

## **E. NEW BUSINESS**

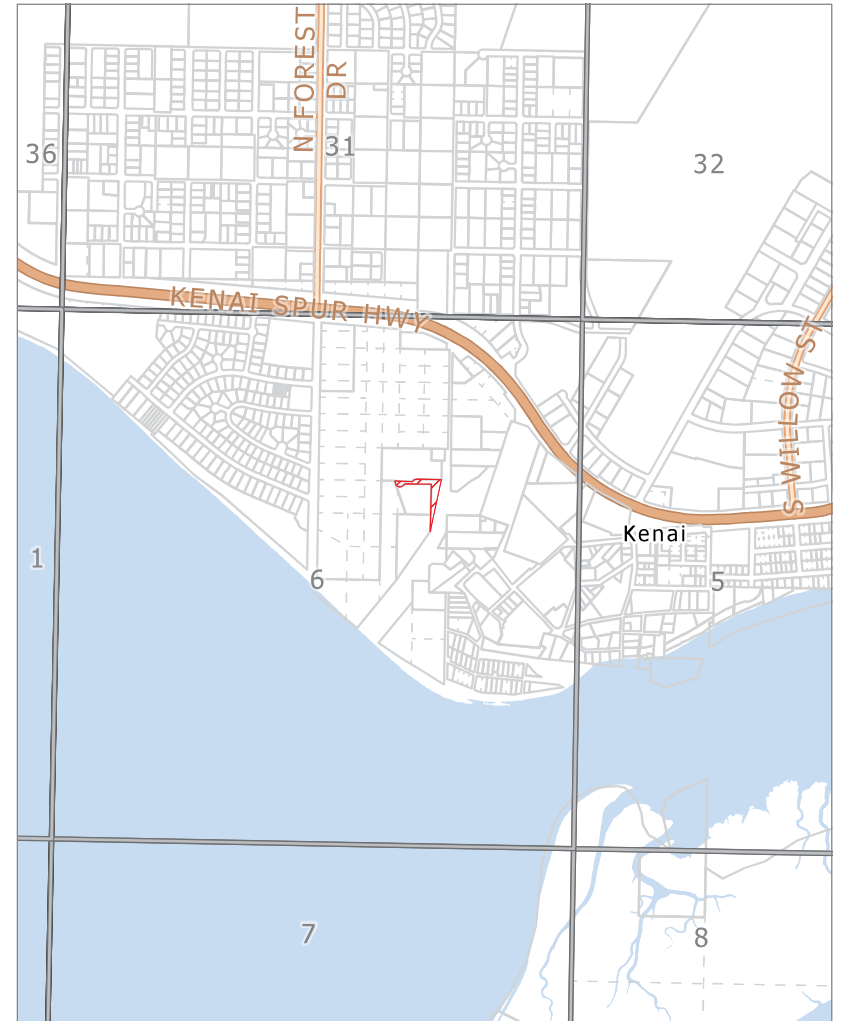
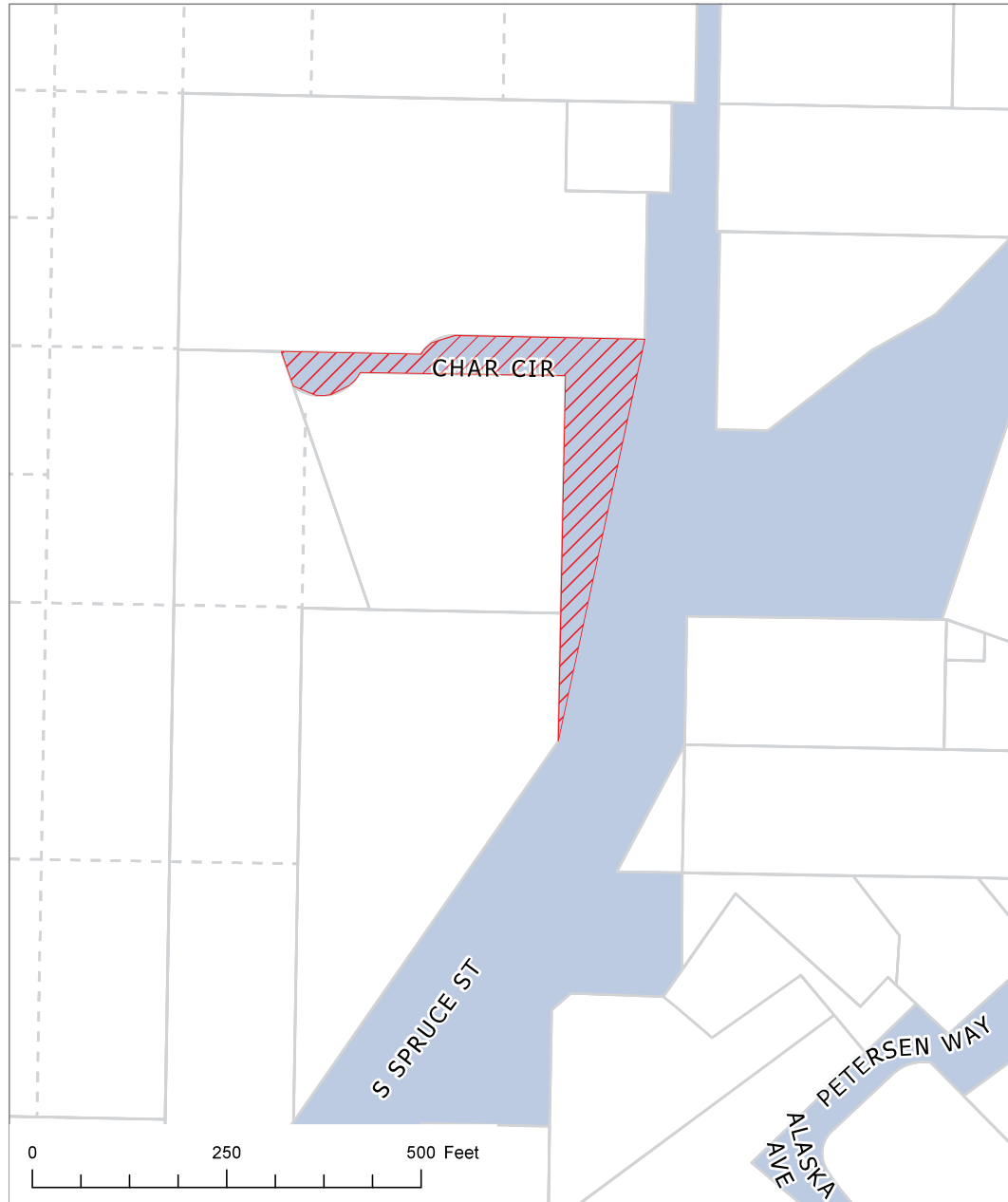
### **2. Right-Of-Way Vacation; KPB File 2023-145V**

