




KENAI PENINSULA BOROUGH

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JOHN J. WILLIAMS
MAYOR

MEMORANDUM

TO: Ron Long, Assembly President
Kenai Peninsula Borough Assembly Members

FROM:  Max Best, Planning Director

DATE: April 28, 2006

SUBJECT: Vacate a portion of the 33-foot section line easement on the north boundary of Tract A North Ridge Estates Subdivision (Plat KN 86-133); within Section 13 extending between Crooked Creek and Crooked Creek Road; AND vacate the 33' or 50' section line easement adjacent to the above portion, within Section 12; all within Township 2 North, Range 12 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough; KPB File 2006-060; (Note: DNR owns the parcel to north and must agree to final plat to vacate the easement on their side). Petitioner: Matthew G. Letzring of Kasilof, Alaska; Location: West of Crooked Creek Road in Kasilof

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly. The Planning Commission approved the referenced vacation during their regularly scheduled April 24, 2006 meeting.

A motion to grant the vacation as petitioned and adopting the fourteen findings passed by unanimous consent. This petition is being sent to you for your consideration and action.

The Assembly has 30 days from April 24, 2006 in which to veto the decision of the Planning Commission. If the Commission receives no veto within the 30-day period, the decision of the Commission will stand.

Draft, unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

AGENDA ITEM F. PUBLIC HEARINGS

1. Vacate a portion of the 33-foot section line easement on the north boundary of Tract A North Ridge Estates Subdivision (Plat KN 86-133); within Section 13 extending between Crooked Creek and Crooked Creek Road; AND vacate the 33' or 50' section line easement adjacent to the above portion, within Section 12; all within Township 2 North, Range 12 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough; KPB File 2006-060; (Note: DNR owns the parcel to north and must agree to final plat to vacate the easement on their side). Petitioner: Matthew G. Letzring of Kasilof, Alaska; Location: West of Crooked Creek Road in Kasilof

Staff Report reviewed by Max Best

PC Meeting: 4/24/06

Purpose as stated in petition: Both parcels front Crooked Creek Road. Easement has no benefit for any parcels.

Petitioner: Matthew G. Letzring of Kasilof, Alaska

Public notice appeared in the April 6 and April 13, 2006 issues of the Peninsula Clarion.

Fifteen (15) certified mailings were sent to owners of property within 300 feet of the parcels; fourteen (14) of the receipts have been returned.

Nine (9) regular mailings were sent to agencies and interested parties; seven (7) notices were sent to KPB Departments. Notices were mailed to the Kasilof Post Office and Kasilof Community Library to post on the public bulletin board. The notice and maps were posted on the Borough web site and bulletin board.

Statement(s) of non-objection

Homer Electric Association

Staff discussion

This section line appears to be unnecessary for access due to the terrain and surrounding development pattern. Two branches of Crooked Creek cross the section line easement. Crooked Creek is an anadromous stream. An extension of Koski Avenue is highly unlikely, due to the subdivision configuration and the large expanse of wetlands and creek. Crooked Creek routinely floods into the wetland area annually.

A separate petition will be to be submitted for the section line easement vacation plat to the Borough and State Department of Natural Resources. DNR owns the parcel to north and must agree to vacate the easement on both sides.

Findings:

1. Sufficient rights-of-way exist to serve surrounding properties.
2. No surrounding properties will be denied access.
3. Per the submittal, the right-of-way proposed for vacation is not in use for access.
4. Per the submittal, the right-of-way proposed for vacation has not been constructed.
5. The rights-of-way do not appear to be in use for utilities.
6. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
7. To date, one utility company has provided a letter of non-objection.
8. Crooked Creek, an anadromous stream, crosses the section line easement in two places.
9. Satellite imagery indicates a significant wet area adjoins Crooked Creek.
10. Per KPB 20.20.080, the subdivider shall demonstrate that streets can be readily constructed in accordance with current borough road standards.
11. Constructing a road over an anadromous stream and wet areas would require local, state, and/or federal permitting.

12. Obtaining all necessary permits to construct the section line easement is not guaranteed.
13. Crooked Creek is susceptible to annual flooding into the wetland area.
14. Pedestrian access to the creek is not feasible due to the wetlands area.

STAFF RECOMMENDATION: Based on the above findings, staff recommends approval of the vacations as petitioned, subject to:

1. Submittal of a preliminary plat in accordance with Chapter 20 of the KPB Code (submittal of a final plat within one year of vacation approval).
2. Compliance with any State requirements for the section line easement vacation.

If the vacation is approved, the Kenai Peninsula Borough Assembly has thirty days in which they may veto Planning Commission approval of the vacation.

DENIAL OF A VACATION PETITION IS A FINAL ACT FOR WHICH NO FURTHER CONSIDERATION SHALL BE GIVEN BY THE KENAI PENINSULA BOROUGH. APPEALS TO PLANNING COMMISSION DENIAL OF A VACATION MUST BE TAKEN WITHIN THIRTY (30) DAYS TO SUPERIOR COURT AT KENAI, ALASKA PURSUANT TO PART VI OF THE ALASKA RULES OF APPELLATE PROCEDURES. [20.28.110 AS AMENDED BY KENAI PENINSULA BOROUGH ORDINANCE 99-43].

