



City of Homer

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Memorandum

Agenda Changes/Supplemental Packet

TO: MAYOR CASTNER AND HOMER CITY COUNCIL
FROM: MELISSA JACOBSEN, MMC, CITY CLERK
DATE: SEPTEMBER 4, 2019
SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

PENDING BUSINESS

Vacation of a 10 foot wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition granted by AA Mattox Peggi's Addition (Plat HM 99-64) within Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-048V.

Informational items

- Email from AnnaLisa Cox dated September 3, 2019 with photos and KPB Code Excerpts Page 2
- Email from Tony Neal dated September 3, 2019 Page 13
- Letter to Attorney Molloy from City Attorney dated August 2, 2019 Page 15
- Easement Hearing Outline Agenda from City Attorney Wells Page 17

From: [AnnaLisa Cox](#)
To: [Melissa Jacobsen](#)
Subject: 4510 Heidi Ct
Date: Tuesday, September 03, 2019 8:36:15 AM
Attachments: [4510 Heidi Ct Drainage Pictures.pdf](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Melissa,

I've attached a PDF that contains pictures of Lot 24-A, AA Mattox Peggi's Addition and Nelson Ave Row.

I would like to request that the city council and city attorney have copies of 2 KPB code sections that I think will be relevant for this hearing.

A utility easement was filed and approved after they found that there was no Public Easement or Public Use on our property. The Deputy Borough Attorney reviewed and agreed that on the original Mattox 1958 Addition Plot map (1984) and current Lot 24-A, AA Mattox Peggi's Addition Owners Certificate (1999) have no public use attachments to them and the easements are "utility and drainage easements". KPB Code 20.60.160. - Easements.

The Easements code would be beneficial for them to have to review these points. Additionally I would like to request that they have a copy of the definitions printed, specifically the section that defines Easement and section B that defines a Utility Easement. KPB Code 20.90.010. - Definitions generally. Easement section B

Thank you for your assistance,

AnnaLisa

20.60.160. - Easements.

A. The plat shall clearly show the location, width, and use of all easements. The easements must be clearly labeled and identified and, if already of record, the recorded reference given. **If public easements are being granted by the plat, they shall be properly set out in the owner's certification of dedication.**

20.90.010. - Definitions generally.

"Easement" means the grant of a certain right to the use of the land by parties other than the owner. An easement is generally perpetual; if temporary, the condition for termination must be stated.

B. Utility Easement. **The right to install and maintain utilities normally associated with developed land such as electric, telephone, gas, drainage,** wastewater disposal, and water facilities. The

right of ingress and egress for conducting utility operations is implicit.



Lot 24-A, AA Mattox Peggi's Addition,
granted by AA Mattox Peggi's Addition (Plat HM 99-64)



End of Drain that runs through property ends in a 12 inch culvert



Lot 24-A, AA Mattox Peggi's Addition, granted by AA Mattox Peggi's Addition (Plat HM 99-64)





Water Drainage runs along the north side of Nelson Row skirting the edge of Quiet Creek Properties



20.60.160. - Easements.

- A. The plat shall clearly show the location, width, and use of all easements. The easements must be clearly labeled and identified and, if already of record, the recorded reference given. If public easements are being granted by the plat, they shall be properly set out in the owner's certification of dedication.
 - 1. Special purpose easements being granted by the plat shall be clearly defined for allowed use. Special purpose easements may require a signed acceptance statement on the plat.
- B. Private easements may not be granted on the plat.

([Ord. No. 2014-02, § 1, 2-11-14](#))

20.90.010. - Definitions generally.

In this title, unless otherwise provided, or the context otherwise requires, the following definitions shall apply.

"Access street": See definition of "Street" (A).

"Agenda" means the list of items to be considered by the planning commission or plat committee, in the order in which they are to be taken up, and includes the time and location of the meeting; the agenda also serves as public notice, published in local papers and online, and posted in public locations.

"Aliquot part" means a rectangular portion of a section created by midpoint protraction as defined by the "Manual of Surveying Instructions 1973," U.S. Department of the Interior, Bureau of Land Management.

"Alley": See definition of "Street" (B).

"Alternate onsite wastewater treatment and disposal" and "alternate soil absorption system" mean a method of soil absorption treatment and disposal other than a conventional soil absorption system, but exclude holding tanks or no-water carried disposal methods such as composting, incineration, or privies.

"Anadromous" means fish migrating up rivers and streams from the sea to breed in fresh water.

"Area suitable for conventional development" means ground not subject to slopes greater than 25 percent or cataloged as potential wetlands on the KPB Geographic Information System (GIS) wetland map.

"Arterial road": See definition of "Street" (C).