**McLane Consulting Group**

**Evenson, Boys & Gils Club of the Kenai Peninsula**

**Request: Vacate 31' by 518' S. Spruce ROW & 48' by  
367' Char Circle, Plat KN 79-156**

**City of Kenai**



KPB File 2023-145V  
T 05S R 15W SEC 04  
Kenai





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AGENDA ITEM E. NEW BUSINESS

**ITEM #2 - RIGHT OF WAY VACATION  
Vacate Char Circle & S Spruce St ROW  
City Park Subdivision and City Park Subdivision No 2**

<b>KPB File No.</b>	2023-145V
<b>Planning Commission Meeting:</b>	January 8, 2024
<b>Applicant / Owner:</b>	Boys and Girls Club of the Kenai Peninsula / Kenai AK Thor Evenson / Anchorage AK
<b>Surveyor:</b>	James Hall / McLane Consulting Inc.
<b>General Location:</b>	S Spruce Street, City of Kenai
<b>Legal Description:</b>	Char St & S Spruce St as dedicated on Park View Subdivision KRD 79-156 and City Park Subdivision No 2 KRD 2007-146 in Section 6, Township 5 North, Range 11 west SM City of Kenai, AK

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**STAFF REPORT**

**Specific Request / Purpose as stated in the petition:** The ROW vacation will enable the Club to maximize development as discussed during the City's land donation. The ROW vacation will not impact the public travel and will accommodate private access to an adjacent parcel.

**Notification:** The public hearing notice was published in the Peninsula Clarion issue of the January 4, 2024 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

Ten certified mailings were sent to owners of property within 300 feet of the proposed vacation. 0 receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to nine 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  
State of Alaska DNR  
State of Alaska DOT  
State of Alaska DNR Forestry  
Advisory Planning Commission  
City of Kenai  
Emergency Services of Kenai

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

**Legal Access (existing and proposed):**

Current legal access is by S Spruce Street which is maintained by the City of Kenai. S Spruce St is a varied width right-of-way coming from the Kenai Spur Highway that ends at the Kenai Beach.

There will be no new access provided as on the east is S Spruce Street which is a varied width right-of-way, that after the vacation will still be at its narrowest 60 feet wide at the north end of the vacation.

The block length is not complaint, but due to the terrain in the area of this vacation and lots involved, a dedication would not help the block length.

KPB Roads Dept. comments	Out of Jurisdiction: Yes  Roads Director: Griebel, Scott Comments: No comments. Within city limits
SOA DOT comments	

**Site Investigation:**

There are steep areas near the property involved. S Spruce Street heads downhill as it goes to the beach area at a slope of 6% and the side slopes along the road are at approximately 65%. The steep slopes are at the east side of the vacation area.