END OF STAFF REPORT

Chairman Bryson read the rules by which public hearings are conducted.

Chairman Bryson opened the meeting for public comment. Seeing and hearing no one wishing to speak, Chairman Bryson closed the public comment and opened the discussion among the Commission.

MOTION: Commissioner Johnson moved, seconded by Commissioner Tauriainen to accept and adopt findings 1-14 and grant the vacation per staff recommendations.

Findings:

1. Sufficient rights-of-way exist to serve surrounding properties.
2. No surrounding properties will be denied access.
3. Per the submittal, the right-of-way proposed for vacation is not in use for access.
4. Per the submittal, the right-of-way proposed for vacation has not been constructed.
5. The rights-of-way do not appear to be in use for utilities.
6. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
7. To date, one utility company has provided a letter of non-objection.
8. Crooked Creek, an anadromous stream, crosses the section line easement in two places.
9. Satellite imagery indicates a significant wet area adjoins Crooked Creek.
10. Per KPB 20.20.080, the subdivider shall demonstrate that streets can be readily constructed in accordance with current borough road standards.
11. Constructing a road over an anadromous stream and wet areas would require local, state, and/or federal permitting.
12. Obtaining all necessary permits to construct the section line easement is not guaranteed.
13. Crooked Creek is susceptible to annual flooding into the wetland area.
14. Pedestrian access to the creek is not feasible due to the wetlands area.

Commissioner Heimbuch thought that section line easements were for the public in general and not necessarily for the adjoining parcels. She stated that people could go down Crooked Creek Road and use the easement to get to Crooked Creek. Ms. Toll replied that Running Water Avenue is approximately ½ mile to the south of this section line. There is a bridge that crosses Crooked Creek at that point which provides public access to Crooked Creek. She stated that the proposed section line vacation is an impassible wetland adjacent to the creek. Ms. Toll commented that the creek does flood and she doubted the public would want to access the creek at that point. The parcel to the north is owned by DNR and the public could access anywhere across

that state land.

Commissioner Johnson stated he learned from the Roads Seminar that roads should be kept away from the streams especially streams that are classified as Anadromous Streams. He felt that this vacation would be natural in a case like this since there is public access nearby.

There being no further comments or discussion, the commissioners proceeded to vote.

VOTE: The motion passed by unanimous consent.

BRYSON YES	CLARK YES	FOSTER YES	GROSS YES	HEIMBUCH YES	HOHL YES	HUTCHINSON ABSENT
ISHAM YES	JOHNSON YES	MARTIN YES	MASSION YES	PETERSEN YES	TAURIAINEN YES	12 YES 1 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS

2. Vacate that portion of a 66-foot section line easement centered on the line common to Sections 20 and 21, beginning 33 north of the corner common to Sections 20, 21, 28 and 29, and extending to the south shore of Hall Lake Sangster Subdivision Hall Lake Addition (Plat KN 2006-11); within Sections 20 and 21, Township 5 North, Range 9 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough; KPB File 2006-061; Petitioners: John Stevens of Australia and Kenneth S. Merkes of Sterling, Alaska; Location: South of Hall Lake in Sterling

Staff Report reviewed by Max Best

PC Meeting: 4/24/06

Purpose as stated in petition: Section line runs through six lots on the new subdivision. A new ROW is being dedicated to replace the section line easement.

Petitioners: John Stevens of Australia and Kenneth S Merkes of Sterling, Alaska.

Public notice appeared in the April 6 and April 13, 2006 issues of the Peninsula Clarion.

Five (5) certified mailings were sent to adjoining owners; one (1) receipt was returned. One certified notice was returned as undeliverable.

Ten (10) notices were sent by regular mail to interested parties. Seven (7) departmental notices were distributed. Notices were mailed to the Soldotna Post Office and Soldotna Community Library to be posted in public locations. The notice and maps were posted on the Borough web site and bulletin board.

