



KENAI PENINSULA BOROUGH

144 N. BINKLEY SOLDOTNA, ALASKA 99669-7520
BUSINESS (907) 262-4441 FAX (907) 262-1892

JOHN J. WILLIAMS
MAYOR

MEMORANDUM

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

FROM: Max Best, Planning Director *by mr*

DATE: September 13, 2006

SUBJECT: Vacate a portion of Cardwell Road and all of Puckerbrush Street 33-foot rights-of-way dedicated by Shannon Subdivision (Plat KN 80-72) and associated public utility easements, within Section 33, Township 4 North, Range 11 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough; KPB File 2006-209; Petitioners: Jack R. and Sarah H. Hill of Soldotna, Alaska; Location: West of Sterling Highway in Soldotna

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 September 11, 2006 meeting.

A motion to grant the vacation as petitioned and adopting the eighteen findings passed by majority consent. (*Bryson, Yes; Carluccio, Yes; Clark, Absent; Foster, Yes; Gross, Yes; Heimbuch, No; Hohl, Yes; Hutchinson, Yes; Isham, Yes; Johnson, Yes; Martin, Yes; Petersen, Yes; Tauriainen, Yes*) This petition is being sent to you for your consideration and action.

The Assembly has 30 days from September 11, 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.

cc: petitioners w/minutes only

AGENDA ITEM F. PUBLIC HEARINGS

3. Vacate a portion of Cardwell Road and all of Puckerbrush Street 33-foot rights-of-way dedicated by Shannon Subdivision (Plat KN 80-72) and associated public utility easements, within Section 33, Township 4 North, Range 11 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough; KPB File 2006-209; Petitioners: Jack R. and Sarah H. Hill of Soldotna, Alaska; Location: West of Sterling Highway in Soldotna

Staff Report reviewed by Mary Toll

PC Meeting: 9/11/06

Purpose as stated in petition: No matching dedication possible due to lake.

Petitioners: Jack R. and Sarah H. Hill of Soldotna, Alaska.

Public notice appeared in the August 24 and August 31, 2006 issues of the Peninsula Clarion.

Eleven (11) certified mailings were sent to owners of property within 300 feet of the parcels; seven (7) of the receipts have been returned.

Twelve (12) regular mailings were sent to agencies and interested parties; six (6) notices were sent to KPB Departments. Notices were mailed to the Soldotna Community Library and Soldotna Post Office to be posted in public locations. The notice and maps were posted on the Borough web site and bulletin board.

Comments Received

Homer Electric Association reviewed the proposed vacation and has no comment.

State of Alaska Department of Transportation and Public Facilities (DOT) expressed concern that vacating the section line easement will eliminate public access to private property and the lake. DOT recommends denial of the vacation unless alternative access can be assured.

Staff discussion

The surveyor stated the owners do not want to vacate the section line easement. They only want to vacate the right-of-way. The section line easement will remain in place for public access.

Findings:

1. Sufficient rights-of-way exist to serve the surrounding properties.
2. Per the submittal, the rights-of-way proposed for vacation are not in use for access.
3. Per the submittal, the rights-of-way proposed for vacation have not been constructed.
4. The rights-of-way do not appear to be in use for utilities.
5. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
6. To date, one utility company has provided a letter of no comment.
7. Pucker Brush Street is a section line easement.
8. The surveyor stated the owners do not wish to vacate the section line easement.
9. The section line easement cannot be vacated without written approval from the State of Alaska.
10. The section line easement vacation would have to go through a separate process, with a separate plat.
11. The northern portion of Pucker Brush Street is within a lake.
12. Wet areas affect the eastern and northern portions of Pucker Brush Street.
13. Four lots adjoining and adjacent to the rights-of-way proposed for vacation are being replatted into one tract, which fronts Shannon Circle, a constructed right-of-way.
14. No surrounding properties will be denied access.
15. KPB 20.20.080 requires subdividers to demonstrate a right-of-way to be constructed to Borough standards.
16. Construction within a wet area would likely require permits from borough, state and/or federal agencies.
17. Approval of permits to construct in a wet area is not guaranteed.
18. If the vacations as petitioned are approved, the section line easement will remain in place for access and will be shown on the final plat.

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

1. Submittal of a final plat in accordance with Chapter 20 of the KPB Code within one year of vacation approval.

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

MOTION: Commissioner Johnson moved, seconded by Commissioner Tauriainen to accept and adopt Findings 1-18 and grant the vacation in accordance with staff recommendations.