"ADEC" means Alaska Department of Environmental Conservation.

"ADEC approval" means Alaska Department of Environmental Conservation letter to construct or operate.

"Basis of Bearing" means the bearing in degrees, minutes and seconds, or equivalent, between two monuments of record on a common line, which serves as the reference bearing for all other lines on the survey.

"Block" means a piece or parcel of land entirely surrounded by public streets, streams, railroads, rights-of-way, parks, and other public dedications, or a combination thereof.

"Building setback" is the area of the lot where permanent structures are not allowed. The purpose of the setback is to promote safe public access, areas for emergency response, and traffic sight distance. (See "Permanent Structures" definition.)

"Collector wastewater" means that line used as a common receiver of wastewater from more than one service line.

"Collector system" means a wastewater collection system using methods of collection other than pipes.

"Community soil absorption system" means a soil absorption system serving more than one single-family or duplex residence.

"Contiguous" means parcels sharing a boundary or touching each other.

"Conventional soil absorption system" means a soil absorption system of typical trench, bed, or seepage pit design as described by On-Site Wastewater Treatment and Disposal Systems (Design Manual), EPA 625/1-80-012, October 1980, or A 1979 State of The Art Manual of On-Site Wastewater Management, 1979, The National Environmental Health Association, using natural subsurface undisturbed soils for the treatment media, or any soil absorption system with the same characteristics.

"Corner" unless otherwise defined, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

"Cul-de-sac": See definition of "Street" (D).

"Date of acceptance" means the date the planning director determines the submittal has met all the submittal requirements of the appropriate portions of Chapter 20 and is accepted for processing, scheduling and review.

"Date of distribution" or "distribution" means the date a notice, decision or other document is provided, manually or electronically, or is postmarked, to a party of record.

"Date of notice" means the date a certified mail notice is postmarked or a public notice is published.

"Date of submittal" means the date a preliminary or final plat, vacation, time extension, or other item requiring planning department or planning commission review and action is submitted for evaluation of completeness prior to acceptance for review.

"Disposal system" means a system, whose sole function is to provide a means of final disposal of domestic wastewater to the environment.

"Domestic wastewater" means waterborne human wastes or gray water derived mainly from dwellings, commercial buildings, institutions, or similar structures; domestic wastewater includes contents from individual removable containers used in dwellings to collect human waste.

"Domestic wastewater disposal system" means a device, structure, or formation used to dilute, dispose, treat, or discharge domestic wastewater, including injection wells, soil absorption systems, outfalls, percolating lagoons, and land irrigation systems.

"Duplex" means a single structure designed to house two family dwelling units.

"Easement" means the grant of a certain right to the use of the land by parties other than the owner. An easement is generally perpetual; if temporary, the condition for termination must be stated.

- A. Ingress and Egress Easement. The right to enter and leave or travel through property.
- B. Utility Easement. The right to install and maintain utilities normally associated with developed land such as electric, telephone, gas, drainage, wastewater disposal, and water facilities. The right of ingress and egress for conducting utility operations is implicit.
- C. Other Easements. Special purpose easements include, but are not limited to, slope, screening, pedestrian, and pipeline easements. The specific conditions of these easements can vary.

"Engineer" or "qualified engineer" means a licensed engineer registered to practice in Alaska under AS 08.48 and 12 AAC 36 in the branch of engineering defined by 12 AAC 36.990(a)(17) applicable to the project.

"Engineering plans" means a set of plans approved and sealed by a registered engineer.

"Exception" means in this title a waiver, reduction, or variance from a subdivision regulation.

"Flag lot" or "panhandle lot" means a lot with two discernible portions, one a building site portion not fronting on or abutting a street and the second portion abutting on the street and providing private access by a narrow strip of land to the building site portion.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height, usually 1 foot, at any point.

"Frontage" means that dimension of a lot which abuts upon a road right-of-way or other access.

"Frontage roads": See definition of "Street" (E).

"Groundwater" means the subsurface water permanently or seasonally occupying the zone in which the voids in the rock or soil are filled with water at a pressure greater than atmospheric.

"Holding tank" means of a watertight vessel or tank for the temporary storage of wastewater, urine, or excrement.

"Initial point of survey" means the point at which the closure of a boundary survey commences and ends. The initial point of survey must be labeled on the final plat and must agree with the closure computations submitted with the final plat.

"Land survey" means measuring the field location of corners that:

- A. Determine the boundary or boundaries common to two or more ownerships;
- B. Retrace or establish land boundaries;
- C. Retrace or establish boundary lines of public roads, streets, alleys, or trails; or
- D. Plat lands and subdivisions thereof.