To the west of the property is a steep area leading down to an area of inundation partly on the land of the Boys and Girls Club of the Kenai Peninsula and Thor Evenson's properties as shown on the drawing.

Wetlands do not affect the vacation area.

The vacation area is located in a Flood Insurance Rate Map (FIRM) area mapped as flood hazard zone D. Surveyor will need to work with the city of Kenai to determine what notes will need to be put on the plat drawing.

The vacation is totally or partially located in an anadromous waters habitat protected district, the plat shall contain the following note:

**ANADROMOUS WATERS HABITAT PROTECTION DISTRICT NOTE:**

Portions of this subdivision are within the Kenai Peninsula Borough Anadromous Waters Habitat Protection District. See KPB Chapter 21.18, as may be amended, for restrictions that affect development in this subdivision. Width of the habitat protection district shall be in accordance with KPB 21.18.040.

KPB River Center review	<p>A. Floodplain</p> <p>Reviewer: Hindman, Julie Floodplain Status: Within City of Kenai Comments: Work with City of Kenai to determine required notes.</p> <p>B. Habitat Protection</p> <p>Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: i:0#.w kpb\maldridge</p> <p>C. State Parks</p> <p>Reviewer: Comments:</p>
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**Staff Analysis:** The area to be vacated was originally plotted as part of Government Lots 129, 130, 152, 153, 154, 155 and 157 in the NE1/4 of Section 6 Township 5 North Range 11 West SM Alaska. Park View Subdivision KRD 79-156 created two tracts and the dedication now being vacated with this request and City Park Subdivision No 2



KRD 2007-146 created one tract and two dedications, one of which a portion of is being vacated. The only use of the vacated portions has been by the requestors for driveway purposes.

The neighboring lands to the north and south of Char Circle are one of the requestors and use is designated as institutional. Further south along S Spruce Street on the west is a parcel which is currently vacant.

This vacation will not have any effect on access for either parcel. Vacation will be divisible with adjacent property to south as needed.

No utility comments were received at the time the staff report was written. It is suggested that any utility issues be address when they are received by the surveyor / client. Visible utilities have been shown on the drawing.

After the vacation is complete, proposed improvements and expansions to the structures and property are planned.

#### **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:** No use being done
  2. A road is impossible or impractical to construct, and alternative access has been provided;  
**Staff comments:** road impractical to construct in location of vacation, no alternative provided.
  3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;  
**Staff comments:** Surrounding area is developed or a drainage area.
  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:** Vacation area is adjacent to a road, provides no access as a standalone piece.
  5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;  
**Staff comments:** Easily divisible along projected lines
  6. Other public access, other than general road use, exist or are feasible for the right-of-way;  
**Staff comments:** No other uses are visible to the public other than right-of-way.
  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:** appears utility requirements are met, any comments will be addressed and accommodated when made.
  8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.  
**Staff comments:**

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 heard the vacation at their regular meeting of September 20, 2023 and unanimously approved amended Resolution 2023-49 Declaring the Right-of-way of Char Circle as Dedicated on Park View Subdivision (Plat No KN 79-156) and City Park Subdivision No 2 (Plat No KN 2007-146) and Portion of S Spruce Street as Dedicated on Park View Subdivision (Plat No KN 79-156) are No Longer Needed for Public Purpose and Consenting to Vacation of the Rights-of-Way.

If approved, City Park Subdivision 2023 Replat will finalize the proposed right of way vacations. The Plat Committee will review the subdivision when submitted for review.

**KPB department / agency review:**

Addressing	<p>Reviewer: Leavitt, Rhealyn</p> <p>Affected Addresses: 320 S SPRUCE ST, 330 S SPRUCE ST,</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names: S SPRUCE ST, CHAR CIR</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: CITY OF KENAI WILL ADVISE ON AFFECTED ADDRESSES</p>
Code Compliance	<p>Reviewer: Ogren, Eric</p> <p>Comments: No comments</p>
Planner	<p>Reviewer: Raidmae, Ryan</p> <p>There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat. Review Not Required</p>
Assessing	<p>Reviewer: Windsor, Heather</p> <p>Comments: No comment</p>
Advisory Planning Commission	

**Utility provider review:**

HEA	
ENSTAR	No comments or recommendations
ACS	
GCI	
SEWARD ELECTRIC	



CHUGACH ELECTRIC	
TELALASKA	

### **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 (consented to on September 20, 2023).
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.*

