

**ITEM 4 - RIGHT OF WAY VACATION
VACATE A PORTION OF DERKS LAKE ROAD AND ASSOCIATED UTILITY EASEMENTS**

KPB File No.	2021-122V
Planning Commission Meeting:	September 13, 2021
Applicant / Owner:	Gene, George, and Linda Friendshuh of Soldotna, Alaska
Surveyor:	James Hall / McLane Consulting, Inc
General Location:	Ridgeway Area
Legal Description:	Derks Lake Road as dedicated on Denise Lake Estates Part Two, KN 94-27 and Tatum Subdivision, KN 2021-15, Kenai Recording District, Sections 14 and 23 Township 05 North Range 10 West S.M.

STAFF REPORT

Specific Request / Purpose as stated in the petition: Lots along south side of Derks Lake Road are pressed between right of way and Soldotna Creek. By re-routing Derks Lake Road the additional property gained will allow the owners space to build homes.

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.

A petition has also been received for section line easement vacations that coincide with the right of way vacation. Public notices posted and mailed contained the information for each item so only one notice was required. 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 Soldotna
- Post Office of Sterling

Fifteen certified mailings were sent to owners of property within 300 feet of the proposed vacation. Six receipt had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to eight 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 | Alaska Communication Systems (ACS) |
| State of Alaska DNR | ENSTAR Natural Gas |
| State of Alaska DOT | General Communications Inc, (GCI) |
| State of Alaska DNR Forestry | Homer Electric Association (HEA) |
| Advisory Planning Commission | |
| Central Emergency Services | |

Legal Access (existing and proposed): Legal access to Derks Lake road is via Mackdy Lake Road to Denise Lake Road. An alternate route is from Denise Lake to Aksala Lane and Arctic Tern Road.

Nearby right of ways Goldeneye Avenue, Big D Road, and Cinnamon Street provide additional access. Cinnamon Street does not appear to be improved. Bid D street appears to have a constructed road. Neither right of way is maintained by KPB.

Per KPB GIS data, Derks Lake Road maintenance stops approximately 200 feet east of Arctic Tern Road and the portion being requested for vacation is not constructed or maintained. The preliminary plat design shows a realignment of Derks Lake Road. KPB GIS Imagery appears to show a roadway that angles to the north of the dedication and connects to Big D Road. The proposed dedication does not appear to follow the existing trail or drive.

The proposed vacation has an underlying section line easement and a petition has been received to vacate the corresponding area. The public hearing for the section line easement vacation will be heard at the same meeting as this petition.

The parent subdivision Tatum Denise Subdivision, KN 2021-15, did receive an exception for block length. The preliminary plat to finalize the vacation will also need to request an exception for block length.

KPB Roads Dept. comments	Within KPB jurisdiction. The RSA has no comments at this time.
SOA DOT comments	No comments.

Site Investigation: There are no low wet areas or steep terrain within the right of way vacation or within the proposed dedication areas. The area proposed to be vacated and dedicated appear to be relatively flat.

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: Per the petition, the lots south of Derks Lake Road have limited buildable area due to restrictions associated with Soldotna Creek wetlands and the existing right of way. The realignment of Derks Lake Road will provide additional square footage to develop the lots.

Denise Lake Estates Part Two, KN 94-27, and Tatum Subdivision, KN 2021-15 originally dedicated the portion of Derks Lake Road proposed for vacation. Both of those subdivisions dedicated 50 foot wide right of way atop 50 foot wide section line easements to create a 100 foot wide right of way. To the west of the 100 foot wide dedication the right of way width is reduced to 66 feet and coincides with section line easements.

This petition is requesting the vacation of the east approximately 1000 feet of Derks Lake Road, and the north 17 foot wide by approximately 570 foot section of Derks Lake Road.

A new dedication for Derks Lake Road is proposed to curve northeasterly and connect to Cinnamon Street. KPB GIS imagery shows a constructed road in this area but it will not align with the new right of way. The location of the proposed right of way will allow the best subdivision design with usable area for all lots.

A 10 foot wide utility easement will adjoin all dedicated right of ways within the proposed subdivision. The vacation of the right of way includes the vacation of associated utility easements. There does appear to be Homer Electric Association utilities running parallel to the proposed vacation. The line appears to be approximately 15 feet from the right of way. The parent plat only granted a 10 foot utility easement along the right of way. **Staff recommends the utility easement association with the right of way be vacated and the applicant work with the utility provider to determine an agreeable width and grant an easement centered over the existing powerline line.**

Approval of the vacation will be subject to consent or veto by the Kenai Peninsula Borough Assembly. The petition to vacate is tentatively scheduled for the September 21, 2021 Assembly meeting.

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 of right of way being vacated is not being used for vehicular or pedestrian access. An overhead electric line is located to the south of the right of way.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: The area being vacated is constructible as a roadway. A new right of way dedication is being provided to the north of the vacation and will provide a connection.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The surrounding area has been subdivided, or will be subdivided with this plat. All needed right-of-ways and utility easements have been provided.
 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 proposed to be vacated does not provide access to public areas.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: A proposed right of way dedication in conjunction with the proposed right of way vacation will provide connectivity of the roads and utility easements for nearby parcels.
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments:
 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: Utility easements will be granted to adjoin the proposed dedicated right of way.
 8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: A proposed realignment will provide continuation of the right of way.

If approved, Tatum Denise Subdivision Phase 1 will finalize the proposed right of way vacations. A separate action to vacate the section line easement is proposed to finalize the section line easement vacations. The Plat Committee is scheduled to review Tatum Denise Subdivision Phase 1 on September 27, 2021.

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: None Existing Street Names are Correct: Yes

	List of Correct Street Names: DERKS LAKE RD CINNAMON ST BIG D RD Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: No addresses affected by this subdivision.
Assessing – Matt Bruns	No concerns from Assessing Department.

Utility provider review:

HEA	
ENSTAR	
ACS	
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 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*
 - 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