"Legal access" means a contiguous section line easement, platted public right-of-way, or public access granted by recorded document and acceptable to the borough planning commission, all of which must be constructible to the standards in KPB Chapter 14.06 from a road right-of-way maintained by a municipality or State of Alaska DOTPF to a parcel.

"Lot" means the smallest portion of a subdivision, constituting a single parcel, division, or piece of land with sides connecting the front and rear boundary lines of the parcel intended for building development or conveyance as a single unit.

"Lot depth" means the average distance from street right-of-way to the rear lot line, which is the lot line opposite and most distant from said street right-of-way.

"Lot width" means the distance between lot lines connecting front and rear lot lines at each side of the lot, measured between the midpoints of such lines, unless otherwise specified.

"Mean high water line" means the intersection of the mean high water (the average height of all tidal high waters at a location for a period of 19 years) and the shore; may be labeled as MHWL.

"Meander line" means a line described by courses and distances, being a straight line between fixed points or monuments, or a series of connecting straight lines, used under this title for purposes of calculating areas, and not used for fixing boundaries.

"Monument" means a point marked on the surface of the earth for commencing or controlling a survey.

"Nominal five acres" means of, like, or relating to an aliquot five-acre part.

"Notice of decision" means written documentation of the decision of the planning commission, plat committee, or assembly.

"Onsite treatment system with marine outfall" means a treatment system located on each lot, or shared by adjacent lots, from which effluent is discharged through a single outfall extending to marine water.

"Ordinary high water line" means that line of nontidal waters on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas; may be labeled as OHWL.

"Parties of record" unless specified otherwise means those persons who have commented in a written and signed document or in person on an agenda item before the planning commission or plat committee who own property within the notification radii established in this chapter.

"Permanent structures" for purposes of the building setback shall mean anything of a permanent nature that requires footings, foundations or pilings. Improvements of a minor nature that do not interfere with the sight distance from the right-of-way are allowed. Examples of allowable improvements are well casings, low retaining walls, vent pipes, individual mailboxes, address sign posts and transparent fencing such as metal chain link. (See "Building setback" definition).

"Physical access" means access by the highest level of feasible, accepted transportation for the area is possible. Unless in a remote location not accessed by the road system, this is generally a minimum of 2-wheel drive motor vehicle access.

"Planning director" means the principal executive officer of the department of planning, or designee, as described in KPB 2.36.010.

"Planning commission" or "commission" means the Kenai Peninsula Borough planning commission as established in KPB Chapter 2.40 and unless otherwise stated shall also mean plat committee as established in KPB 2.40.080.

"Plat" means a map or dedicated representation of a tract or parcels of land showing the subdivision of such land into lots, blocks and streets, or other divisions, and other information in compliance with the requirements of all applicable sections of this title and of local ordinances, and may include the terms "replat" or "final plat."

"Platting authority" means the Kenai Peninsula Borough, the planning director, planning commission or plat committee as appropriate to the context in which the term is used.

"Public water system" means a Class A or B system approved by the State of Alaska Department of Environmental Conservation.

"Registered land surveyor" means a professional land surveyor registered to practice in Alaska under AS Chapter 08.48.

"Right-of-way dedication" means transfer of the fee simple underlying ownership of a right-of-way to the state, borough, or a municipality.

"Sealed" means prepared by an engineer or registered land surveyor, or a person under the engineer's or surveyor's direct supervision, and bearing the signature and seal of that engineer or surveyor as required by AS 08.48.221 and 12 AAC 36.185. The particular sealing requirement in this chapter is covered by one or more seals and signatures (whichever applies) of a registered engineer or registered land surveyor, appearing on the plans, drawings, reports, or other documents.

"Soil absorption system" means a surface or subsurface system using soil for the treatment and disposal of effluent from a domestic wastewater treatment works; "soil absorption system" includes a filtering field, leaching field, seepage bed, or seepage pit, but does not include a cesspool.

"Street" is a general term used to describe a right-of-way serving as a means of vehicular and pedestrian travel, also furnishing spaces for public utilities, and vegetation; it includes avenues, boulevards, roads, lanes, and other ways. Streets are classified as follows:

- A. "Access streets" provide direct access to business, commercial, industrial, and residential areas.
- B. "Alley" generally means a narrow street or thoroughfare through the middle of a block giving access to the rear of lots or buildings; allowed only under city codes.

- C. "Arterial road" means a road intended to carry traffic from local and subdivision roads to major highways. May also be called a "collector road."
- D. "Cul-de-sac streets" serve no through traffic and are closed permanently at one end with a vehicular turnaround area.
- E. "Frontage roads" parallel to and abutting an arterial street provide access to abutting land.

"Subdivider" means any person, group, corporation, or other entity acting as a unit, or any agent thereof, dividing or proposing to divide lands so as to constitute a subdivision as defined herein.