Statement of No Comment

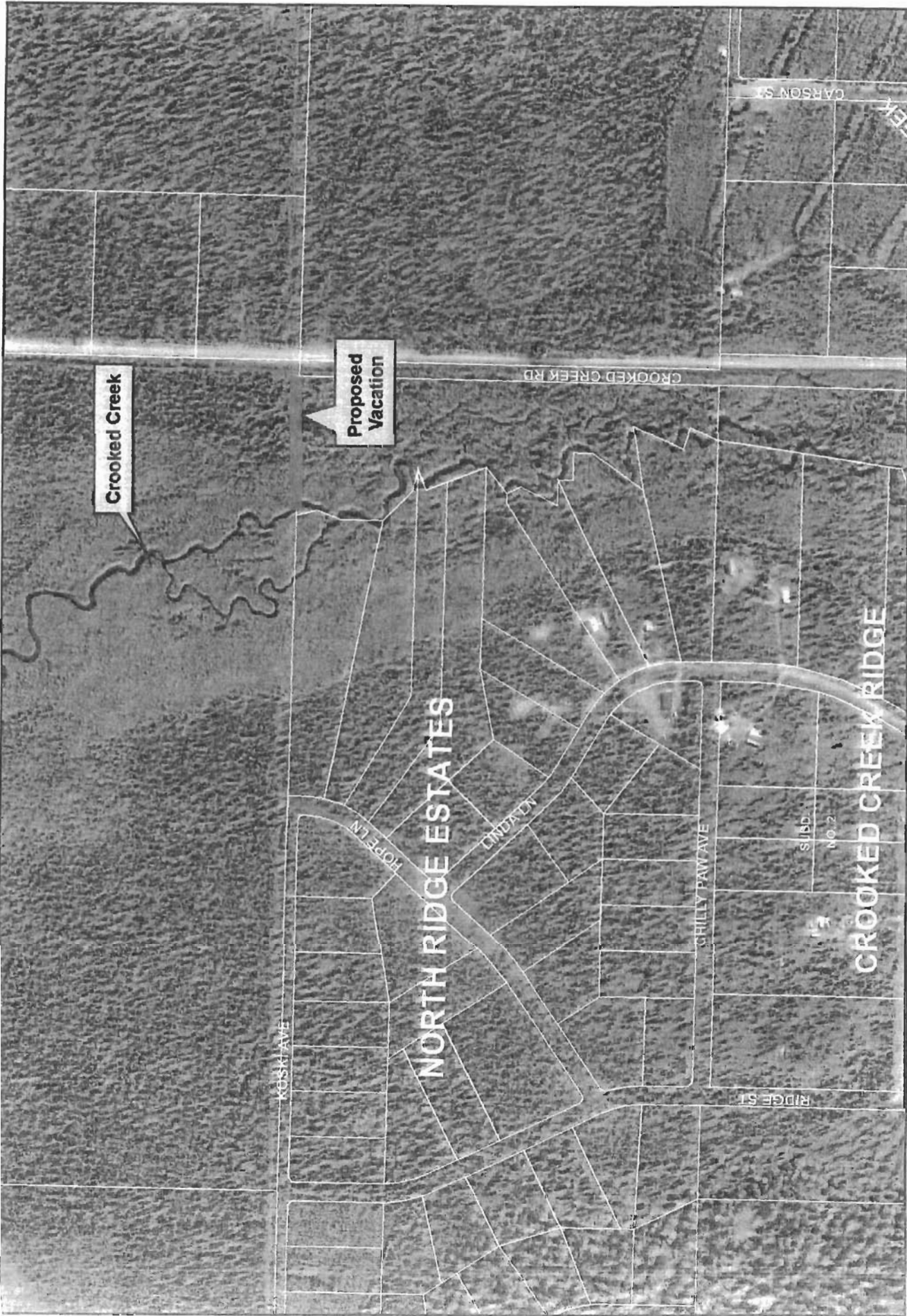
Homer Electric Association

Staff discussion

Sangster Subd. Hall Lake Addn. preliminary plat, which showed the subject section line, was distributed to adjoining owners, interested parties, and agencies during the fall of 2005. The State Department of Transportation and Public Facilities submitted a request for the applicant to vacate the 66-foot section line easement that divided Section 20 and 21.

Findings:

1. Per the petition, the section line easement has not been constructed.
2. Per the petition, the section line easement is not being used.
3. Section line easements are under the regulation of the State of Alaska.
4. AS 19.30.410 and 11 AAC 51.065 require equal or better access prior to vacation, modification, or



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors or omissions in this map.



Kenai Peninsula Borough Planning Department

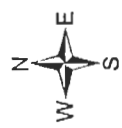
3/28/06

City Map





3/8/2006



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for errors on this map.

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

PETITION TO VACATE

PUBLIC RIGHT-OF-WAY/SECTION LINE EASEMENT

PUBLIC HEARING REQUIRED

Upon receipt of complete application with fees and all required attachments; a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

- Fees - \$300 non-refundable fee to help defray costs of advertising public hearing. Plat fees will be in addition to vacation fees.
City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
Name of public right-of-way proposed to be vacated is Section Line; dedicated by plat of North Ridge Estates Subdivision, filed as Plat No. 86-133 in Kenai Recording District.
Are there associated utility easements to be vacated?
Easement for public road or right-of-way as set out in (specify type of document) as recorded in Book Page of the Recording District.

- Section Line Easement. Width of easement must be shown on sketch.
Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11 x 17 inches in size. In the case of public right-of-way the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch.

Has right-of-way been fully or partially constructed?
Is right-of-way used by vehicles/pedestrians/other?
Has section line easement been constructed?
Is section line easement being used?
Is alternative right-of-way being provided?
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The petitioner must provide reasonable justification for the vacation.
Reason for vacating both parcels Front crooked creek road. Easement has no benefit for any parcels.

The petition must be signed (written signature) by owners of majority of the front feet of land fronting part of right-of-way or section line easement proposed to be vacated. Each must include mailing address and legal description of his/her property.

Submitted by: Signature Name Address Phone
Matthew Letourmy as representative petitioner
Box 6 Kaslof Alaska 99610
252-3831
RECEIVED FEB 24 2006 KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Petitioners: Signature Name Address Owner of
Signature Name Address Owner of