

ITEM 3 - RIGHT OF WAY VACATION
VACATE A PORTION OF KUCHTA STREET AND ADJOINING 5' UTILITY EASEMENT
KUCHTA ESTATES HANSEN ADDITION

| | |
|-------------------------------------|--|
| KPB File No. | 2021-119V |
| Planning Commission Meeting: | September 13, 2021 |
| Applicant / Owner: | Daniel Hansen and Hara Hansen-Biesiot of Kenai, Alaska |
| Surveyor: | Mark Aimonetti, Jason Young / Edge Survey and Design LLC |
| General Location: | Nikiski |
| Legal Description: | Kuchta Street / Kuchta Estates Subdivision Part One, KN 77-33, and Kuchta Estates Subdivision Part Two, KN 77-189, Kenai Recording District, Section 28, Township 7 North, Range 11 West, S.M. |

STAFF REPORT

Specific Request / Purpose as stated in the petition: Justification was not included with the petition. A preliminary plat design was submitted as part of the application showing the intent to combine 3 lots into one 8.6 acre parcel. Kuchta Street is between two of the lots. The subdivision plat depicts a new right of way being dedicated on the north and east boundary.

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 notice was posted 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 Nikiski
- Post Office of Nikiski

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

Public hearing notices were sent by regular mail to ten 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 | Nikiski Community Council |
| State of Alaska DNR | Alaska Communication Systems (ACS) |
| State of Alaska DOT | ENSTAR Natural Gas |
| State of Alaska DNR Forestry | General Communications Inc, (GCI) |
| Nikiski Emergency Services | Homer Electric Association (HEA) |
| Kenai Peninsula Borough Land Management | |

Legal Access (existing and proposed): Kuchta Street is access from Baun Drive which is located near mile 2.5 of state maintained Holt Lamplight Road. Baun Drive is a 60 foot wide borough maintained right of way.

Additional access is available from the Escape Route Road via Muskrat Street and Betty Warren Avenue/Lynx Avenue. Betty Warren Avenue/Lynx Avenue is an unconstructed east-west right of that is not constructed. Muskrat Street is a right of way that runs north-south and is not constructed south of Betty Warren Avenue/Lynx Avenue.

The proposed plat indicates the intention to dedicate two new right of ways. Biesiot Avenue will be a 60 foot wide right of way that extends east along the north boundary. At the east end of Biesiot Avenue a proposed 30 foot wide dedication extending south and connecting to the end of the Lynx Avenue dedication. Both of those right of ways will require street names approved by the Kenai Peninsula Borough Addressing Officer.

Currently only one of the parent lots is within a closed block. The proposed dedication will allow the entire subdivision to be within a closed and compliant block.

Per staff records, a 33 foot section line easement is located south of Lynx Avenue that runs from the Muskrat Street dedication and to the east. A 50 foot section line easement is present to the east of the subdivision running east-west.

| | |
|--------------------------|---|
| KPB Roads Dept. comments | Within KPB jurisdiction. A portion of this vacate is maintained by the RSA. The current turnaround will be vacated, which will create an issue of maintenance. |
| SOA DOT comments | No comments. |

Site Investigation: The area is relatively flat and not affected by low wet areas.

| | |
|--|---------------------------------|
| Floodplain Hazard Review | Not within a flood hazard area. |
| Anadromous Waters Habitat Protection District Review | Not within a HPD. |
| State Parks Review | No comments. |

Staff Analysis: The lots associated with the vacation and the right of way being vacated were created by two plats. Kuchta Estates Subdivision, Part One, Plat KN 77-33, dedicated the western 30 foot width for Kuchta Street and created Lot 4 Block 4. A 5 foot utility easement adjoins the right of way within Lot 4 Block 4. Kuchta Estates Subdivision, Part Two, Plat KN 77-189, dedicated the eastern 30 feet of Kuchta Street and created Lots 4 and 5 Block 3. The plat did not grant utility easements along Kuchta Street.