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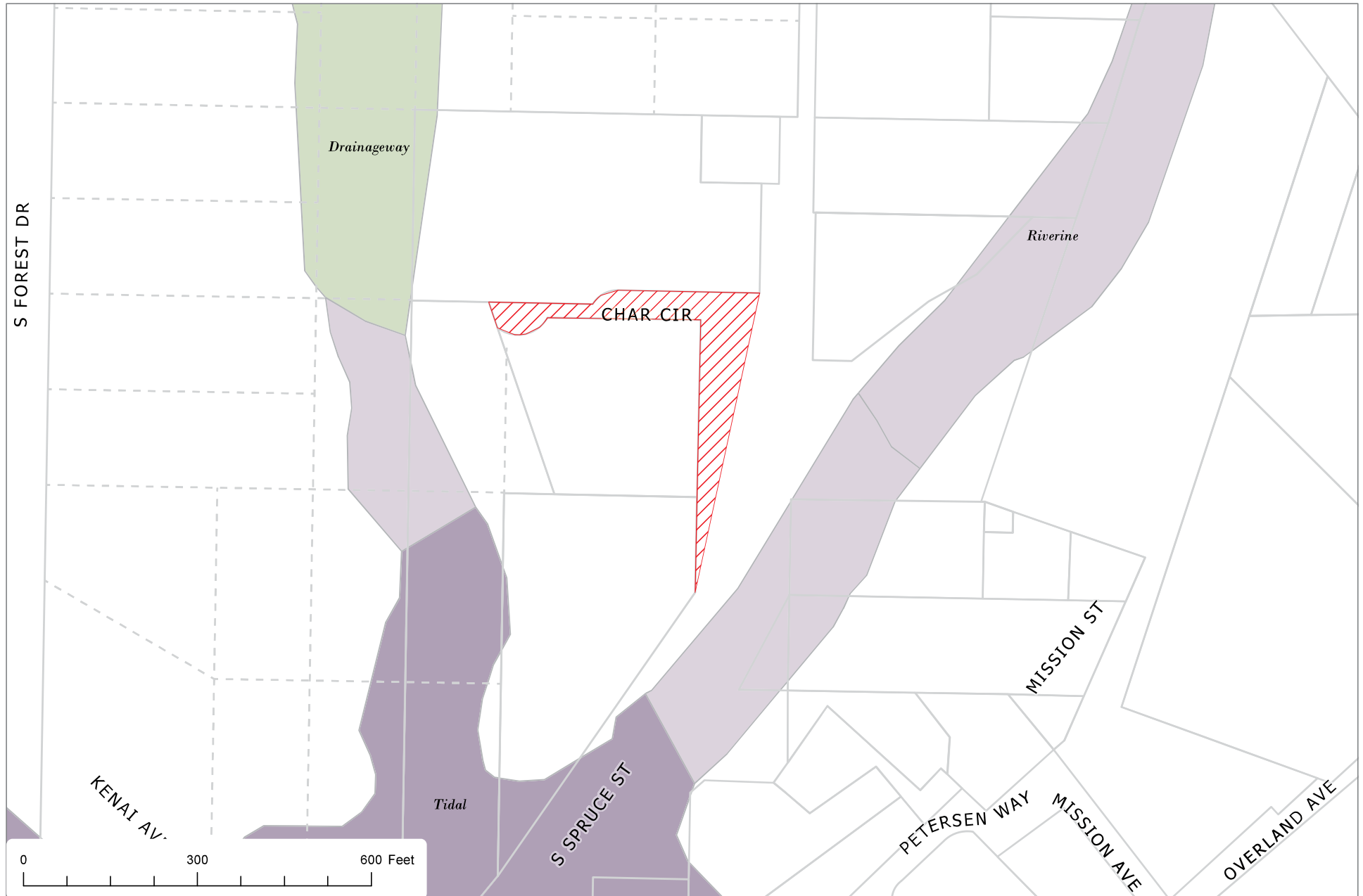
**END OF STAFF REPORT**





