



KENAI PENINSULA BOROUGH

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

MEMORANDUM

JOHN J. WILLIAMS
MAYOR

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

FROM:  Max Best, Planning Director

DATE: October 11, 2006

SUBJECT: Vacate a 50-foot easement in favor of "Broccoli" along the south boundary of Tract C and Tract D as shown on Alder Slopes Subdivision (Plat HM 78-16); within Section 23, Township 5 South, Range 12 West, Seward Meridian, Alaska; within the Kenai Peninsula Borough; KPB File 2006-265; Location: East End Road in Homer; Kachemak Bay APC

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 October 9, 2006 meeting.

A motion to grant the vacation as petitioned and citing 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 October 9, 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

2. Vacate a 50-foot easement in favor of "Broccoli" along the south boundary of Tract C and Tract D as shown on Alder Slopes Subdivision (Plat HM 78-16); within Section 23, Township 5 South, Range 12 West, Seward Meridian, Alaska; within the Kenai Peninsula Borough; KPB File 2006-265; Location: East End Road in Homer; Kachemak Bay APC

Staff Report reviewed by Max Best

PC Meeting: 10/9/06

Purpose as stated in petition: We could find no record of this apparently personal easement on the recorders office website. Property that this easement may have been intended for has ROW frontage. No roads, trails, or utilities are within the 50 feet.

Petitioners: Kemp and Jo-Carole Absher of Anchorage, Alaska;

Public notice appeared in the September 28 and October 5, 2006 issues of the Homer News.

Eleven (11) certified mailings were sent to owners of property within 300 feet of the parcels; five (5) of the receipts have been returned.

Sixteen (16) regular mailings were sent to agencies and interested parties. Seven notices were mailed 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 or no comment

Homer Electric Association

Findings:

1. A 50-foot easement of record in favor of Broccoli lies along the southern boundary of Tract C and Tract D as shown on Alder Slopes Subdivision (Plat HM 78-16).
2. The easement is labeled 'of record'.
3. No other record source was found, other than the 1978 subdivision plat.
4. The easement does not appear to be appurtenant to any parcel.
5. The easement appears to be a private easement.
6. No landowners with the name of 'Broccoli' own property adjacent to or near this subdivision.
7. The properties that lie at each end of the 1978 easement are now served by dedicated rights-of-way.
8. Sufficient rights-of-way exist to serve surrounding properties.
9. No surrounding properties will be denied access.
10. Per the submittal, the easement proposed for vacation is not in use for access.
11. Per the submittal, the easement proposed for vacation has not been constructed.
12. The easement does not appear to be in use for utilities.
13. To date, one utility company has provided a letter of no comment.
14. No letters of objection have been received.

STAFF RECOMMENDATION: Accept and adopt Findings 1-8 and adopt KPBPC Resolution 2006-54, thereby approving the vacation as petitioned, subject to:

1. Filing the PC Resolution in the appropriate recording district with the applicant responsible for the recording fees.

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 Gross moved, seconded by Commissioner Hutchinson to approve the Kenai Peninsula Borough Planning Commission Resolution 2006-54 citing the 14 findings.

Findings:

1. A 50-foot easement of record in favor of Broccoli lies along the southern boundary of Tract C and Tract D as shown on Alder Slopes Subdivision (Plat HM 78-16).
2. The easement is labeled 'of record'.
3. No other record source was found, other than the 1978 subdivision plat.
4. The easement does not appear to be appurtenant to any parcel.
5. The easement appears to be a private easement.
6. No landowners with the name of 'Broccoli' own property adjacent to or near this subdivision.
7. The properties that lie at each end of the 1978 easement are now served by dedicated rights-of-way.
8. Sufficient rights-of-way exist to serve surrounding properties.
9. No surrounding properties will be denied access.
10. Per the submittal, the easement proposed for vacation is not in use for access.
11. Per the submittal, the easement proposed for vacation has not been constructed.
12. The easement does not appear to be in use for utilities.
13. To date, one utility company has provided a letter of no comment.
14. No letters of objection have been received.

