

## AGENDA ITEM F. PUBLIC HEARINGS

1. Vacate the two 33-foot portions (approximately 215 feet) of the Section Line Easements between Cohoe Lake Drive and Lower Cohoe Lake that intersect Lots 2, 3, and 4, Block 2 of Cohoe Lakes Subdivision (Plat KN-1430). All portions of the requested vacation are located within Sections 22 & 27, Township 3 North, Range 12 West, Seward Meridian, Alaska and within the Kenai Peninsula Borough; KPB File 2016-005.

Staff Report given by Max Best

PC Meeting: 1/25/16

Purpose as stated in petition: The Section Line Easement (SLE) has not been improved and is not currently being used by the public as a form of access. Because the easement traverses over Lots 2, 3, and 4 (all private), it is impractical for public use, as well as detrimental to the property value. All lots within the Subdivision front on Cohoe Lake Drive, which is a dedicated ROW that has an improved roadway. All local traffic uses Cohoe Lake Drive to access the Subdivision, Lower Cohoe Lake, and Upper Cohoe Lake. There is a 50-foot ROW dedicated to Lower Cohoe Lake (350 feet away), which provides a more direct access than the SLE. Previous landowners who were unaware of the SLE constructed residential improvements within the SLE. The vacation of the SLE will allow for a better use of these small parcels (especially Lot 3, much of which is unusable because it passes through the middle of the property and affects such a large portion of it).

Petitioners: Lawrence E. Davis of Anchorage, AK; Laurel C. Lindquist of Eagle River, AK; and Dale L. Bagley of Soldotna, AK.

Public notice appeared in the January 14 and January 21, 2016 issues of the Peninsula Clarion.

Notice of the proposed vacation was sent by regular mail to 27 owners within 600 feet. Notification by certified mail is not required for Section Line Easement Vacation petitions.

Notice of the proposed vacation was emailed to 15 agencies and interested parties. The vacation notice was sent by regular mail to two agencies. Notice of the proposed vacation was emailed to 11 KPB Departments. The vacation notice was mailed to the Kasilof Post Office and Kasilof Community Library with a request to post in public places. The notice and maps were posted on the Borough web site and bulletin board.

### Comments Received:

ENSTAR: No comments, recommendations, or objections.

KPB Addressing Officer: No objection to the proposed vacation. Cohoe Lakes Drive should be Cohoe Lake Drive.

KPB River Center: The proposed vacation is not within a mapped flood hazard area, and it is not affected by the Anadromous Stream Habitat Protection District.

Paul & Rae Romanik (adjacent landowners): We are very much in favor of vacating the section line easements on these properties.

State Department of Natural Resources: All comments we have regarding this proposed section line easement vacation will be addressed in the Preliminary and Final Decisions for EV-3-253.

State Division of Parks & Outdoor Recreation: No comments.

State Department of Transportation: No comments.

Staff Discussion: The Section Line Easement Vacation plat is tentatively scheduled for Plat Committee review on February 8, 2016.

Per KPB GIS mapping, Lots 2-4 Block 2 are not affected by low wet areas except adjoining the lake.

Per the Alaska Mental Health Trust Authority website, the public use of Trust land for hunting, fishing and other recreational activities is conditionally allowed. The Trust reserves the right to close Trust land to public use at any time.