Commissioner Heimbuch asked what was accomplished by vacating the right of way. Ms. Toll replied that vacating the right of way does a couple of things. It removes the 20-foot building setback that is associated with the dedication so that landowners have more room on their property that they can use. It also transfers the underlying ownership of that dedication back to the property owner with the easement lying on top. She reiterated that the owners couldn't do anything in the section line that would prevent people from using it such as installing gates or barriers so that it blocks public access. Ms. Toll stated they could do things that they couldn't do in a Borough right of way. They could plant a garden or build a footpath without going to the Borough Road Maintenance Department for a permit. She commented the vacation gives the landowners more usable land.

Commissioner Heimbuch asked if people were losing access to the lake or if a road could be built. Mr. Toll replied they are not losing access to the lake and a road could be installed if someone wanted to build it. Commissioner Heimbuch asked if a road could be built over a garden. Mr. Toll replied yes.

Chairman Bryson stated it appeared that the adjacent property owner owned the frontage to the lake and asked if they have commented on the vacation. Ms. Toll replied they have not commented but was sent certified notice of the vacation.

Commissioner Hohl asked if this pertained to the east and west or north and south section line easements. Ms. Toll replied it pertained to both. Commissioner Hohl asked if it was a section line easement. Ms. Toll replied, yes.

Commissioner Heimbuch expressed a problem and concern regarding blocking the access to the lake. Chairman Bryson stated it appeared that half of the right of way was dedicated which is being vacated. The other side is private property or has an underlying easement on it. Ms. Toll stated the plat that would replat this vacated right of way would show the section line easement, which would be a recorded plat.

Commissioner Peterson asked if this had anything to do with the building in the setback. Ms. Toll replied they have not been advised that there is a problem with the setback.

There being no further discussion or comment, Chairman Bryson called for a roll call vote.

VOTE: The motion passed by unanimous consent.

BRYSON YES	CARLUCCIO YES	CLARK ABSENT	FOSTER YES	GROSS YES	HEIMBUCH NO	HOHL YES
HUTCHINSON YES	ISHAM YES	JOHNSON YES	MARTIN YES	PETERSEN YES	TAURIAINEN YES	11 YES 1 NO 1 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS

4. Vacate a 50-foot radius half cul-de-sac temporary turn around, granted within Lot 6 Bluff Park No 4 (HM 85-120); carried forward within Lot 9, Bluff Park No 4 Harmon-Porter Addition (Plat HM 97-5), within Section 19, Township 6 South, Range 13 West, Seward Meridian, Alaska; City of Homer and within the Kenai Peninsula Borough; KPB File 2006-236; Petitioners: Paul R. and Betty Jo Porter of Beaver, Utah; Location: City of Homer; KPBPC Resolution 2006-50

Staff Report reviewed by Mary Toll

PC Meeting: 9/11/06

Purpose as stated in petition: The 1985 grant of the temporary cul-de-sac by Plat HM 85-120 was labeled to be automatically vacated upon extension of Waddell Street. Automatic vacations or self-vacating easement have been determined to leave a possibility of cloud on the title and are not permitted by the Borough for easements granted on plats. A resolution, adopted by the Borough Planning Commission, is required to vacate the public's interest in the temporary cul-de-sac. Waddell Street has been extended and serves 9 lots past this point. (**NOTE:** The Borough no longer accepts temporary cul-de-sac or turnaround easements on plats).

Petitioners: Paul R. and Betty Jo Porter of Beaver, Utah.

Public notice appeared in the August 31 and September 7, 2006 issues of the Homer News.

Seventeen (17) certified mailings were sent to owners of property within 300 feet of the parcels; two (2) of the receipts have been returned.

Seventeen (17) regular mailings were sent to agencies and interested parties; six (6) notices were sent to KPB Departments. Notices were mailed to the Homer Community Library and Homer Post Office to be posted in public locations. The notice and maps were posted on the Borough web site and bulletin board.

Statement(s) of non-objection

City of Homer Planning and Zoning

Findings:

1. Bluff Park No. 4 (HM 85-120) granted a 50-foot radius temporary cul-de-sac to be automatically vacated upon extension of Waddell Street.
2. Bluff Park No. 4 Harmon-Porter Add. (HM 97-5) extended Waddell Street and serves 9 lots past the temporary cul-de-sac.
3. The plat note on HM 85-120 clearly indicates the 50-foot radius cul-de-sac was to be a temporary, not a permanent, turn around.
4. Based on advice from the Legal Department, a public interest in the turnaround area may remain in place unless formally vacated through a vacation process.
5. Self-vacating temporary turnarounds are no longer accepted on subdivision plats.
6. Sufficient rights-of-way exist to serve the surrounding properties.
7. No surrounding properties will be denied access.
8. Per the submittal, alternative right-of-way has been dedicated and constructed for access to surrounding parcels.
9. The 50-foot radius temporary cul-de-sac does not appear to be in use for utilities.
10. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
11. City of Homer Planning and Zoning Department submitted a statement of non-objection to the proposed vacation.
12. If approved, the vacation will be accomplished by Planning Commission resolution.



