



# **KENAI PENINSULA BOROUGH**

## **PLANNING DEPARTMENT**

144 North Binkley Street • Soldotna, Alaska 99669-7520

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**MIKE NAVARRE**  
**BOROUGH MAYOR**

August 24, 2016

## **KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF DECISION**

### **MEETING OF AUGUST 22, 2016**

**RE:** Vacate the south 752 feet (approximately) of the 60-foot wide Fish Street right-of-way and the west 190 feet of the 60-foot wide Brush Way right-of-way as dedicated on Nikishka Subdivision No. 2, Plat KN-1400. The rights-of-way being vacated are partially constructed and located within the SW¼ NE¼ of Section 1, Township 7 North, Range 12 West, Seward Meridian, Alaska and within the Kenai Peninsula Borough; KPB File 2016-084.

During their regularly scheduled meeting of August 22, 2016, the Kenai Peninsula Borough Planning Commission granted approval of the proposed vacation based on the following findings of fact and conditions.

#### *Findings*

3. The vacation petition proposes to vacate and re-align Fish Street and vacate that portion of Brush Way outside the new alignment for Fish Street.
4. Homer Electric Association submitted a statement of reviewed/no comments.
5. Sufficient rights-of-way exist to serve the surrounding properties.
6. No surrounding properties will be denied access.
7. The amount of right-of-way proposed for vacation is approximately the same as the amount of alternative right-of-way proposed for the new re-alignment of Fish Street.
8. Per KPB GIS mapping, the property is not affected by low wet areas.
9. Per KPB GIS 4-foot contours, terrain within subject lots is basically flat.

#### *Conditions*

1. Grant the utility easements requested by the utility providers per KPB 20.30.060 and KPB 20.60.150.
2. Adjust the 20-foot building setback for the new alignment of Fish Street such that no encroachments will be created.
3. Submittal of a final plat within a timeframe that will ensure recordation of the plat within one year of vacation consent.

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly. The proposed vacation will be forwarded to the Borough Assembly. The Assembly shall have 30 calendar days from the date of approval (January 25, 2016) in which to veto the Planning Commission decision. If the Planning Director receives no veto within the specified period, the Assembly shall be considered to have given consent to the vacation.

Please contact the Borough Clerk's office (907-714-2160 or 1-800-478-4441 toll-free within the borough) for additional information.

This notice and unapproved minutes of the subject portion of the meeting were sent August 24, 2016 to:

Segesser Surveys  
30485 Rosland St.  
Soldotna, AK 99669

Alaska Omega Nutrition  
524 Second Ave #500  
Seattle, WA 98104-2323

Alvin & Wilma Hampson  
PO Box 8465  
Nikiski, AK 99635

## AGENDA ITEM F. PUBLIC HEARINGS

1. Vacate the south 752 feet (approximately) of the 60-foot wide Fish Street right-of-way and the west 190 feet of the 60-foot wide Brush Way right-of-way as dedicated on Nikishka Subdivision No. 2, Plat KN-1400. The rights-of-way being vacated are partially constructed and located within the SW¼ NE¼ of Section 1, Township 7 North, Range 12 West, Seward Meridian, Alaska and within the Kenai Peninsula Borough; KPB File 2016-084.

**NOTE:** Fish Street is to be re-aligned to be coincident with the east boundary of the Nikishka Subdivision No. 2.

### STAFF REPORT

PC Meeting: 8/22/16

Purpose as stated in petition: The existing Fish Street has two buildings in the right of way. The replat will move Fish Street around these buildings.

Petitioners: Alaska Omega Nutrition, Inc., of Seattle, Washington and Alvin and Wilma Hampson of Nikiski, Alaska.

Notification: Public notice appeared in the August 11 issue of the Peninsula Clarion as a separate ad and on August 18 as part of the Planning Commission's tentative agenda.

Nine certified mailings were sent to owners of property within 300 feet of the parcels. Eight receipts have been returned.

Ten notices of public hearing were sent by regular mail to owners within 600 feet.

Sixteen regular mailings were emailed to agencies and interested parties. Eleven notices were emailed to KPB Departments. Notices were mailed to the Nikiski Post Office and Nikiski Community Library to be posted in public locations. The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

### Comments Received:

ENSTAR: There is an existing easement within the west half of the existing Fish Street right-of-way. As this right-of-way will be vacated, ENSTAR requests a 15-foot natural gas easement centered on the line within proposed Lot 2A Block 1.

Homer Electric Association: Reviewed/no comments.

KPB Addressing Officer: No objection to the vacation of Brush Way. No objection to the realignment of Fish Street. Some addresses will be affected by the proposed vacation and replat of the property.

River Center: The proposed vacation is not within a mapped floodplain or floodway, and it is not affected by the Anadromous Stream Habitat Protection District.

State Department of Transportation: The project (constructed) centerline is 75 feet from the edge of the property. Showing it as 100 feet could be confusing if someone thought that was the half width and that the total ROW was 200 feet when in fact it is only 150 feet. [Staff Comment: The Plat Committee will address the highway width for the associated subdivision plat.]

Staff Discussion: The preliminary plat has been submitted but not yet scheduled for Plat Committee review.

The surveyor provided a detailed as-built survey of the encroachments in the rights-of-way per KPB 20.70.050. No utility easements were included in the vacation petition. If the vacation petition is approved as submitted, it will not resolve encroachments into the 10-foot utility easement within Lots 2-8 Block 1.

Utility reviews from all the affected utility providers were not available when the staff report was prepared.

The parent plat (KN 1400) was recorded on February 3, 1965, which was prior to enactment of the subdivision ordinance. If a standard 20-foot building setback is created for the new alignment of Fish Street, an encroachment will be created with the existing building in the northern most portion of Lot 2A Block 1.

**Findings:**

1. Per the submittal, the rights-of-way proposed for vacation are partially constructed.
2. Per ENSTAR's review, there is an existing gas main within the west half of the existing Fish Street right-of-way.
3. The vacation petition proposes to vacate and re-align Fish Street and vacate that portion of Brush Way outside the new alignment for Fish Street.
4. Homer Electric Association submitted a statement of reviewed/no comments.
5. Sufficient rights-of-way exist to serve the surrounding properties.
6. No surrounding properties will be denied access.
7. The amount of right-of-way proposed for vacation is approximately the same as the amount of alternative right-of-way proposed for the new re-alignment of Fish Street.
8. Per KPB GIS mapping, the property is not affected by low wet areas.
9. Per KPB GIS 4-foot contours, terrain within subject lots is basically flat.

**STAFF RECOMMENDATION:** Based on Findings 3-9, staff recommends approval of the vacations as petitioned, subject to:

1. Grant the utility easements requested by the utility providers per KPB 20.30.060 and KPB 20.60.150.
2. Adjust the 20-foot building setback for the new alignment of Fish Street such that no encroachments will be created.
3. Submittal of a final plat within a timeframe that will ensure recordation of the plat within one year of vacation consent.

**KPB 20.70.110:**

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly. The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

**KPB 20.70.120:**

- 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.

**KPB 20.70.130:**

**THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.**

END OF STAFF REPORT