### **Surveyor's Findings**

1. Cohoe Lakes Subdivision (completed in 1965) granted a 50 foot right of way (ROW) dedication to Lower Cohoe Lake. The dedication to the lake is located 350 feet from the SLE.
2. The ROW dedication to the lake is perpendicular to the lake and provides a shorter length to access the lake. The ROW is a more direct access to the lake as opposed to the SLE which does not intersect the lake at a perpendicular angle.
3. The ROW dedication to Lower Cohoe Lake meets the DNR's requirement of being "a reasonably comparable, established alternate right-of-way that is sufficient to satisfy all present and reasonable foreseeable uses". The dedicated ROW provides "equal or better" access that is protected for public use and is adequately wide for the purpose it is to be used for.
4. The SLE has not been improved and is not being used by the public at this time.
5. There is public access to the west side of Lower Cohoe Lake along the SLE located on the north boundary of Section 27.
6. There is public access to northwestern side of Lower Cohoe Lake across the 83 acre parcel that is owned by Alaska Mental Health Trust. This 83 acre parcel has approximately 4,200 feet of lake frontage.
7. There is public access to southeastern side of Lower Cohoe Lake across the 37 acre parcel that is owned by Alaska Mental Health Trust. This 37 acre parcel has approximately 642 feet of lake frontage.
8. There is public access to the south side of Lower Cohoe Lake across the 221 acre parcel that is owned by the State of Alaska DNR. This 221 acre parcel has 3,482 feet of Lake Frontage. More than half of the lake frontage on Lower Cohoe Lake has public access at this time.

### **Platting Staff Findings**

9. A Section Line Easement Vacation Plat was submitted to the State Department of Natural Resources in December 2015 (EV-3-253). A preliminary decision from DNR was not available when the staff report was prepared.
10. KN 1430 (Cohoe Lakes Subdivision) was approved by the KPB Assembly on December 7, 1965.
11. KN 1430 was recorded on January 10, 1966, which was prior to enactment of the subdivision ordinance.
12. KN 1430 did not depict the 66-foot section line easements.
13. KN 1430 dedicated two 50-foot rights-of-way approximately 350 feet northwest and northeast of the proposed vacation.
14. An as-built survey showing the improvements on Lot 3 Block 2 has been provided.
15. KPB GIS 4-foot contours show terrain within Lots 2-4 Block 2 is basically flat.
16. Lot 2 contains 13,939 square feet; Lot 3 contains 20,908 square feet, and Lot 4 contains 23,958 square feet.
17. No minimum lot size was in effect when KN 1430 was recorded.
18. The 66-foot section line easements provide access to public water (Lower Cohoe Lake).
19. The Alaska Mental Health Trust Authority can close Trust property to public use at any time.

**STAFF RECOMMENDATION:** Based on Findings 1-3, 5, 10-13, 16, and 17, staff recommends granting a four-year approval of the proposed vacation per KPB 20.25.110, subject to:

1. Compliance with Plat Committee conditions and approvals of the Section Line Easement Vacation Plat.
2. Compliance with any State requirements for the section line easement vacation.

**If the vacation is approved, the Assembly has thirty days in which they may veto Planning Commission approval of the vacation.**

**KPB 20.70.120 - Action after denial of vacation petition.**

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.
- B. Upon denial by the planning commission, 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.

#### END OF STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. Scott Huff, Integrity Surveys

Mr. Huff stated that he and his clients found out when an as built was completed on this property that there was a section line easement going through the property and through the cabin and garage. This is the reason they are trying to eliminate the entire section line easement from Lots 2, 3 and 4.

Mr. Huff asked the Commission to pass on a recommendation to the State. The State requires that if a section line easement is vacated then equal or better access needs to be provided in lieu of the vacation. They hoped the State would agree that the public access already dedicated on the parent plat was equal or better access. He expressed concern that the State would ask for a public access easement across Lot 3 to get from Cohoe Lake Dr to the lake but there was not a real need for that. It would be appreciated if the Commission could pass on a recommendation to the State that additional public access was not needed. Mr. Huff stated that more than half of Cohoe Lake was open to public access with property owned by DNR, Mental Health Trust and UAA. It might be a little excessive for the State to require another small 15 foot public access easement on his client's property. He would appreciate the Commission passing this onto the State and was available to answer questions.

Chairman Martin asked if there were questions for Mr. Huff. Hearing none the public hearing continued.

Seeing and hearing no one wishing to speak Chairman Martin closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Whitney moved, seconded by Commissioner Ecklund to approve the vacation as outlined in staff's recommendations and findings.