**Kenai Peninsula Borough
Planning Department
144 North Binkley
Soldotna, Alaska 99669-7599
907-714-2200**

toll free within the Borough 1-800-478-4441, extension 2200

FAX 907-262-8618

email: planning@borough.kenai.ak.us

September 14, 2006

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
NOTICE OF DECISION**

MEETING OF SEPTEMBER 11, 2006

RE: Vacate a portion of Cardwell Road and all of Puckerbrush Street 33-foot rights-of-way dedicated by Shannon Subdivision (Plat KN 80-72) and associated public utility easements, within Section 33, Township 4 North, Range 11 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough; KPB File 2006-209; Petitioners: Jack R. and Sarah H. Hill of Soldotna, Alaska; Location: West of Sterling Highway in Soldotna

The Kenai Peninsula Borough Planning Commission approved the proposed vacation during their regularly scheduled meeting of September 11, 2006.

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 proposed vacation will be forwarded to the Borough Assembly. The Assembly shall have 30 calendar days from the date of approval in which to veto the Planning Commission decision. If the Planning Director receives no veto within the specified period, the Borough shall be considered to have given consent to the vacation.

Please contact the Borough Clerk's office (907-714-2160 or 1-800-478-4441 toll-free within the borough) to verify the date the subject vacation will be reviewed by the Assembly.

This notice and unapproved minutes of the subject portion of the meeting were sent September 14, 2006 to:

Segesser Surveys
30485 Rosland Street
Soldotna, AK 99669

Jack & Sarah Hill
PO Box 1540
Soldotna, AK 99669

AGENDA ITEM F. PUBLIC HEARINGS

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Staff discussion

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Findings:

