


Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Max Best, Planning Director 

DATE: January 28, 2020

RE: Vacate the westerly approximately 791 feet of Bonita Avenue, a 30 foot right-of-way, including the associated 15 foot utility easement, as dedicated on Bremond Farm Estates Norris Addition KN 2005-27. The right-of-way being vacated is unconstructed and located within the NW1/4 SW1/4 of Section 25, Township 5 North, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-132V.

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.

During their regularly scheduled meeting of January 27, 2020, the Kenai Peninsula Borough Planning Commission granted approval of the proposed right-of-way vacation by unanimous consent based on the means of evaluating public necessity established in KPB 20.70. This petition is being sent to you for your consideration and action.

Draft, unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

AGENDA ITEM F. PUBLIC HEARINGS

4. Vacate the westerly approximately 791 feet of Bonita Avenue, a 30 foot right-of-way, including the associated 15 foot utility easement, as dedicated on Bremond Farm Estates Norris Addition KN 2005-27. The right-of-way being vacated is unconstructed and located within the NW1/4 SW1/4 of Section 25, Township 5 North, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-132V.

Staff Report given by Scott Huff

PC Meeting: 1/27/2020

Purpose as stated in petition: Bonita Avenue is being re-routed to create a right-angle intersection with Kalifornsky Beach Road with a continuous route to a right-angle intersection with Poppy Ridge Road as a major collector. This re-route is being dedicated on the Kalifornsky Center Subdivision KPB File No 2019-132 and this plat will finalize the right-of-way vacation.

Petitioners: Douglas A. Norris Sr. and Kenai Peninsula Borough of Soldotna, AK.

Notification: Public notice appeared in the January 16, 2020 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the January 23, 2020 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

2 certified mailings were sent January 9, 2020 to owners of property within 300 feet of the proposed vacation. 2 receipts had been returned when the staff report was prepared.

17 public hearing notices were emailed to agencies and interested parties.

Public hearing notices were made available to 6 KPB staff/Departments via a shared database.

Notices were mailed to the Soldotna Post Office and Soldotna Public Library with a request 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:

ACS: No Objections

ENSTAR: Not available at the time the staff report was prepared.

Homer Electric Association: Not available at the time the staff report was prepared.

KPB Addressing: Existing street names are correct.

KPB Planner:

- There are not any Local Option Zoning District issues with this proposed plat.
- Conditional Land Use Permit CLUP Resolution Number: 2016-11
- CLUP Approval Date: 4/25/2016
- Material Site Comments: The right-of-way vacation, if approved, will not increase the permitted extraction area. If the owner wishes to extract within the vacated right-of-way, an application is needed to modify the Conditional Land Use Permit.

KPB River Center: Not located within a flood hazard area or a Habitat Protection District.

KPB Roads Department: Within KPB jurisdiction, no comments.

Kalifornsky Advisory Planning Commission: Minutes were not available at the time the staff report was prepared.

State Parks: No comments.

Staff Discussion: KPB Land Management is proposing to subdivide approximately 240 acres of Borough owned land north of Bonita Avenue. Part of that proposed subdivision (Kalifornsky Center Subdivision KPB 2019-132) is a proposed realignment of Bonita Avenue. The proposed realignment would create an uncompliant block per KPB 20.30.170 and an uncompliant acute angle intersection per KPB 20.30.150. This vacation would resolve that uncompliant block and acute angle intersection.

If the vacation of right of way is approved, **Staff recommends a revised submittal of Kalifornsky Center Subdivision KPB 2019-132 be submitted that will finalize the proposed right of way vacations and simultaneously dedicate the realigned right of way.** On November 25, 2019, the Plat Committee postponed action on the preliminary plat per the request of KPB Land Management. A revised preliminary plat has not been submitted at this time. Staff notes the subject platting action will require exceptions to KPB 20.30.030 Proposed Street Layout and KPB 20.30.170 Block Length. While resolving the aforementioned uncompliant block and intersection, this vacation will also will bring the block south of Bonita Avenue further out of compliance with KPB 20.30.170 Block Length requirements.

KPB 20.70 – Vacation Requirements.

Platting Staff Findings: *Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:*

20.70.050. Petition—Information required.

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

Petitioner Comments: Bonita Avenue is being re-routed to create a right-angle intersection with Kalifornsky Beach Road with a continuous route to a right-angle intersection with Poppy Ridge Road as a major collector. This re-route is being dedicated on the Kalifornsky Center Subdivision KPB File No 2019-132 and this plat will finalize the right-of-way vacation.