#### *Findings*

1. Cohoe Lakes Subdivision (completed in 1965) granted a 50 foot right of way (ROW) dedication to Lower Cohoe Lake. The dedication to the lake is located 350 feet from the SLE.
2. The ROW dedication to the lake is perpendicular to the lake and provides a shorter length to access the lake. The ROW is a more direct access to the lake as opposed to the SLE which does not intersect the lake at a perpendicular angle.
3. The ROW dedication to Lower Cohoe Lake meets the DNR's requirement of being "a reasonably comparable, established alternate right-of-way that is sufficient to satisfy all present and reasonable foreseeable uses". The dedicated ROW provides "equal or better" access that is protected for public use and is adequately wide for the purpose it is to be used for.
5. There is public access to the west side of Lower Cohoe Lake along the SLE located on the north boundary of Section 27.
10. KN 1430 (Cohoe Lakes Subdivision) was approved by the KPB Assembly on December 7, 1965.
11. KN 1430 was recorded on January 10, 1966, which was prior to enactment of the subdivision ordinance.
12. KN 1430 did not depict the 66-foot section line easements.
13. KN 1430 dedicated two 50-foot rights-of-way approximately 350 feet northwest and northeast of the proposed vacation.

16. Lot 2 contains 13,939 square feet; Lot 3 contains 20,908 square feet, and Lot 4 contains 23,958 square feet.
17. No minimum lot size was in effect when KN 1430 was recorded.

**AMENDMENT MOTION:** Commissioner Carluccio moved, seconded by Commissioner Ecklund to amend the motion to include the surveyor's findings.

*Surveyor's Findings*

4. The SLE has not been improved and is not being used by the public at this time.
6. There is public access to northwestern side of Lower Coho Lake across the 83 acre parcel that is owned by Alaska Mental Health Trust. This 83 acre parcel has approximately 4,200 feet of lake frontage.
7. There is public access to southeastern side of Lower Coho Lake across the 37 acre parcel that is owned by Alaska Mental Health Trust. This 37 acre parcel has approximately 642 feet of lake frontage.
8. There is public access to the south side of Lower Coho Lake across the 221 acre parcel that is owned by the State of Alaska DNR. This 221 acre parcel has 3,482 feet of Lake Frontage. More than half of the lake frontage on Lower Coho Lake has public access at this time.

Commissioner Foster asked if the surveyor's request was clear in requesting the Planning Commission's support. Ms. Hartley believed that the surveyor requested that the Planning Commission support his request for not providing additional public access.

Commissioner Ruffner asked if the Planning Commission's support for granting the vacation was forwarded onto the State. Mr. Best replied yes. Commissioner Ruffner asked if the State would see the findings of support for granting the section line easement vacation. Mr. Best replied yes, they will see the full report.

Chairman Martin stated that the State will see the minutes and the motion to concur with the surveyor.

**AMENDMENT MOTION:** The amendment motion passed by unanimous consent.

CARLUCCIO YES	COLLINS ABSENT	ECKLUND YES	ERNST YES	FOSTER YES	GLENDENING YES	HOLSTEN ABSENT
ISHAM YES	LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	11 YES 2 ABSENT

Commissioner Ruffner stated that he supported the motion. It seems pretty clear to him that there is another public access that doesn't interfere with private parcels. This one is a short distance that cuts through three different private parcels. He felt there was a clear alternative access that was equal or better.

**MAIN MOTION VOTE:** The motion passed by unanimous consent.

CARLUCCIO YES	COLLINS ABSENT	ECKLUND YES	ERNST YES	FOSTER YES	GLENDENING YES	HOLSTEN ABSENT
ISHAM YES	LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES	11 YES 2 ABSENT

**AGENDA ITEM F. PUBLIC HEARINGS**

2. Vacate the 30-foot wide (approximately 560 feet) right-of-way and easement along the south lot line of that property shown as Homer Electric Association on Plat HM 54-2021; replatted as Lot E Heath Street Replat, HM 90-58, as recorded in Book 165 Page 294 of the Homer Recording District. All portions of the requested vacation are located within the W½ of the NE¼ of Section 20, Township 06 South, Range 13 West, Seward Meridian, in the City of Homer, Alaska and within the Kenai Peninsula Borough; KPB File 2016-003.

Staff Report given by Max Best

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**END OF STAFF REPORT**