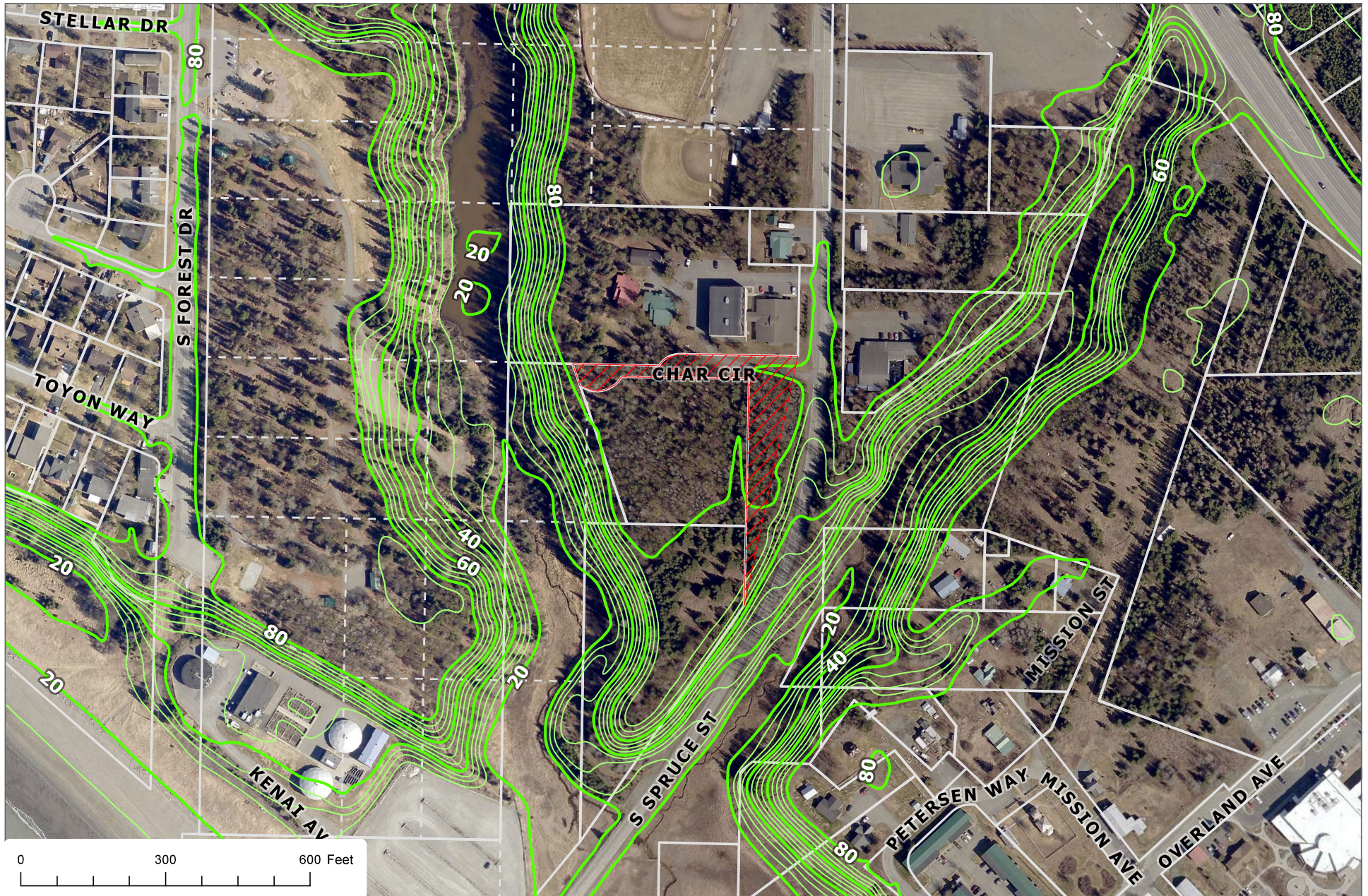
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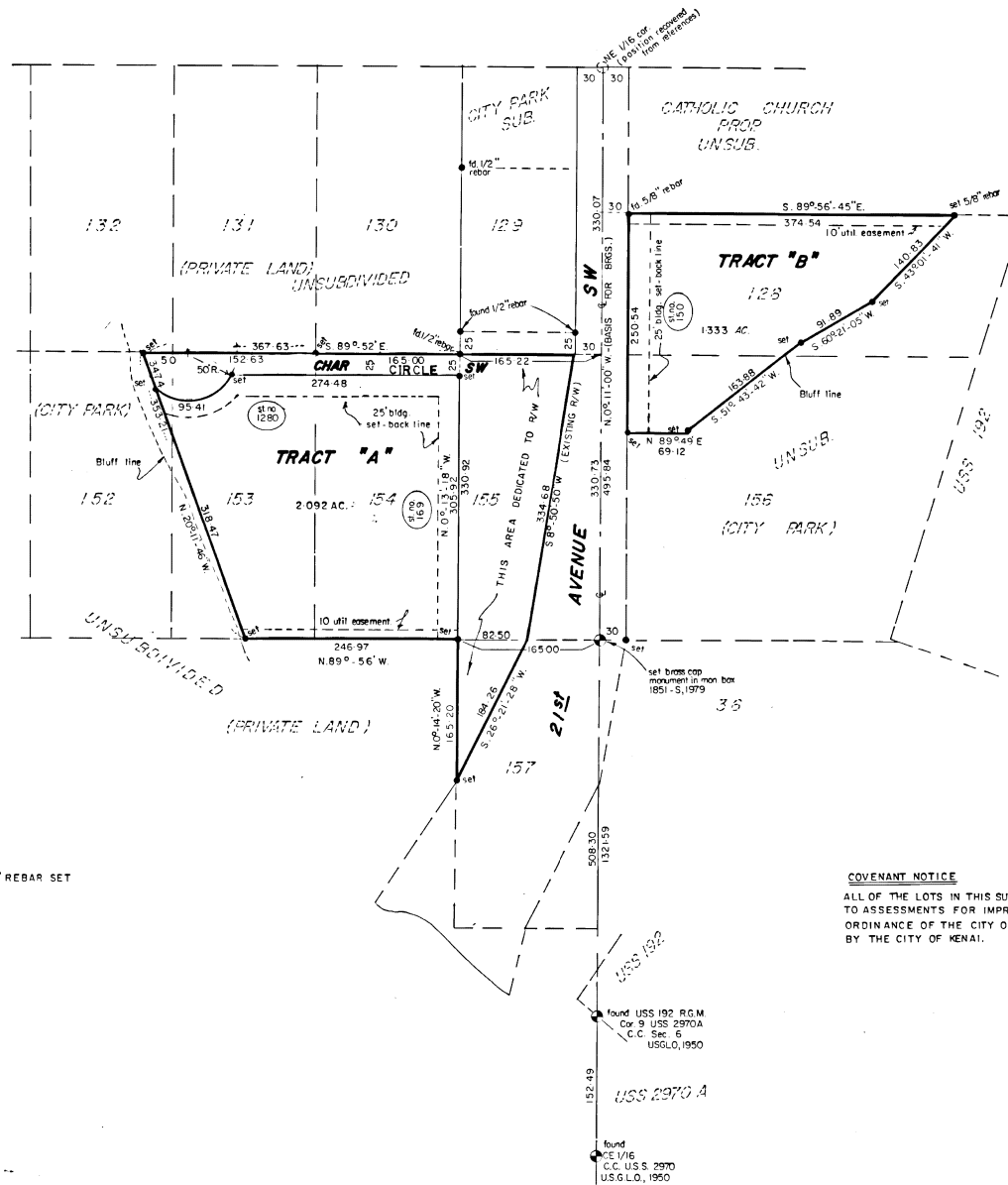
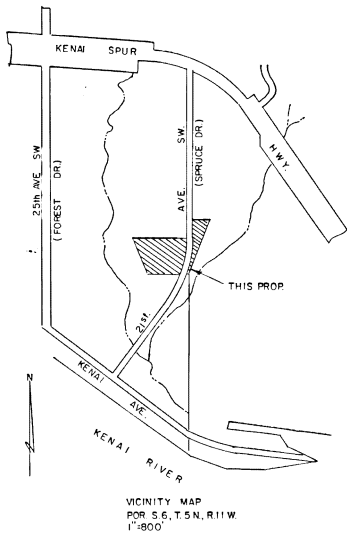
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# PARK VIEW SUBDIVISION

