 2022 meeting. They found the new lot configurations complied with their city code. The approved the plat subject to the following conditions:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
2. The Kenai City Council must declare that the two 20' public street easements to be vacated is not needed for a public purpose and approve the vacation of the two 20' public street easements as shown on the preliminary plat.

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: They appear to be used as access the lodge and parking lot located on current Lot 2 of Toyon Subdivision. Lot 2 and Lot 1 will be combined into one parcel.
2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: Neither access easement is impractical to construct. The southerly access easement has been constructed for access to Lot 2. The northerly access easement has been improved but a fence limits the access to Lot 2. The legal access after the replat will be from Alaska Avenue and Mission Avenue.
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The surrounding area is developed with paved roads maintained by the city. City utilities are present along Mission Avenue, per the City of Kenai Planning and Zoning staff report.
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 easements do not provide access to public lands or public waters.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: The lot that benefits from the easements will be combined with Lot 1. Further connectivity will not be possible due to steep terrain and tidal waters.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: A 10 foot access easement is already present at the end of Alaska Avenue providing additional pedestrian access to the south.
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: Any requested uses from the utility companies will be reviewed and granted as easements if requested.

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: The access easements are being used as ingress/egress to Lot 2, which is proposed to be combined with Lot 1.

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 Kenai City Council will hear the vacation to provide a consent or veto to the Planning Commission decision.

If approved, Toyon Subdivision 2021 Replat will finalize the proposed right of way vacations. The Plat Committee is scheduled to review the plat on February 28, 2022.

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: 1001 MISSION AVE 929 MISSION AVE Existing Street Names are Correct: Yes List of Correct Street Names: MISSION AVE ALASKA AVE OVERLAND AVE 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 Kenai will advise on affected addresses.
Assessing	Reviewer: Wilcox, Adeena Comments: No Comment

Utility provider review:

HEA	Requesting a 10 foot utility easement adjoining the northwest boundary between Mission Avenue and Alaska Avenue.
ENSTAR	No comments or recommendations
ACS	No objections
GCI	Approved as depicted.

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