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, 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 in KPB 20.70.110.

Platting Staff Comments: A revised submittal for Kalifornsky Center Subdivision KPB 2019-132 has not been submitted at this time.

Staff recommendation: *Comply with KPB 20.70.130.*

20.70.150. Title to vacated area.

- A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies

within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

Platting Staff Comments: KN 2005-27 dedicated the Bonita Avenue right-of-way proposed to be vacated. Title to the vacated portion of the right-of-way must attach to Tract A-1, KN 2005-27.

Staff recommendation: Comply with KPB 20.70.150.

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: Per the submittal and aerial imagery, the portion of Bonita Avenue proposed to be vacated is unconstructed. Per the submittal, the right-of-way is not used for vehicular access.

The portion of Bonita Avenue proposed to be vacated is a 30' wide half right-of-way. Per Kenai Watershed Forum Wetland mapping, the right-of-way is not affected by low wet areas. Per KPB Four Foot Contours, the right-of-way is relatively flat. The existing right-of-way intersects with a 30' wide portion of Ravenwood Street South.

The submittal proposes to dedicate an alternate right-of-way. The proposed alternate right-of-way is an 80' wide right-of-way. Per Kenai Watershed Forum Wetland mapping, the proposed alternate right-of-way is not affected by low wet areas. Per KPB Four Foot Contours, the proposed alternate right-of-way is relatively flat. The proposed alternate right-of-way curves north from east to west in a curve that meets KPB 20.30.140 curve requirements. The curve results in an alignment approximately 280' north of the current alignment of Bonita Avenue. The submittal proposes to dedicate a 100' wide extension of Ravenwood Street South to intersect with the new alignment of Bonita Avenue.

Staff Finding: The proposed right-of-way dedications will provide equal or superior right-of-way for vehicular access in exchange for the proposed vacation.

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: Per the submittal, no other lawful uses exist within the right-of-way proposed to be vacated. Other uses could exist within the right-of-way. However, as discussed above, the right-of-way is flat, not affected by low wet areas, and suited for general road use. Regardless, as discussed above, the petitioner proposes to dedicate alternate rights-of-way that are relatively flat, not affected by low wet area, and which are wider than the existing right-of-way.

Staff Finding: The proposed right-of-way dedications will provide equal or superior access for other uses.

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public 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 public utility easement be granted in place of the right-of-way.

Platting Staff Comments: The submittal did not specify whether the right-of-way proposed to be vacated is utilized by a public utility.

The right-of-way proposed to be vacated could logically be required by a public utility. The right-of-way could be used to provide an extension of utilities from Poppy Ridge Road in a straight line to the west or to provide an extension of utilities from Kalifornsky Beach Road in a straight line to the east. KPB HEA transmission line information indicates a transmission line currently extends east from Kalifornsky Beach Road aligned with the proposed right-of-way vacation that could be extended further east through the right-of-way in the future.

As discussed above, the petition proposes to dedicate alternate rights-of-way. The petition also proposes to grant 10' wide utility easements adjoining those rights-of-way. While the wider proposed right-of-way width may help to mitigate the curve of the right-of-way, a straight right-of-way is logically preferable for utility use than a curved right-of-way. In addition, the proposed alternate right-of-way is not aligned with existing rights-of-way to the east, nor an existing HEA transmission line to the west.

Staff Finding: *The realignment of Bonita Avenue will provide a utility easement adjoining the right of way dedications. No comments were received by the utility providers that requested an easement to remain.*

Staff recommendation: *If utility easements are requested by a utility provider, work with the utility providers to grant utility easements that meet their specifications.*

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacation, staff comments, and staff findings, staff recommends approval of the vacations as petitioned, subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by utility providers.
4. Grant a 20' utility easement centered on the north boundary of the proposed right-of-way vacation.
5. Submittal of a final plat that simultaneously dedicates the realigned Bonita Avenue right of way within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

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

Mr. Huff noted that in the laydown packet there was a revised drawing of the preliminary plat. The plat depicts the proposed vacation of Bonita Avenue.

Chair Martin asked if anyone from the public wished to comment on this item. Seeing and hearing no one wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Morgan moved, seconded by Commissioner Venuti, to approve the vacation of Bonita Avenue as petitioned based on the means of evaluating public necessity established by KPB 20.70 and subject to staff recommendations and compliance with borough code.

Commissioner Bentz was looking at the plat provided in the laydown and noted that the road was labeled as Traveler Avenue. Mr. Huff said that the petitioners want to rename Bonita Avenue to Traveler Avenue. That will need to be done through a different process.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.