Per KPB GIS data, Kuchta Street is constructed and a portion is maintained by the borough. The access map prepared by staff indicates the approximate location road maintenance ends. Per KPB GIS imagery, there are structures possibly within the right of way, building setback, or are very close to the right of way.

Lot 4 Block 4 and Lots 4 and 5 Block 3 are all under the same ownership. The owners are attempting to combine their three lots and allow right of way access to be provided surrounding the north and east edge of their property versus going through the middle.

To the east is a 40 acre lot owned by the Bureau of Indian Affairs. If the vacation and dedication is approved, a matching 30 foot dedication will be required with any future subdivision. To the south of Lynx Avenue is a 465 acre parcel owned by Salamatof Native Association. If the parcel is subdivided, a minimum 30 foot wide dedication will be required along Lynx Avenue.

Plat KN 77-33, granted a 5 foot utility easement along the western boundary of Kuchta Street as well as along Lynx Avenue. Plat KN 77-189 did not grant any easements along Kuchta Street but did grant a 5 foot utility easement along Lynx Avenue. The petition does request to vacate the associated 5 foot easement where adjoining the Kuchta Street vacation. The plat is proposing to grant 15 foot utility easements along new and existing right of way dedications.

Homer Electric Association did comment that they have an existing distribution line along or within the west portion of Kuchta Street. They are requesting a 20 foot wide easement centered on the existing line.

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 portion being vacated is being used but appears to only be providing access to the lots adjacent to the vacation area and does not appear to be used for access to neighboring parcels.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: The area to be vacated can be constructed to comply with KPB road standards. An alternative access is being dedicated to allow the construction of a new roadway around the applicant's property.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The area to the north and west has been subdivided with legal access to all lots. The areas to the east and south remain unsubdivided and will be required to provide a matching right of way dedication with subdivided in the future.
 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: The right of way does not provide access to water body or other public interest area.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: The vacation will not deny any access as the new dedications will create a complete and compliant block. Large acreage lots to the east and south will be able to dedicate right of ways that fit their design plan.
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Other public access is feasible within the vacation area but it does not appear to be used by the public at this time. Sufficient right of ways exist for public access.
 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: A power line is located on the west side of the vacation. Homer Electric Association is requesting an easement over an existing line. The proposed plat will be granting a 20 foot utility easement on the existing overhead line as well as 15 foot utility easements adjoining all right of ways.
 8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: From aerial imagery it appears that the applicant has improvements within the right of way, or within the 20 foot building setback. The vacation and replat will remove any encroachment issues.

If approved, Kuchta Estate Hansen Addition will finalize the proposed right of way vacations. The Plat Committee is scheduled to review the plat on September 13, 2021.

Finalizing the vacation is subject to consent or veto by the Kenai Peninsula Borough Assembly within 30 days. The vacation is tentatively scheduled for the September 21, 2021 Assembly meeting.

KPB department / agency review:

| | |
|------------------------------|--|
| Planner – Bryan Taylor | There are no local option zoning district issues or material site issues associated with this right of way vacation. |
| Code Compliance – Eric Ogren | Review not available. |
| Addressing – Derek Haws | <p>Affected Addresses: 47071 KUCHTA ST 47050 KUCHTA ST</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names: KUCHTA ST LYNX AVE</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names: BIESIOT AVE</p> <p>List of Street Names Denied: CARIBOU RUN ST is denied because CARIBOU is on the prohibited names list.</p> <p>Comments: 47071 KUCHTA ST will be deleted. 47050 KUCHTA ST will remain with new Lot 4A. CARIBOU RUN is denied, please contact dhaws@kpb.us for any questions regarding street naming.</p> |
| Assessing – Matt Bruns | Comments: No concerns from Assessing Dept. |
| Advisory Planning Commission | N/A |

Utility provider review:

| | |
|--------|---|
| HEA | Approximate location shown on map of HEA Overhead Powerline, centerline of a 20 foot wide electrical distribution line easement is requested. |
| ENSTAR | Approved as shown |
| ACS | No objections |
| GCI | No objections |

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 the 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*

- *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