

ITEM 1 - Banta Sub Addition No 1 Lot 14 Block 1 Utility Easement Vacation

KPB File No.	2021-084V
Planning Commission Meeting:	July 12, 2021
Applicant / Owner:	Mark and Micki Salinas of Ninilchik, AK.
Surveyor:	None
General Location:	Barbara Drive, Ninilchik

STAFF REPORT

Specific Request / Purpose as stated in the petition: Vacate the 10 foot wide utility easement on the north side of Lot 14 Block 1 Banta Subdivision Addition No. 1.

Petitioner statement: *I plan to build a high tunnel on the north side of my property, which would be on the easement. I cannot start dirt work or build unless the easement is removed. This piece of ground is the only place on my property that is conducive to placing a high tunnel.*

There are no utilities or roads on the easement.

Notification: Notice of vacation mailings were sent by regular mail to 12 owners of property within 600 feet. Notice of the proposed vacation was emailed to 6 agencies and interested parties.

The public notice has been posted on the Planning Department’s bulletin board at the KPB Administration Building.

Staff Analysis: The request is to vacate the 10 foot wide portion of the utility easement within Lot 14. The total width of the easement is 20 feet. The 10 feet within Lot 13 will remain in place. Plat HM 78-21 granted a 20 foot utility easement centered on the shared lot line of Lot 13 and Lot 14. The easement is approximately 370 feet in length and does not affect the entire length of the side lot line.

The parent plat granted a 5 foot utility easement along the eastern lot line adjoining Barbara Drive (originally named Barbara Street). A 5 foot by 20 foot utility easement was also granted by document to Homer Electric Association.

Per KPB 20.30.060(D) the front ten feet adjoining rights-of-way shall be designated as a utility easement. When the subdivision was created 10 feet was not required and only 5 feet was granted. A 10 foot by 10 foot utility easement should remain adjoining Barbara Drive within 10 feet of the north boundary line.

Comments were provided by the petitioner from utility providers and the Kenai Peninsula Borough Roads Department. It should be noted the map presented had the 5 foot easement labeled as well as the HEA easement. Comments were in support of the 10 foot along the property line but objected to any vacation of easements along the right of way. Staff wants to note that the petition is only for the 10 foot utility easement along the northern property line. If this vacation is approved, all other easements will remain in place.

The Kenai Peninsula Borough Road Service Area reviewed the easement request and had no objection to the 10 foot utility easement vacation on the north boundary. They did object to any utility easements being vacated that adjoin Barbara Street.

Utility provider review:

HEA	HEA would likely object to the vacation of the 5 ft. wide easement running along your east property line. (“The Road”) since there is an existing electrical pedestal (small green box) that appears to be within this easement. In addition, the 5 foot easement along the east property line allows HEA to maintain industry standard tree clearing around the overhead electrical facilities that prevents outages and reduces threats to public safety. The 10 ft. wide easement
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	<p>along the north property line however is not currently utilized by HEA and as such HEA would have no objection to vacating this easement should you choose to pursue this request with the borough.</p> <p>I have also attached a copy of a HEA specific easement granted by a deed that was recorded at Book 259 Page 174 of the Homer Recorder's District. This easement is the anchor easement I was referring to on the phone. The easement width stated is 5 ft. (2.5 ft. on either side of the aluminum guy wire, extending 20 ft. onto the property from the east property line common with Barbara Dr. This easement cannot be vacated through the Kenai Peninsula Borough since it was granted by HEA by deed and is being utilized by HEA for the continued use of the down-guy and anchor to support the utility pole.</p>
ENSTAR	<p>Does not object to the vacation of a portion of utility easement dedicated by Banta Subdivision, according to Plat No. 78.21 ...,including the portion of utility easement ten feet (10ft) in width located along the north boundary of Lot 14 Block 1 of said subdivision, but excluding the portion five feet (5ft) in width located along the east boundary fronting Barbara Street right of way of said Lot 14 Block 1.</p>
ACS	<p>Alaska Communications has no objection to vacating the PUE along the northern edge of the parcel described. Alaska Communications has no cable or equipment in this easement, nor are there any plans to use this easement in the future.</p>
GCI	<p>No objection vacating the 10' easement on the north side of Addition No. 1 and Resubdivision of Lot 4 Block 1 Banta Subdivision. Also know as 14585 Barbara Drive, GCI wo. 21-0340-14.</p>

Findings:

1. Per the petition, the utility easement proposed to be vacated is not in use by a utility company.
2. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation.
3. Banta Subdivision Addition No 1 and Resubdivision of Lot 4 Block 1 Banta Subdivision (Plat HM 78-21), granted a 10' wide utility on the north boundary of Lot 14 Block 1 for +/- 370'.
4. No surrounding properties will be denied utilities.
5. A 10 foot utility easement will remain in place along the southern boundary of Lot 13 Block 1 as granted by Plat HM 78-21.
6. A 5 foot utility easement was granted along Barbara Drive (Barbara Street) by Plat HM 78-21 and will remain in place.
7. An easement was granted by recorded document to Homer Electric Association that will continue to allow them access and maintenance for existing guy wire and anchor.
8. Current code requires 10 foot utility easements along dedicated right of ways.
9. The Kenai Peninsula Borough Roads Service Board has no objection as long as easements remain along Barbara Drive.
10. The proposed lot is along the bluff of Cook Inlet. The easement is not needed to extend utilities to neighboring lots to the west.

RECOMMENDATION:

Based on consideration of the merits as outlined by Staff comments and Staff findings, Staff recommends approval of the utility easement alteration as petitioned, subject to:

1. Grant utility easements requested by the owners.
2. A 10 foot by 10 foot easement will remain along Barbara Drive within 10 feet of the north boundary.
3. Finalizing the approval of the easement alteration by either;
 - a. The recording of a subdivision plat within 12 months or,
 - b. The recording of a utility easement alteration resolution within 90 days of the adoption of the resolution by the Planning Commission, with the following requirements:
 - i. An exhibit drawing showing, and dimensioning, the utility easement alteration area, prepared, signed and sealed by a licensed land surveyor. The exhibit drawing will be attached to, and recorded with, the resolution.

- ii. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
- iii. The Planning Department is responsible for filing the Planning Commission resolution.

20.65.070 Alteration of platted utility easements

- E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement 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. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.**
- F. An appeal of the planning commission decision under this section 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

- *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.*

END OF STAFF REPORT