

ITEM 2 - RIGHT OF WAY VACATION

VACATE SHANE RAE CIRCLE RIGHT OF WAY RUNNING (60' X 645.10') AS SHOWN AND DEDICATED ON S & S SUBDIVISION (PLAT KN 86-112)

KPB File No.	2021-112V
Planning Commission Meeting:	September 13, 2021
Applicant / Owner:	Jessica A and Cole B Young of Soldotna, Alaska
Surveyor:	None at this time
General Location:	Located off of Riggs Avenue from Mackey Lake Road.
Legal Description:	Shane Rae Circle right of way, S & S Sub KN 86-112 E1/2 W1/2 SW1/4 SW1/4, Section 22 Township 5 North Range 10 West Kenai Recording District

STAFF REPORT

Specific Request / Purpose as stated in the petition:

We are requesting to vacate Shane Rae Circle. We own all five of the lots in the S & S Subdivision. We are proposing the following changes to the plat:

- Lot 1 currently has access from Riggs Ave. Lot 1 would continue to share the current driveway for access.*
- Lot 2 & 3 to be combined and absorb the Shane Rae Circle land. The combined Lots 2 & 3 will share the current driveway access from Riggs Avenue.*
- Lot 4 is double frontage lot with Shane Rae Circle and Heath Circle. As it is served by both accesses, there will be no impact when Shane Rae Circle is vacated. As it is now, an exception had to be made for the construction of Heath Circle due to the depth of the lot.*
- The back 4.86 unsubdivided acreage of the S & S Subdivision sits on the cul-de-sac of Heath Circle. Vacating Shane Rae Circle will have no impact on this lot. Currently the Shane Rae Circle access is only platted and not fully constructed. The access via Heath Circle is onto an established gravel cul-de-sac.*

As we operate a business with valuable equipment and machinery parked outside, we placed a gate and fence on our driveway for security reasons. We own all of the surrounding lots, so there is not a reason for anyone to travel down Shane Rae Circle. Vacating Shane Rae Circle will not have a negative impact on future owners or require amendments to the plat because all the properties have accessible entry points.

Notification: Public notice appeared in the September 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the September 9, 2021 issue of the Peninsula Clarion as part of the Commission’s tentative agenda.

The public noticed was placed on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

- Library of Soldotna
- Post Office of Sterling

Nineteen certified mailings were sent to owners of property within 300 feet of the proposed vacation. Thirteen receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 14 owners within 600 feet of the proposed vacation.

Nineteen public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game
State of Alaska DNR
State of Alaska DOT
State of Alaska DNR Forestry
Central Emergency Services
Alaska Communication Systems (ACS)

ENSTAR Natural Gas
General Communications Inc, (GCI)
Homer Electric Association (HEA)

Legal Access (existing and proposed): Shane Rae Circle is off Riggs Avenue (originally Spruce Avenue) and is located approximately 920 feet west from the intersection of Riggs Avenue and Mackey Lake Road. Mackey Lake Road is a state maintained right of way. The Kenai Peninsula Borough maintains Riggs Avenue.

Riggs Avenue is the boundary between the Kenai Peninsula Borough (located to the north) and the City of Soldotna (located to the south).

Lots 1 and 2 front Riggs Avenue and Shane Rae Circle. Lot 3 fronts Shane Rae Circle. Lot 4 and the unsubdivided remainder front on Shane Rae Circle and Heath Circle. No other lots use Shane Rae Circle for access.

An overall preliminary design has not been submitted at this time. Per the comments with the vacation petition, no additional right of way is proposed to be dedicated.

KPB Roads Dept. comments	Within KPB jurisdiction, no comments.
SOA DOT comments	No comments.

Site Investigation: The area within the right of way vacation, including the abutting lots, is relatively flat. There are some low wet areas located within the Heath Circle cul-de-sac bulb.

Shane Rae Circle appears to be improved with a driveway but has not been constructed to KPB standards.

Floodplain Hazard Review	Not located within a floodplain.
Anadromous Waters Habitat Protection District Review	Not affected by a Habitat Protection District.
State Parks Review	No comments.

Staff Analysis: Shane Rae Circle is a 60 foot wide by 645 foot long right of way dedicated by S & S Subdivision, Plat KN 86-112.

The right of way was given a suffix of Circle. Per KPB Code 14.10.070, circle is “any right of way laying in a north-south direction and ending in a cul-de-sac.” Based on the naming convention used it would appear there was intent to further subdivide and extend the right of way. Per current code KPB 20.30.100(A), cul-de-sacs are to be permanently closed and no more than 1,000 feet long.

The block is closed but the block length is not compliant. There are numerous dedications in the area that would have improved block length requirements but many end in cul-de-sacs. Due to wetlands and area configurations, the ability to obtain a compliant block length with a continuation of Shane Rae Circle will be difficult.

If the unsubdivided parcel at the north end of Shane Rae Circle were to be subdivided, a right of way connection between Shane Rae Circle and Heath Circle would be required.

Heath Circle, located to the west, received exceptions for length as the right of way was dedicated to avoid wetland areas. A dedication along the section line easement was not required as the section line easement is affected by low wet areas.

