

02019-29

Introduced by: Mayor  
Date: 10/08/19  
Hearing: 11/05/19  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 2019-29**

**AN ORDINANCE ESTABLISHING THE APPEAL PROCEDURE BEFORE THE  
BOROUGH ASSEMBLY FOR THE APPEAL FILED BY ECHO TRADING  
COMPANY, LLC OF A PLANNING COMMISSION DECISION**

**WHEREAS,** Echo Trading Company, LLC has filed an appeal of a planning commission decision vacating a ~~utility~~ (drainage) easement; and

**WHEREAS,** ~~after the appeal was filed it was determined that borough code does not contain a specific procedure for appeals of a utility easement vacation decision;~~ and

**WHEREAS,** in order to timely resolve the present appeal, it is necessary that the borough set a one-time procedure for this appeal; and

**WHEREAS,** KPB 21.20.230(B) states that the assembly shall consider vacation petitions approved by the planning commission in accordance with the procedures in KPB Chapter 20.70; and

**WHEREAS,** KPB Chapter 20.70 does not include procedures for the assembly to consider vacation petitions of ~~utility~~ easements approved by the planning commission pursuant to ~~KPB 20.70.080~~; and

**WHEREAS,** this ordinance will establish that for the appeal filed by Echo Trading Company, LLC the full assembly will sit as the hearing officer for the appeal, with the assembly president serving as presiding officer, and the appeal will follow the ~~same~~ procedures as set forth in ~~KPB Chapter 21.20~~; *this ordinance.*

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI  
PENINSULA BOROUGH:**

**SECTION 1.** This is an uncodified ordinance.

**SECTION 2.** For purposes of complying with KPB 21.20.230(B) to address the appeal filed by Echo Trading Company, LLC, regarding the planning commission's vacation approval decision in KPB File NO. 2019-048V, the assembly will sit as the hearing officer and follow the appeal procedures set forth in KPB 21.20.210 through KPB 21.20.360, *except as follows.*

*[proposal to be submitted later]*

**SECTION 3.** The assembly president will act as the presiding officer.

**SECTION 4.** For purposes of this appeal, the current landowner of the parcel encumbered by the easement and the appellant, Echo Trading Company, LLC, will both be considered a “party of record.”

**SECTION 5.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \*  
DAY OF \*, 2019.**

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Wayne H. Ogle, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

indicating that construction which meets the design requirements set forth in KPB Chapter 20.30 is practical and economical. In this title, legal access exists where an unrestricted, public right-of-way connects the subdivision to the state highway system, the state marine highway system or a regularly served public airport, and one of the following is met:

1. Ingress and egress will be provided over section line easements located within a surveyed section;
2. The applicant provides copies of borough-accepted recorded conveyances creating the public easement or right-of-way where the access is located;
3. That access is a State of Alaska maintained road or municipal maintained road;
4. The applicant provides documentation satisfactory to the borough demonstrating that public legal access is guaranteed through judicial decree; or
5. The right-of-way is an easement or fee interest at least 60 feet in width dedicated or irrevocably conveyed to the public and acceptable to the planning commission.

B. The following situations may qualify for a waiver of the legal access requirement:

1. Upon finding that no practical means of providing road access to a proposed subdivision exists and upon presentation of credible and convincing evidence by the applicant that permanent public access by air, water, or railroad is both practical and feasible, the planning commission may waive the legal access requirements of KPB 20.30.050(A). If access other than by road is approved, the mode of access shall be noted on the plat.
2. Where only a 30-foot dedication exists over all or a portion of the legal access to a subdivision, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the other 30 feet will be dedicated in the future.
3. Where a road is in use for physical access but there is no right-of-way document for all or part of the access road, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the right-of-way will be dedicated in the future.

(Ord. No. 2014-02, § 1, 2-11-14)

#### **20.30.060. Easements—Requirements.**

A. The planning commission may require easements it determines necessary for the benefit of the public. Such easements include, but are not limited to, lateral support (slope) easements, drainage easements for ditching or protection of a drainage, and utility easements. Required easements do not need to be for road purposes.

B. Upon submittal of a preliminary plat, the planning department shall provide a copy to public utility companies for their comments and recommended design of utility easements. If the property is subject to existing natural gas or petroleum pipeline easements, a copy shall also be furnished to the appropriate company for comment.