VOTE: The motion passed by unanimous consent.

BRYSON YES	CARLUCCIO ABSENT	CLARK YES	FOSTER YES	GROSS YES	HEIMBUCH YES	HOHL ABSENT
HUTCHINSON YES	ISHAM YES	JOHNSON YES	MARTIN YES	PETERSEN ABSENT	TAURIAINEN YES	10 YES 3 ABSENT

AGENDA ITEM G. ANADROMOUS STREAM HABITAT PROTECTION (KPB 21.18)

1. A Conditional Use Permit Pursuant to KPB 21.18 for the development of property within the 50-foot Habitat Protection Area. This project is located on a slough of the Kenai River near the left bank at River Mile 15.1, located on Lot 45, River Quest Phase 1 Amended Subdivision, Section 19, T5N, R10W, S.M., AK; KPB Parcel 055-033-45; KPB PC Resolution 2006-56

Staff Report reviewed by John Mohorcich

PC MEETING: October 9, 2006

Applicant: Joseph & Billie Hardy, PO Box 3391, Soldotna, AK 99669

Property Owner: Same

Project Location: Section 19, T. 5 N., R. 10 W., S.M., AK.
Lot 45, River Quest Phase 1 Amended Subdivision
Kenai River Mile 15.1, left bank

Proposed Action: The proposal is to complete a work in progress 22-foot by 36-foot cabin with a 34-foot deck at least 8 feet back away from the river as authorized under the original Conditional Use Permit, Resolution 2004-19 Amended.

Background Information

This property was previously used as a seasonally recreation vehicle resort on the Kenai River, originally known as Porter's. In 2004 the Kenai Peninsula Borough approved a subdivision plat containing 25.678 acres creating 52 lots

AGENDA ITEM F. PUBLIC HEARINGS

2. Vacate a 50-foot easement in favor of "Broccoli" along the south boundary of Tract C and Tract D as shown on Alder Slopes Subdivision (Plat HM 78-16); within Section 23, Township 5 South, Range 12 West, Seward Meridian, Alaska; within the Kenai Peninsula Borough; KPB File 2006-265; Location: East End Road in Homer; Kachemak Bay APC

STAFF REPORT

PC Meeting: 10/9/06

Purpose as stated in petition: We could find no record of this apparently personal easement on the recorders office website. Property that this easement may have been intended for has ROW frontage. No roads, trails, or utilities are within the 50 feet.

Petitioners: Kemp and Jo-Carole Absher of Anchorage, Alaska;

Public notice appeared in the September 28 and October 5, 2006 issues of the Homer News.

Eleven (11) certified mailings were sent to owners of property within 300 feet of the parcels; five (5) of the receipts have been returned.

Sixteen (16) regular mailings were sent to agencies and interested parties. Seven notices were mailed 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 or no comment

Homer Electric Association

Findings:

1. A 50-foot easement of record in favor of Broccoli lies along the southern boundary of Tract C and Tract D as shown on Alder Slopes Subdivision (Plat HM 78-16).
2. The easement is labeled 'of record'.
3. No other record source was found, other than the 1978 subdivision plat.
4. The easement does not appear to be appurtenant to any parcel.
5. The easement appears to be a private easement.
6. No landowners with the name of 'Broccoli' own property adjacent to or near this subdivision.
7. The properties that lies at each end of the 1978 easement are now served by dedicated rights-of-way.
8. Sufficient rights-of-way exist to serve surrounding properties.
9. No surrounding properties will be denied access.
10. Per the submittal, the easement proposed for vacation is not in use for access.
11. Per the submittal, the easement proposed for vacation has not been constructed.
12. The easement does not appear to be in use for utilities.
13. To date, one utility company has provided a letter of no comment.
14. No letters of objection have been received.

STAFF RECOMMENDATION: Accept and adopt Findings 1-8 and adopt KPBPC Resolution 2006-54, thereby approving the vacation as petitioned, subject to:

1. Filing the PC Resolution in the appropriate recording district with the applicant

responsible for the recording fees.

