

AGENDA ITEM E. NEW BUSINESS

**ITEM 2 - RIGHT OF WAY VACATION  
VACATE A PORTION OF FANNIE MAE AVENUE**

<b>KPB File No.</b>	2021-129V
<b>Planning Commission Meeting:</b>	September 27, 2021
<b>Applicant / Owner:</b>	Jessica Seymour, Paul Kelly, Guy F. Sherman, and Colleen M. Sherman all of Soldotna, Alaska
<b>Surveyor:</b>	Jason Young, Mark Aimonetti / Edge Survey and Design, LLC
<b>General Location:</b>	Sterling
<b>Legal Description:</b>	Cul-de-sac portion of Fannie Mae Avenue / Edgington Subdivision No. 2, Plat KN 79-195 / Section 30 Township 5 North Range 9 West S.M.

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**STAFF REPORT**

**Specific Request / Purpose as stated in the petition:** None stated. A preliminary plat has been submitted that depicts a shift in the shared lot line, the vacation of a utility easement on the shared boundary, and the vacation of the bulb portion of Fannie Mae Avenue.

**Notification:** Public notice appeared in the September 16, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the September 23, 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 Soldotna

Post Office of Soldotna

14 certified mailings were sent to owners of property within 300 feet of the proposed vacation. 0 receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 22 owners within 600 feet of the proposed vacation.

15 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):** The proposed vacation is located at the west end of Fannie Mae Avenue and adjoins Lots 3 and 4 of Edgington Subdivision No. 2, Plat KN 79-195. Access to this location is from mile post 88 of the Sterling Highway to St. Theresa Road to Edgington Road Fannie Mae Avenue.

Fannie Mae Avenue constructed and maintained by the Kenai Peninsula Borough.

Lots 3 and 4 front Longmere Lake on their west boundary, which provides water access and is commonly used by floatplanes.

The petition wishes to vacate only the bulb portion of Fannie Mae Avenue with a full 60 foot width right of way to remain. Fannie Mae Avenue was granted by Edgington Subdivision No. 2, Plat KN 79-195.

The block is not closed nor compliant in length due to the location of Longmere Lake. The proposed vacation does not affect the block, as it is only a portion of a bulb and the 60 foot wide right of ways will remain.

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

**Site Investigation:** There does not appear to be any low wet areas within the lots or the proposed vacation area. Steep terrain does not affect the area requested to be vacated. It does not appear that the area to be vacated is needed or required for slope or maintenance easements.

Floodplain Hazard Review	Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments
Anadromous Waters Habitat Protection District Review	Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments
State Parks Review	Reviewer: Russell, Pam Comments: No Comments

**Staff Analysis:** The subdivision Edgington Subdivision No. 2, Plat KN 79-195, dedicated a 30 foot width for Fannie Mae Avenue as well as a 50 foot radius partial bulb. The bulb is located on the northern side of the intersection with Hager Boulevard. The 30 foot dedication created a full 60 foot wide right of way as Sleepy Hollow Subdivision, Plat KN 78-79, dedicated the southern 30 foot width of the right of way.

The constructed roadways do not appear to be within the bulb portion proposed for vacation. Edgington Subdivision No. 2 was heard and approved at the September 24, 1979 plat committee meeting. The minutes from the September 24, 1979 meeting do not include any discussion or notes regarding the bulb dedication. It was not dedicated with the intent of a closed cul-de-sac as the right of way dedications already existed to the south.

The proposed lot line reconfiguration will increase the right of way frontage for Lot 4 by 23 feet (45 feet to 68 feet) and decrease the frontage for Lot 3 by 43 feet (285 feet to 242 feet).

There does not appear to be steep slopes along the right of way that would need that portion for slope or maintenance easements.

Lot 3 and 4 have existing constructed access. Having driveways access on an intersection is not ideal. The access is on the outside of the intersection providing a better line of sight. The vacation of the right of way will not change current access to their property.

A preliminary plat has been submitted to be heard by the Plat Committee on September 27, 2021. It appears that a structure is within the utility easement along the shared lot line and possibly across the property line. The preliminary plat is proposing to shift a portion of the shared lot line approximately 25 feet to the northeast. The lot line adjustment should resolve the encroachment issue if it exists or at least provide a buffer between the structure and the neighboring lot.

A petition to alter a platted utility easement has been submitted and is scheduled for hearing at the September 27, 2021 Planning Commission meeting. The easement to be vacated is the 20 foot easement along the shared lot line of lots 3 and 4 of Edgington Subdivision No. 2.

The preliminary plat states in plat note 2 the intent to dedicate additional utility easements along the dedicated right of ways to provide 15 foot easements. Plat note 9 as well as a label on the plat indicate the intent to grant a utility easement in place of the right of way vacation. Additional easements are proposed over existing service lines.

Neighboring lands will not be denied access nor utilities if the vacation is approved.

#### **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:** While Fannie Mae Avenue is constructed and maintained, it appears that the bulb area is not being used by the public for access.
2. A road is impossible or impractical to construct, and alternative access has been provided;  
**Staff comments:** The bulb portion of the right of way is able to be constructed. Fannie Mae Avenue and Hager Boulevard are full width dedicated right of ways with constructed roads maintained by the borough.
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;  
**Staff comments:** The area is developed with dedicated right of ways to all private lands.
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 portion to be vacated does not provide public access to a lake, river or other area with public interest or value.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;  
**Staff comments:** Right of ways have been dedicated to provide connectivity to adjacent parcels.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;  
**Staff comments:** The bulb area is not generally used for other 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:** The preliminary plat is proposing to grant easements atop existing services as well as full 15 feet along the dedicated right of way. The right of way to be vacated is proposed to be granted as a utility easement.
8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.  
**Staff comments:**

If approved, Edgington Subdivision Sherman Addition will finalize the proposed right of way vacation. The Plat Committee is scheduled to review the preliminary plat on September 27, 2021.

Approval of the vacation is required to receive consent by the Kenai Peninsula Borough Assembly within 30 days. The vacation, if approved, will be scheduled for the October 12, 2021 Assembly meeting.

**KPB department / agency review:**

Planner	
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Robinson, Celina Affected Addresses: 39084 FANNIE MAE AVE 35495 HAGER BLVD  Existing Street Names are Correct: Yes  List of Correct Street Names: FANNIE MAE AVE HAGER BLVD  Comments: 39084 FANNIE MAE AVE will remain on LOT 3A 35495 HAGER BLVD should be changed to FANNIE MAE AVE address due to shared driveway with 39084 FANNIE MAE AVE
Assessing	Reviewer: Bruns, Matthew Comments: No concerns from Assessing Dept.
Advisory Planning Commission	

**Utility provider review:**

HEA	
ENSTAR	No comments or objections.
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).

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**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.*

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**END OF STAFF REPORT**