

**ITEM E2 – SEWER EASEMENT ALTERATION
FORT RAYMOND SUBDIVISION REPLAT NO. 1 LOT 7A**

KPB File No.	2022-041V
Planning Commission Meeting:	May 9, 2022
Applicant / Owner:	City of Seward
Surveyor:	A. William Stoll / DOWL
General Location:	Aspen Lane and Seward Highway, City of Seward

Staff report given by Platting Specialist Julie Hindman.

Vice Chair Brantley opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Morgan moved, seconded by Commissioner Bentz to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 10	Bentz, Brantley, Fikes, Gillham, Hooper, Horton, Morgan, Stutzer, Tautfest, Venuti
Absent - 1	Martin

**ITEM E3 - RIGHT-OF-WAY VACATION
VACATE A PORTION OF PAPER BIRCH LANE AND ASSOCIATED UTILITY EASEMENTS**

KPB File No.	2022-023VR1
Planning Commission Meeting:	May 9, 2022
Applicant / Owner:	LittleKnife Inc and Gale Smith of Soldotna
Surveyor:	James Hall / McLane Consulting Group
General Location:	Sterling area, Paper Birch Lane, Mountain Ash Street
Legal Description:	Lots 8, 9, & 15 of Tulchina Pointe Estates Phase 2, Plat KN 2009-48.

Staff report given by Platting Specialist Julie Hindman. She noted that there were several comments from the public that were in the laydown packet. Staff would like to note that one of the public comments stated that Mr. Johnson would not approve a road going through his lot. Per the minutes from the March 21, 2022 PC meeting, Mr. Johnson stated he has no intention of subdividing his property, but if he did decide to subdivide, he understood he would possibly need to dedicate a right of way.

Ms. Hindman noted that there were multiple requests to provide a full right-of-way dedication from the end of Developer Circle. Per KPB Code 20.90(D), Cul-de-sac streets serve no through traffic and are closed permanently at one end with a vehicular turnaround area. The Planning Commission has allowed for cul-de-sacs to be opened and in this case would require approval and signatures from all land owners along the cul-de-sac. A few other points to consider is the width that lots 8 and 9 can provide will be approximately 57 feet at the end of the bulb. The neighboring lot, Lot 7, has structures built close to the shared property line. An as-built would be required to determine, if a setback is put into place, if the structures will be encroaching. Per KPB 20.30.170 blocks shall be no less than 330 feet. The blocks are measured from centerline intersections. A continuation of Developer Circle as a 60-foot wide right of way will result in a current block length of approximately 270 feet. If Quillback receives the other 30-foot dedication the block will then be approximately 285 feet.

END OF STAFF REPORT

Steve Bowen, Petitioner, 36495 Haley's Way, Soldotna, AK 99669: Mr. Bowen is the contractor who build the house that is encroaching into the Paper Birch right-of-way. He spoke in support of the proposed vacation.

Russ Morrison; P.O. Box 4623, Soldotna, AK 99669: Mr. Morrison spoke in opposition to the proposed

vacation. Mr. Morrison believes that a better design would be to open Developer Circle, taking land from Lot 8 for the right-of-way, and connect the road to Paper Birch. The other would be to give a footprint vacation along Paper Birch, not a 30' width.

Janet Morrison; P.O. Box 4623, Soldotna, AK 99669: Ms. Morrison spoke in opposition to the proposed vacation and shared many of the same concerns as the other testifiers.

Kevin Morrison; 36540 Water Ct., Sterling, AK 99672: Mr. Morrison spoke in opposition to the proposed vacation and shared many of the same concerns as the other testifiers.

Steve Bowen, Petitioner, 36495 Haley's Way, Soldotna, AK 99669: Mr. Bowen noted that there is good reason for contractors not to make a mistake like this, which is the cost. This has been a very costly mistake for him. To date he has incurred more than \$30,000 in costs due to this mistake. The goal is not to get "free" land but to resolve the encroachment in the most cost-effective manner. Also, folks seem to think that this section of Paper Birch Lane can be constructed. This section of Paper Birch goes off a bluff, it would be almost impossible to build the road to borough standards, not to mention extremely costly. The plat proposes to leave a 30' wide section of the road which will continue to allow for access. No landowner will lose access with this proposed vacation.

Commissioner Stutzer asked the petitioner why the costs of this mistake have been so high. Mr. Bowen replied that he carries a high interest construction loan on this house and the bank requires that the encroachment be resolved before they will close on the house. Commissioner Stutzer asked Mr. Bowen why he did not have the lot surveyed before he started construction. Mr. Bowen replied that his client showed him some inaccurate flagging on the lot, and that flagging was used to determine the placement of the house.