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

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2006-54
HOMER RECORDING DISTRICT**

WHEREAS, Kemp and Jo-Carole Absher of Anchorage, Alaska, have petitioned for vacation of the "50-foot easement in favor of Broccoli" shown along the south boundary of Tracts C and D on Alder Slopes Subdivision (Plat HM 78-16); and

WHEREAS, KPB 20.28 provides for the vacation of public rights-of-way and other public areas; and

WHEREAS, it is unclear if any public interest was created when this easement was granted on a recorded plat; and

WHEREAS, it has been determined by the Planning Commission on October 9, 2006 that all requirements have been met; and

WHEREAS, the easement was granted by plat without the underlying transfer of ownership as in a platted dedication; and

WHEREAS, the vacation does not require replatting of any vacated area, and may be accomplished by a resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

Section 1: That 50-foot easement in favor of Broccoli along the south boundary of Tracts C and D as shown on Alder Slopes Subdivision (Plat HM 78-16) described above is hereby vacated.

Section 2: That this resolution is void if not recorded in the appropriate Recording District within sixty days of adoption.

Section 3. That this resolution becomes effective upon being properly recorded.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS ____ DAY OF _____, 2006.

Philip Bryson, Chairperson
Planning Commission

ATTEST:

Patricia Hartley
Administrative Assistant

Please return to:
Planning Department
Kenai Peninsula Borough
144 North Binkley Street
Soldotna, Alaska 99669-7599

ALDER SLOPES SUBDIVISION

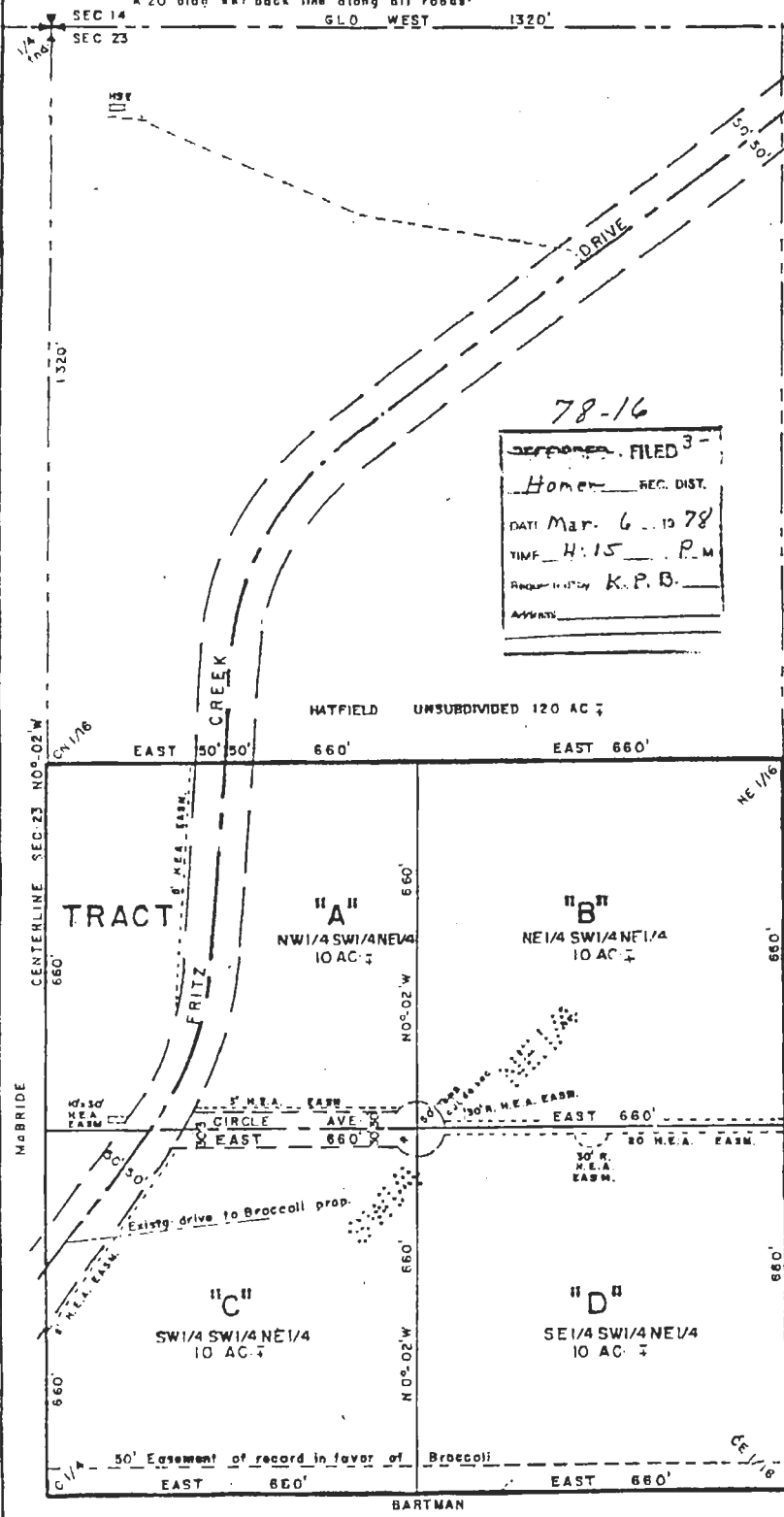
LOCATED IN SW1/4 NE1/4 SEC. 23, T5S R12W S-M; ALASKA