LOCATED WITHIN B.L.M. LOTS 128, &  
152-157, (ALL WITHIN THE NE 1/4)  
SEC. 6, T.5 N., R.11 W., S.M., CITY OF KENAI, AK.

4652 AC. TOTAL AREA



## CERTIFICATE OF OWNERSHIP & DEDICATION

I HEREBY CERTIFY THAT THE CITY OF KENAI IS THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON, AND THAT THIS SUBDIVISION IS MADE WITH THE CONSENT OF THE CITY. I FURTHER CERTIFY THAT THE CITY OF KENAI DOES HEREBY DEDICATE TO PUBLIC USE, AND THE USE OF PUBLIC UTILITIES, THE STREETS, AND EASEMENTS, AS SHOWN.

*Anna Brown*  
CITY MANAGER

SWORN AND SUBSCRIBED TO BEFORE ME, A NOTARY PUBLIC, THIS 30th DAY OF September, 1979.

*Janice R. Taylor*  
NOTARY PUBLIC  
MY COMMISSION EXPIRES 2/20/83

## PLAT APPROVAL

THIS PLAT, HAVING BEEN APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AS RECORDED IN THE OFFICIAL MINUTES OF THE MEETING OF June 18, 1979, IS HEREBY ACKNOWLEDGED AND ACCEPTED AS THE OFFICIAL PLAT, SUBJECT TO ANY AND ALL CONDITIONS AND REQUIREMENTS OF ORDINANCES AND LAW APPLICABLE THERETO.

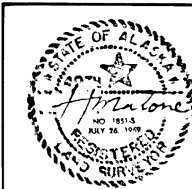
KENAI PENINSULA BOROUGH  
BY *Philip Waring*

NOTE: ALL WASTEWATER DISPOSAL SYSTEMS SHALL COMPLY WITH EXISTING LAW AT TIME OF CONSTRUCTION.

