

ITEM 1 – UTILITY EASEMENT VACATION
TOWNSITE OF KENAI - KENAITZE COURTHOUSE REPLAT

KPB File No.	2021-118V
Planning Commission Meeting:	September 13, 2021
Applicant / Owner:	Kenaitze Indian Tribe IRA of Kenai, Alaska
Surveyor:	Mark Aimonetti, Jason Young / Edge Survey and Design, LLC
General Location:	City of Kenai

STAFF REPORT

Specific Request / Purpose as stated in the petition: The petition did not state a purpose but a plat has been submitted to remove interior lot lines. The request is to remove the platted utility easements that are located on the former lot lines within the new lot.

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

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

Staff Analysis: The preliminary plat supplied for the vacation of utility easements depicts several easements to be vacated. Per the submittal, the intent of the preliminary plat is to combine several lots into one 5 acre tract. Per the City of Kenai staff report, the Kenaitze Indian Tribe wishes to expand their tribal court building and provide additional parking. The extension of the building will not comply with city zoning and will encroach into a utility easement. The proposed changes will allow the building to be compliant.

The original plat, US Survey 2970, did not grant any utility easements. Plat KN 2012-11, Townsite of Kenai Kenaitze Addition Subdivision, vacated some of the right of ways in the area and granted some utility easements. Those easements were also depicted on Plat KN 2021-18, Townsite of Kenai 2021 Kenaitze Replat. .

Along the northern boundary, adjacent to Lot 13A Block 5, a 10 foot utility easement, granted by KN 2012-11, centered over the existing underground line will remain as will a 5 foot utility easement granted by book and page.

Along the southeast are utility easements that were granted by KN 2012-11 atop a portion of the right of way vacation of Upland Way and Overland Way. This easement will remain. The easement is labeled as 10 foot utility easement but the width varies and in some areas not 10 feet. **Staff recommends** the label be corrected for the utility easement extending from Upland Street as the width of the easement is not 10 feet and varies with the former right of way width.

A utility easement extends from Overland Avenue into proposed Tract B-1. This request is to vacate the easterly approximately 125 feet. The remaining easement is approximately 13 feet wide and will be approximately 35 feet long.

Plat KN 2012-11 granted utility easements along the property lines in the southwest corner. The northern portion of the 10 foot utility easement adjoining the former lot line is requested to be vacated. When the easement extends to the southeast the width varies. Per KN 2012-11 a 20 foot utility easement was granted centered on the existing utility line. The plat only had the authority to grant the easement within the subdivision boundary. Staff did not find any record of the remaining 20 foot width being granted within Lot 5 Block 5. **Staff recommends** the depiction of the portion being vacated be corrected to match what was actually granted. **Staff recommends** this platting action grant the remaining width for the 20 foot wide utility easement that extends from Mission Avenue.

The City of Kenai Planning and Zoning Commission reviewed the plat at their regularly scheduled meeting on August 11, 2021. They approved the plat including the vacations subject to the Kenai City Council declaring the utility easements to be vacated are not needed for public purpose and approve the vacation as shown. If approved the Kenai City Council must consent or veto the vacation within 30 days from September 13, 2021.

The vacations are proposed to be finalized by plat Townsite of Kenai Kenaitze Courthouse Replat, KPB File 2021-118. The plat has been submitted and will be reviewed by the Plat Committee on September 13, 2021.

Utility provider review:

HEA	No objections
ENSTAR	Approved as shown
ACS	No objections
GCI	Approved as shown

Findings:

1. The petition states a utility company does not use the utility easements proposed for vacation.
2. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation.
3. Townsite of Kenai Kenaitze Addition Subdivision, Plat KN 2012-11, granted utility easements coinciding with portions of right of ways vacated by that plat.
4. Townsite of Kenai Kenaitze Addition Subdivision, Plat KN 2012-11, granted utility easements adjoining lot lines with the remainder of Lot 4 Block 5 and Lot 5 Block 5 of US Survey 2970.
5. A portion of the easement extending from Overland Avenue will be vacated with an approximately 35 foot segment to remain.
6. Additional utility easement will be granted within former Lot 5 Block 5 to allow the full 20 foot width centered on the existing electric overhead line.
7. No surrounding properties will be denied utilities.
8. The vacations are proposed to be vacated by plat, Townsite of Kenai Kenaitze Courthouse Replat.
9. The plat, if approved, will create a 5 acre lot with improvements owned by the Kenaitze Indian Tribe.
10. Per the City of Kenai staff report, the lot line removals and vacation of utility easements will allow the Kenaitze Indian Tribe the ability to add an addition to an existing building and comply with city zoning code requirements.

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. Consent by Kenai City Council.
2. Grant utility easements requested by the Kenai City Council and utility providers.
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*
 - 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.*

END OF STAFF REPORT