SCALE = 1" = 200' AREA = 40 AC ± APRIL 24, 1975

BY: VELVA HATFIELD STAR ROUTE "A", HOMER, ALASKA 99603

NOTE:

This plot represents a protracted subdivision of Sec 23, based on USGLO plat of May 29, 1919. No stakes were found or set except as shown. Area of tracts include roads. A 20' wide easement back line along all roads.



78-16

~~RECORDED~~ FILED 3-

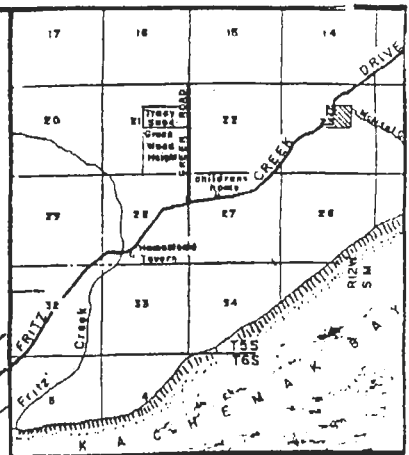
Homer REG. DIST.

DATE Mar. 6 1978

TIME 4:15 P.M.

RECORDED BY K.P.B.

APPROVED



VICINITY SCALE 1/4" = 125 M MAP

CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of the property shown and described hereon, and that we hereby adopt this plan of subdivision, and dedicate all streets to public use and to the use of public utilities.

Velva Hatfield
 Owner, VELVA HATFIELD/
 Star Route "A", Homer, Alaska 99603

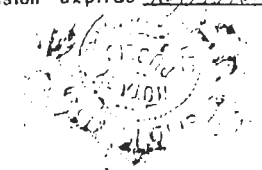
Owner

STATE OF ALASKA, THIRD JUDICIAL DISTRICT

Subscribed and sworn before me this 27 day of Feb. 1978.

Neil M. Deha
 NOTARY PUBLIC FOR ALASKA

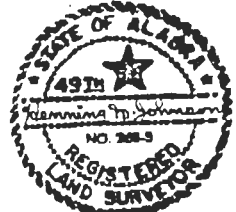
My commission expires May 14, 1981



KENAI PENINSULA BOROUGH

Approved May 5, 1975

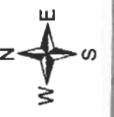
By: *Philip Waring*
 Mayor



CLAM GULCH, ALASKA 99568



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.