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END OF STAFF REPORT



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

8/4/06

Kenai Peninsula Borough Planning Department

Vicinity Map





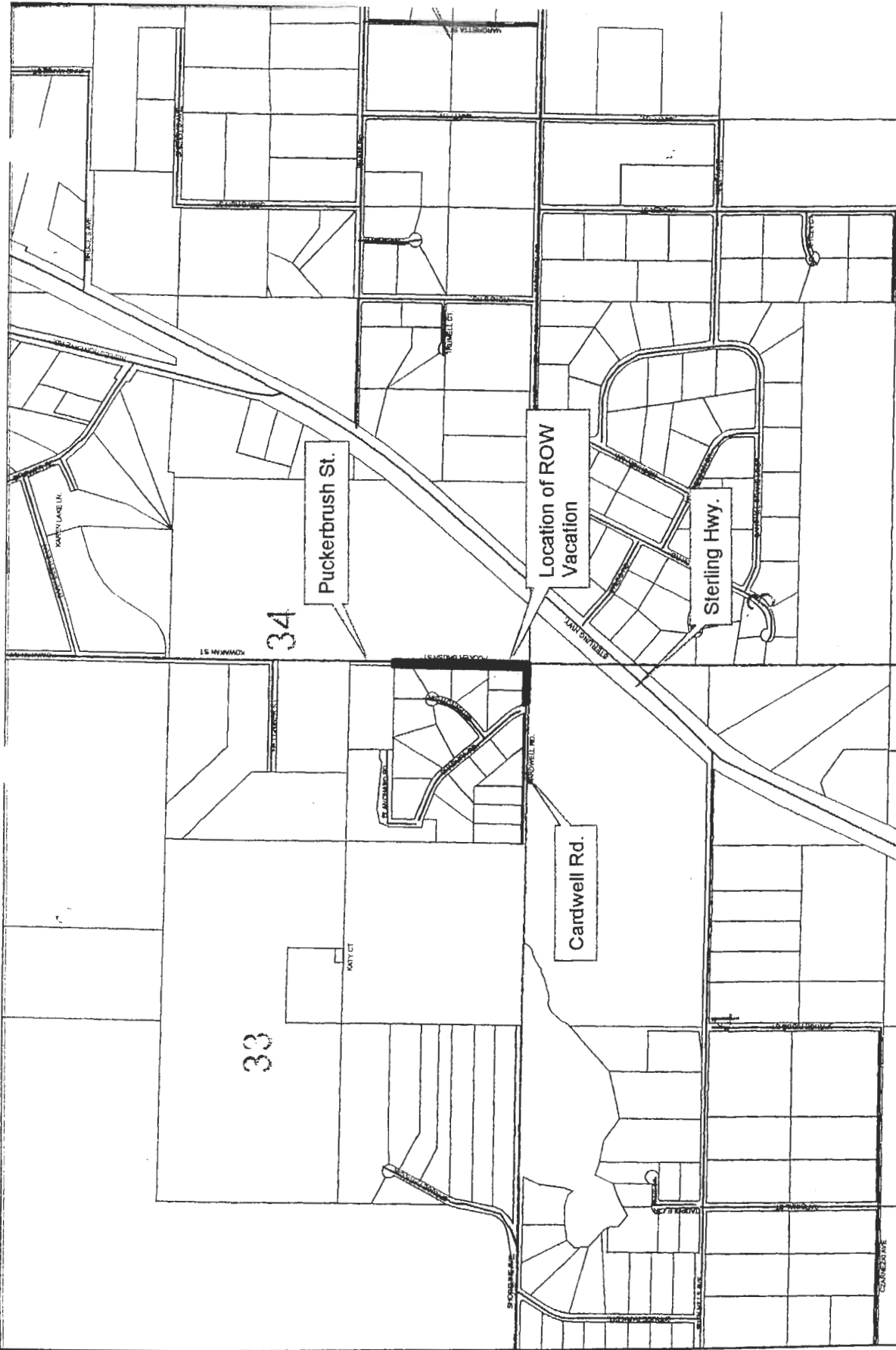
7/26/2006

0.2 Miles

0.2 0.1 0



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.



STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CENTRAL REGION - PLANNING

FRANK H. MURKOWSKI, GOVERNOR

4111 AVIATION AVENUE
P.O. BOX 196900
ANCHORAGE, ALASKA 99519-6900
(907) 269-0520 (FAX 269-0521)
(TTY 269-0473)

August 28, 2006

Sylvia Vinson
Planning Department
Kenai Peninsula Borough

AUG 29 2006
11:11 AM
RECEIVED

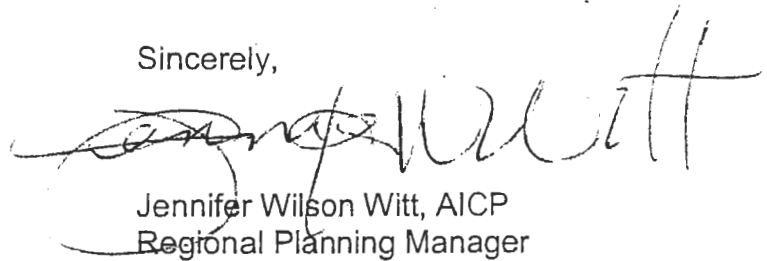
RE: Cardwell Road and Puckerbrush Street Vacation

Thank you for the opportunity to review the Notice of Public Hearing for the Cardwell road and all of Puckerbrush Street Vacation, a 33-foot right-of-way dedicated by Shannon Subdivision.

The Department is concerned that vacating this section line easement will eliminate public access to private property and the lake. The Department recommends denial of this vacation unless alternative access can be assured.

Thank you for the opportunity to comment.

Sincerely,



Jennifer Wilson Witt, AICP
Regional Planning Manager

TV/em

cc: Paula Brault, Right of Way Supervisor, Right of Way
Department of Natural Resources; Mining, Land and Water

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

PETITION TO VACATE

PUBLIC RIGHT-OF-WAY/SECTION LINE EASEMENT

PUBLIC HEARING REQUIRED

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 CARDWELL RD; dedicated by plat of SHANNON SUBDIVISION Subdivision, filed as Plat No. 80-72 in KENAI Recording District.
Are there associated utility easements to be vacated? Yes No
Are easements in use by any utility company; if so which? NO
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? Yes No
Is right-of-way used by vehicles/pedestrians/other? Yes No
Has section line easement been constructed? Yes No
Is section line easement being used? Yes No
Alternative right-of-way being provided? Yes No

RECEIVED

JUL 24 2006

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

The petitioner must provide reasonable justification for the vacation.

Reason for vacating NO MATCHING DEDICATION POSSIBLE DO TO LAKE

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
JOHN F. SEGESER as representative
30485 ROSLAND ST
SOLDOTNA, AK 99669
262 3909

Petitioners: Signature Name Address Owner of
SARAH H. HILL
P.O. Box 1540
SOLDOTNA AK 99669
TRC, Lots 6-10
JACK R. HILL SR
P.O. Box 1540
SOLDOTNA, AK 99669
TRC, LOTS 6-10