Attorney Steinhage highlighted for the commission a few points the Assembly had with this vacation. One concern was they wanted to make sure that there was adequate legal access to the properties to the north. The Assembly also expressed concerns about this type of situation creating windfalls for landowners. They had questions regarding how the borough should respond to encroachments into rights-of-ways.

Hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Bentz, to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

Commissioner Gillham asked staff why they were recommending a 30' vacation and not just a footprint vacation. Ms. Hindman replied that earlier comments from the public noted that this section of the right-of-way was used by snowmachines, ATVs, horses and hikers. There was also discussion about not wanting a full vacation in this area. So, this proposal leaves 30' for pedestrian and other uses. Also, while the house only encroaches into the right-of-way by 9', the well encroaches 13'. Generally, code requires a 20' setback and this proposal included footage to help address the setback issue. The 30' vacation would leave the house clear of the setback.

Commissioner Stutzer noted that he has been in the construction business for 40 years and believes that it is in very poor form for the contractor to not verify the property corners and setbacks. He does not believe that the borough should have to be in the position of having to grant exceptions like this on a routine basis. He believes that the borough should give only the very minimal amount of land in this situation and not the whole 30'.

Commissioner Morgan asked staff if they had taken into consideration some of the suggestions from the public. For instance, only giving a footprint vacation or moving the right-of-way to connect to Developer Circle. Ms. Hindman replied staff is presenting the request as it was petitioned. The planning commission has the authority to propose something different if they so choose. The concern with extending Developer is that it is a cul-de-sac. While this proposal would have the landowner giving up the land for the right-of-way, there are other landowners on this circle that purchased and developed their lots on a cul-de-sac, not on a through street. Per code, cul-de-sacs are supposed to be permanently closed. While some have been opened in the past, it does require all landowners on the road to agree to open the cul-de-sac up to

through traffic. Another concern, because of the location of Quillback, is that opening Developer Circle up will create a none compliant block length.

Commissioner Venuti asked what would be the repercussions if this vacation is not approved. Mr. Bowen replied that if the vacation is not approved the house remains in the right-of-way and his clients will not be able to close on the house. Commissioner Venuti asked Mr. Bowen if the bank has stated that they will not close on the house until the encroachment is resolved. Mr. Bowen replied that the bank will not close on this property until the encroachment is resolved. Commissioner Venuti noted that while it is not a common practice, he is aware that banks have made exceptions in cases like this and have approved the loans. Mr. Bowen replied that he has not received from the bank any indication that they would make any exceptions in this case.

Commissioner Fikes asked Mr. Bowen what would be the cost to make the house comply with code. Mr. Bowen replied that it would be hard to estimate, but to move or truncate the house so that it is no longer in the right-of-way it could cost somewhere around \$100,000.

Ms. Hindman reminded the commission that code does not take into consideration the costs associated with removing encroachments when considering approval of vacations. The main consideration is whether or not the right-of-way is needed for public use.

Commissioner Brantley stated that when he looks at vacations, he does not take into consideration whether or not there are encroachments. What he looks at when reviewing vacation petitions, is the standards set out in code. The road is not buildable in this section. Developer Circle cannot be extended unless everyone living on the road agrees. Questions as to whether or not Quillback will be developed, have nothing to do with this request. In his opinion this section of Paper Birch is not buildable and vacating it will not impact development in the area. The one landowner who could be affected by this vacation is Mr. Johnson. Mr. Johnson will be given better access to his property in the subdivision Mr. McLane is proposing. He then noted that he will be voting in favor of the petition.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY MAJORITY VOTE:

Yes - 8	Bentz, Brantley, Fikes, Gillham, Hooper, Morgan, Tautfest, Venuti
No - 2	Horton, Stutzer
Absent - 1	Martin

**ITEM E4 – CONDITIONAL USE PERMIT
ANADROMOUS WATERS HABITAT PROTECTION DISTRICT**

PC Resolution No.	2022-006
Planning Commission Meeting:	May 9, 2022
Applicant / Owner:	Kent Cushman
Physical Address:	34775 Sockeye Lane
KPB Tax Parcel No.	065-270-05
Request:	For the construction of a 10' chain-link fence within the 50' Habitat Protection District of the Kenai River.

Staff report given by Resource Planner Morgan Aldridge.

Vice Chair Brantley opened the meeting for public comment.

Kent Cushman, Applicant; P.O. Box 449, Sterling, AK 99672: Mr. Cushman made himself available for questions.

Robert Jefferies; P.O. Box 214, Soldotna, AK 99669: Mr. Jefferies is a neighboring landowner and spoke in opposition to the proposed fence project. He noted that he has used a driveway that crosses Mr. Cushman's property since 1972. He believes that adverse possession laws in the State of Alaska allow him continued use of his driveway that crosses over the Cushman property.