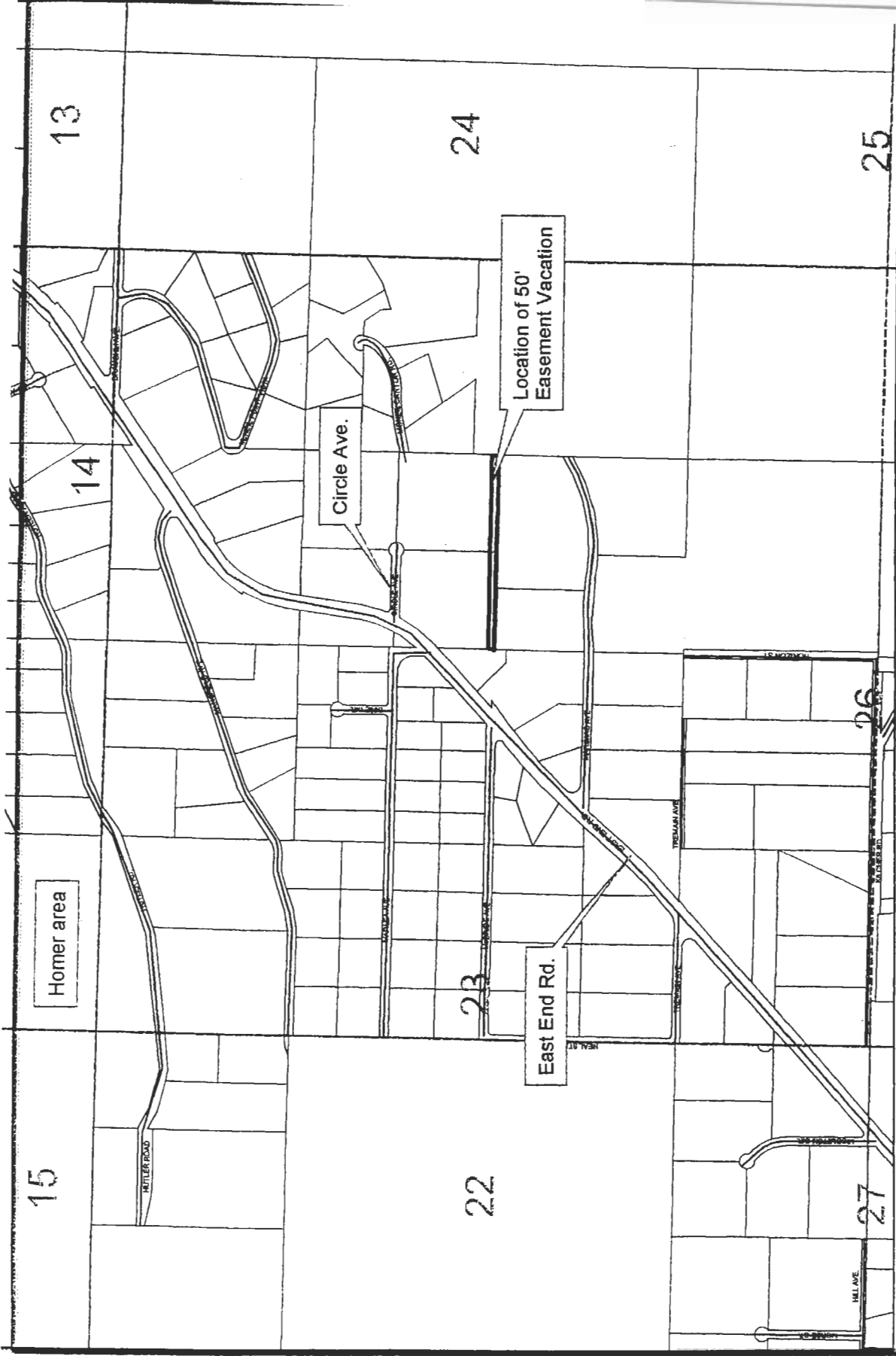


Kenai Peninsula Borough Planning Department

9/14/06

Vicinity Map





9/7/2006

325 650 975 1,300



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
144 North Binkley
Soldotna, Alaska 99669-7599
907-714-2200**