## COVENANT NOTICE

ALL OF THE LOTS IN THIS SUBDIVISION SHALL BE SUBJECT TO ASSESSMENTS FOR IMPROVEMENTS REQUIRED BY ORDINANCE OF THE CITY OF KENAI, WHEN INSTALLED BY THE CITY OF KENAI.

79-156  
RECORDED - FILED 303  
Kenai REG. DIST.  
DATE 9-21 1979  
TIME 3:56 P.M.  
WITNESSED BY KPB



DATE: 5-21-79

## PARK VIEW SUBDIVISION

CITY OF KENAI,  
BOX 580,  
KENAI, ALASKA 99611  
MALONE SURVEYING  
BOX 566  
KENAI, ALASKA 99611  
#79-27 FB32 DRN: PJM CKD: HM



**VOTE:**

YEA: Gabriel, Winger, Sounart, Knackstedt, Baisden, Askin

NAY: None

ABSENT: Douthit

\*\*Student Representative Tanner: YEA

**MOTION APPROVED**, without objection.

**F. MINUTES**

1. \*Regular Meeting of September 6, 2023. (City Clerk)

**G. UNFINISHED BUSINESS**

1. **Resolution No. 2023-49** - Declaring the Rights-of-Way of Char Circle as Dedicated on Park View Subdivision (Plat No. KN 79-156) and City Park Subdivision No. 2 (Plat No. KN 2007-149) and a Portion of S. Spruce Street as Dedication on Park View Subdivision (Plat No. KN 79-156) are No Longer Needed for a Public Purpose and Consenting to Vacation of the Rights-of-Way. (Administration) *[At the 08/02/23 meeting, this item was postponed to 09/06/23; at the 09/06/23 meeting, this item was postponed to 09/20/23.]*

*[Clerk's Note: The motion to adopt Resolution 2023-49 was on the floor from the August 2, 2023 Regular City Council Meeting.]*

Mayor Gabriel opened the floor for public comment.

Ryan Tunseth, Board member of the Boys & Girls Club of the Kenai Peninsula addressed the Council stating that the Boys & Girls Club and the Evenson's were in agreement regarding the vacation of rights-of-ways.

There being no one else wishing to be heard, the public comment period was closed.

It was reported that the City met with the Boys & Girls Club and the Evenson's and worked out an agreement; the easement as proposed would provide sufficient access and space for installation of utilities.

**MOTION:**

Vice Mayor Baisden **MOVED** to amend Resolution 2023-49 as follows:

Amend the third Whereas clause to read, "the total area of the right-of-way vacation is approximately [0.719] 0.96-acre as shown in Exhibit A; and,"

Insert a new fourth Whereas clause to read, "on August 2, 2023, City Council postponed Resolution No. 2023-49 to September 6, 2023 at the request of an affected property to address concerns on access with the Boys & Girls Club of the Kenai Peninsula; and,"

Insert a new fifth Whereas clause to read, "on September 6, 2023, a postponement was granted by Council to bring the matter back to Planning and Zoning Commission at their September 13, 2023 meeting for their recommendation on the revision to the ROW vacations; and,"

Insert a new sixth Whereas clause to read, "on September 13, 2023, the Planning and Zoning Commission passed Resolution PZ2023-17 recommending that Kenai Peninsula Borough Planning Commission approve the preliminary plat for City Park 2023 Replat with vacations of Char Circle and a portion of S. Spruce Street; and,"

Council Member Askin **SECONDED** the motion.

**UNANIMOUS CONSENT** was requested on the motion to amend.

**VOTE:** Motion to amend **APPROVED**; without objection.

**UNANIMOUS CONSENT** was requested on the main motion as amended.

**VOTE:** Main motion as amended **APPROVED**; without objection.

#### **H. NEW BUSINESS**

1. **\*Action/Approval** - Bills to be Ratified. (Administration)

Approved by the consent agenda.

2. **\*Action/Approval** - Purchase Orders and Purchase Order Amendments Requiring Council Approval in Accordance with KMC 7.15.020. (Administration)

Approved by the consent agenda.

3. **\*Action/Approval** - Confirming the Appointment of the October 3, 2023 Election Precinct Boards for the October 3, 2023 Regular City Election. (City Clerk)

Approved by the consent agenda.

4. **\*Action/Approval** - Confirming the Appointment of Xinlan Tanner as Student Representative to City Council. (Mayor)

Approved by the consent agenda.

5. **\*Ordinance No. 3371-2023** - Accepting and Appropriating Funds from the Institute of Museum and Library Services, Passed through the State of Alaska, Department of Education and Early Development, Division of Library, Archives & Museums, for Library Employee Training. (Administration)

Introduced by the consent agenda and Public Hearing set for October 4, 2023.

6. **\*Ordinance No. 3372-2023** - Accepting and Appropriating a Grant from the State of Alaska for the Purchase of Library Materials. (Administration)

Introduced by the consent agenda and Public Hearing set for October 4, 2023.