From the intersection of Mackey Lake Road and Riggs Avenue to the dedication of Heath Circle, there are three right of way dedications within approximately 1,400 feet. All three are designated as Circles and two currently end with bulbs, Shane Rae Circle is the only one without a bulb or turnaround area dedicated.

KPB GIS imagery shows Shane Rae Circle is partially constructed. Per the submittal, the constructed portion is used as their driveway as all the lots that have access from Shane Rae Circle are under common ownership. Per 2021 imagery, Heath Circle is constructed.

The parent plat granted a 10 foot utility easement adjoining the west side of Riggs Avenue. The application did not indicate any request to vacate the utility easements. Per the submittal, the vacated Shane Rae Circle right of way will be combined into Lot 2 and Lot 3. Lot configurations for Lot 1 and Lot 4, including the utility easement will remain unchanged. There is a 5 x 10 easement on the shared lot line for Lots 2 and 3. If Shane Rae Circle is approved to be vacated, an additional easement will be required to provide a connection to the easement in Lot 1 and Lot 4.

The remainder portion of the S&S Subdivision, and Lot 4 would have legal access on Heath Circle only. The unsubdivided portion is 4.86 acres. The 4.8 acre parcel has 117 feet of frontage on Heath Circle. Lot 4 has 104 feet of frontage on Heath Circle.

The owners of the lands around Shane Rae Circle installed a gate to protect their business equipment. They have been contacted by the Roads Department and were told the gate would need to be removed. If the vacation is approved, the gate may remain but if denied the gate will be required to be removed. Staff would like to note that even if approved, the vacation is not final until the recording of the plat. Compliance issues should be worked out with the Roads Department and Code Compliance.

20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
Staff comments: The owners are currently using it as access to their property. All surrounding parcels are under common ownership. If the vacation of right of way is approved, a plat will be required to alter the property boundaries so that all lots in S and S Subdivision front on a dedicated right of way.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: The right of way is able to be constructed to KPB standards. I subdivision plat will be required to change the parcel boundaries so that Heath Circle and Riggs Avenue will provide legal access to all lots.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The surrounding area is generally developed. The 4.6 acre parcel to the north of Shane Rae Circle can be further subdivided. All nearby lots have legal access.
 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: Shane Rae Circle right of way does not provide access to public interest lands or water bodies.

5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: Due to the design of lots, existing structures, wetlands, and nearby right of ways, the ability to connect, or extend, right of ways is limited. The vacation may have an impact on the northern lot, as the access will be reduced to 128 feet along Heath Court. A connection between Shane Rae Circle and Heath Circle would be required if the 4.6 acre parcel were subdivided.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: All the parcels that front on Shane Rae Circle are currently under common ownership. Shane Rae Circle does not provide a benefit to the public.
7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a 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 utility easement be granted in place of the right-of-way.
Staff comments: There is a 10 foot utility easement along the eastern boundary of Lot 1 and Lot 4 that will remain in place and the petitioner will need to work with the utility providers if additional utility easements are needed.
8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: A code compliant plat will be required that changes the boundaries so that all lots will have adequate access and utility easements.

A plat has not been submitted at this time. A plat will be required to be submitted for review by the Plat Committee and a final recorded within one year of the vacation consent. Staff notes that exceptions to block length (20.30.170) and depth to width ratio (20.30.190) may be required.

If approved, the vacation is subject to consent or veto by the Kenai Peninsula Borough Assembly. The vacation is tentatively scheduled for the September 21, 2021 Assembly meeting.

KPB department / agency review:

Planner – Bryan Taylor	There are not any Local Option Zoning District issues with this proposed plat. There are not any material site issues with this proposed plat.
Code Compliance – Eric Ogren	Code Compliance review not available.
Addressing – Derek Haws	Affected Addresses: 42924 SHANE RAE CIR 42960 SHANE RAE CIR Existing Street Names are Correct: No List of Correct Street Names: SHANE RAE CIR Existing Street Name Corrections Needed: SPRUCE AVE should be RIGGS AVE All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:

	Comments: 42924 RIGGS AVE will remain with new combined lot. 42960 RIGGS AVE will be deleted.
Assessing – Matt Bruns	No concerns from Assessing Dept.

Utility provider review:

HEA	
ENSTAR	ENSTAR has reviewed the proposed vacation of Shane Rae Circle under KPB 2021-112V S&S Subdivision and advises that natural gas facilities are installed within the existing right of way as shown on the attached sketch labeled Exhibit B. ENSTAR objects to approval unless one of the following conditions are met. - Owner grant ENSTAR document easement for a fifteen feet (15 FT) wide natural gas easement centered on the existing natural gas pipeline facilities. - Add a note to the plat which says, "There is a fifteen feet (15 FT) wide natural gas easement centered on the existing main.", draw in the approximate location of the main on the plat map and add "Approximate location of natural gas main and centerline of fifteen feet (15 FT) wide natural gas easement."
ACS	No objections.
GCI	Approved as shown.

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends APPROVAL 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. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, 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.**
- J. A planning commission decision denying a vacation application is final. 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.

K. An appeal of the planning commission, city council or assembly vacation action under this chapter 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*
 - o *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.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *Focus Area: Transportation*
 - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

END OF STAFF REPORT