**toll free within the Borough 1-800-478-4441, ext. 2200
FAX 907-714-2378**

email: planning@borough.kenai.ak.us

October 12, 2006

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

MEETING OF OCTOBER 9, 2006

RE: Vacate a 50-foot easement in favor of "Broccoli" along the south boundary of Tract C and Tract D as shown on Alder Slopes Subdivision (Plat HM 78-16); within Section 23, Township 5 South, Range 12 West, Seward Meridian, Alaska; within the Kenai Peninsula Borough; KPB File 2006-265; Location: East End Road in Homer, Kachemak Bay APC

The Kenai Peninsula Borough Planning Commission approved the proposed vacation during their regularly scheduled meeting of October 9, 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 October 12, 2006 to:

Roger Imhoff
PO Box 2588
Homer, AK 99603

Kemp & Jo-Carole Absher
3410 Telstar Circle
Anchorage, AK 99517-1462

KENAI PENINSULA BOROUGH PLANNING COMMISSION
NOTICE OF PUBLIC HEARING

Public notice is hereby given that a petition has been received to vacate a 50-foot easement in the Homer area. Area under consideration is described as follows:

- A. Location and request: Vacate a 50-foot easement in favor of "Broccoli" along the south boundary of Tract C and Tract D as shown on Alder Slopes Subdivision (Plat HM 78-16); within Section 23, Township 5 South, Range 12 West, Seward Meridian, Alaska; within the Kenai Peninsula Borough. KPB File 2006-265
- B. Purpose as stated in petition: We could find no record of this apparently personal easement on the recorders office website. Property that this easement may have been intended for has ROW frontage. No roads, trails, or utilities are within the 50 feet.
- C. Petitioner(s): Kemp and Jo-Carole Absher of Anchorage, Alaska.

Public hearing will be held by the Kenai Peninsula Borough Planning Commission on **Monday, October 9, 2006** commencing at 7:30 p.m., or as soon thereafter as business permits. Meeting to be held in the Assembly Chambers of the Kenai Peninsula Borough, 144 N. Binkley Street, Soldotna, Alaska.

Anyone wishing to testify may come to the above meeting to give testimony; or may submit a written statement to the attention of Sylvia Vinson-Miller or Maria Sweppy, Kenai Peninsula Borough Planning Department - 144 N. Binkley Street - Soldotna, Alaska 99669. **Please provide written testimony to the Planning Department by Friday, October 6, 2006** [written comments may also be sent by Fax to 907-262-8618]

If the Planning Commission approves the vacation, the Assembly of the Kenai Peninsula Borough or the appropriate City Council has thirty days from that decision in which they may veto the Planning Commission approval. Appeals from denials of the Planning Commission must be taken within 30 days to the Superior Court at Kenai, Alaska pursuant to Part VI of the Alaska Rules of Appellate Procedure.

For additional information contact Sylvia Vinson-Miller or Maria Sweppy, Planning Department, 714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough).

Mary Toll
Platting Officer
mtoll@borough.kenai.ak.us
PUBLISH 2X (Thursdays, September 28 and October 5, 2006)

Roger W. Imhoff, RLS
PO Box 2588 * Homer Ak 99603
(907)235-7279 fax (907)235-5254
rogerimhoff@alaska.net

9-09-06

Mary Toll
KPB Planning Dept
144 N Binkley St
Soldotna Akk 99669

On behalf of the owners, Kemp and Jo-Carole Absher, we are requesting the KPB Planning Commission to vacate by resolution the 50 ft Easement in favor of "Broccoli" as shown on Plat No. 78-16 HRD.

We could find no record of this apparently personal easement on the Recorders Office website.

Property that this easement may have been intended for has ROW frontage.

No roads, trails, or utilities are within the 50 ft.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger W. Imhoff", with a long horizontal line extending to the right.