7. **Ordinance No. 3373-2023** - Amending Kenai Municipal Code 14.20.330 - Standard for Commercial Marijuana Establishments to Prohibit Licensed Retail Marijuana Establishments from Serving Customers through a Walk-Up or Drive-Through Window. (Baisden, Winger, Douthit)

#### **MOTION:**

Vice Mayor Baisden **MOVED** to introduce Ordinance No. 3373-2023, refer the ordinance as a New Business Item to the Planning and Zoning Commission's September 27, 2023 meeting, for the commission's recommendation on any specific zoning related considerations in regards to this ordinance and to schedule the City Council public hearing on the ordinance for October 4, 2023. Council Member Knackstedt **SECONDED** the motion.

**UNANIMOUS CONSENT** was requested.

**VOTE:** Motion **APPROVED**, without objection.

#### **I. COMMISSION / COMMITTEE REPORTS**

1. Council on Aging

Council Member Sounart reported on the September 14, 2023 meeting, next meeting October 12, 2023.

2. Airport Commission

Council Member Askin reported on the September 14, 2023 meeting, next meeting October 12, 2023.





Sponsored by: Administration

**CITY OF KENAI  
RESOLUTION NO. 2023-49**

A RESOLUTION DECLARING THE RIGHTS-OF-WAY OF CHAR CIRCLE AS DEDICATED ON PARK VIEW SUBDIVISION (PLAT NO. KN 79-156) AND CITY PARK SUBDIVISION NO. 2 (PLAT NO. KN 2007-149) AND A PORTION OF S. SPRUCE STREET AS DEDICATION ON PARK VIEW SUBDIVISION (PLAT NO. KN 79-156) ARE NO LONGER NEEDED FOR A PUBLIC PURPOSE AND CONSENTING TO VACATION OF THE RIGHTS-OF-WAY.

WHEREAS, the City received a preliminary plat from McLane Consulting, Inc., on behalf of the Boys & Girls Club of the Kenai Peninsula for a parcel merger with right-of-way vacations of Char Circle and a portion of S. Spruce Street; and,

WHEREAS, on July 26, 2023, the Planning and Zoning Commission passed Resolution PZ2023-13 recommending that Kenai Peninsula Borough Planning Commission approve the preliminary plat for City Park 2023 Replat with vacation of Char Circle and exclude the portion of S. Spruce Street; and,

WHEREAS, the total area of the right-of-way vacations is approximately 0.96-acre as shown in Exhibit A; and,

WHEREAS, on August 2, 2023, City Council postponed Resolution No. 2023-49 to September 6, 2023 at the request of an affected property to address concerns on access with the Boys & Girls Club of the Kenai Peninsula; and,

WHEREAS, on September 6, 2023, a postponement was granted by Council to bring the matter back to Planning and Zoning Commission at their September 13, 2023 meeting for their recommendation on the revision to the ROW vacations; and,

WHEREAS, on September 13, 2023, the Planning and Zoning Commission passed Resolution PZ2023-17 recommending that Kenai Peninsula Borough Planning Commission approve the preliminary plat for City Park 2023 Replat with vacations of Char Circle and a portion of S. Spruce Street; and,

WHEREAS, Kenai Municipal Code Section 22.05.110, *Determination as to need for public purpose*, states City Council will determine whether rights-of-way is needed for a public purpose by resolution; and,

WHEREAS, the Boys & Girls Club of the Kenai Peninsula has stated the request for the right-of-way vacations is to enable them to maximize development as presented in Ordinance 3287-2022 for facilities for youth sports, recreation, education, after school care and other youth activities; and,

WHEREAS, the right-of-way vacations of Char Circle and a portion of S. Spruce Street will not negatively affect public access; and,

WHEREAS, it is determined that Char Circle and a portion of S. Spruce Street as identified in Exhibit A are no longer needed for a public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

**Section 1.** That Char Circle as dedicated on Park View Subdivision (Plat No. KN 79-156) and City Park Subdivision No. 2 (Plat No. KN 2007-149) and a portion of S. Spruce Street as dedication on Park

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New Text Underlined; [DELETED TEXT BRACKETED]

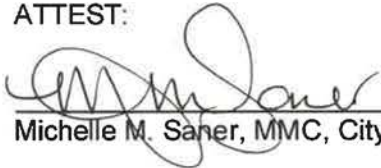
View Subdivision (Plat No. KN 79-156) are no longer needed for a public purpose and consenting to vacation of the rights-of-way as identified in Exhibit A.

**Section 2.** That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2023.

  
\_\_\_\_\_  
Brian Gabriel Sr., Mayor

ATTEST:

  
\_\_\_\_\_  
Michelle M. Sauer, MMC, City Clerk