"Subdivision" means the division of a tract or parcel of land into two or more lots, or other divisions for the purpose of sale or building development, and includes resubdivision and relates to the process of subdividing or to the land or areas subdivided. As used in this Chapter, it also includes the elimination of lot lines.

"Surveyor" means any person licensed by the State of Alaska to practice land surveying.

"Vacation" means the process in which the right of public use or right of use of a dedicated street, right-of-way, easement, or other public area is terminated.

"Wastewater" means water that has been used, as for washing, flushing or in a manufacturing process, and so contains waste products.

"Watercourse" means a running stream of water fed from permanent or periodical natural sources, such as rivers, creeks, glaciers and rivulets which flow in a particular direction in a defined channel, having a bed and banks or sides, and usually discharging itself into another stream or body of water. It must be more than mere surface drainage.

"Waterbody" means any permanent body of water, including any stream, creek, canal, river, lake or bay, or any other body of water, natural or artificial.

([Ord. No. 2014-02, § 1, 2-11-14](#))

From: tonyneal@popsiefishco.com
To: [Katie Koester](#); [Department Clerk](#)
Cc: ["Susannah Webster"](#)
Subject: letter to City Council for meeting Wednesday 04Sep
Date: Tuesday, September 03, 2019 9:51:18 PM
Attachments: [image003.png](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello City Council, greetings from Minneapolis. I couldn't attend your quick reschedule. This whole thing started because there is a ragged non-permitted ditch down the center of Nelson and the City is promoting vacating the drainage easement that we are a beneficiary of without providing for a legal alternative, as required by the law. All we wanted was to be able to build an access on Nelson. The easy solution all along is to have the petitioner provide alternate legal drainage in exchange for the vacation.

For reasons unknown to us, the City promoted the vacation without requiring any alternative, and promoted leaving the ragged non-permitted ditch in place, thus denying the Public and Echo Trading Company their rightful access on Nelson.

I have been saying all along, there was no historic ditch on Nelson. I said the drainage easement was created by the Homer City Council and Public Works in 1999 and at that time, there was no ditch on Nelson. For the Council meeting on 26Aug, the City Manager diminished my credibility by telling you that the City has a 80's aerial photo showing the ditch on Nelson, directly contradicting my testimony. I asked City to show us that map, and made a FOIA request that was ignored.

There is no aerial map from the 80's showing that ditch, just as there are no measurements that show Nelson Avenue can be accessed as intended. City of Homer slandered Echo Trading Company's opposition to the vacation. The "facts" presented by the City to Borough and Council to encourage vacation are false.

For those of us who lived here in the 1980's and worked in the business, and knew Dayton Childs and Dennis Hanoski, who developed the A A Mattox including the drainage easement, and who know Bob Barnett, who logged off his lower property, we know there was a logging trail down the old Nelson to Kalman and there was no ditch obviously. The Borough archives old aerial photos. We have 1984 and 1992 aerial photos, they show the logging trail and no ditch.

Susannah Webster, Echo Trading Company Business Manager, will attend and if you permit her, will show you copies of the photos. If Homer still contends there are photos showing the ditch, bring them out, let's have battle of the photos. But we are presenting

public documents that plainly show logging trails, not any ditch.

It's time for Homer to step up and do what's right. Thank you,

Tony Neal

907-299-2351

www.PopsieFishCo.com





Birch Horton Bittner & Cherot

a professional corporation

Holly C. Wells

Respond to Anchorage Office
T 907.263.7247 • F 907.276.3680
hwells@bhb.com

August 2, 2019

Robert Molloy
Molloy Schmidt LLC
110 South Willow Street, Suite 101
Kenai, Alaska 99611

RE: *Request for Veto of the Kenai Peninsula Borough's Approval of the vacation of a 10 ft. wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition (Plat HM 99-64); within Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough KPB File 2019-048V. Request for Homer City Council Veto.*

Dear Mr. Molloy:

Thank you for your letter received July 17, 2019, regarding the Kenai Peninsula Borough Planning Commission's June 24, 2019 approval of the easement vacation application referenced above. Shortly after receiving your correspondence, and in light of the timing of the request, the City Manager requested legal review of your request to determine if there was a way to present your request to Council despite the time constraints imposed by the standard Borough vacation review process.

Generally, the City limits its involvement in the Borough's vacation process to consideration and recommendations by the Homer Advisory Planning Commission. However, when and if an interested person, a Borough representative or the City Planner or Public Works Director specifically requests Council's opinion on a Borough vacation, the administration ensures that the request is presented to Council along with the Notice of Decision issued by the Borough Planning Commission and, if requested, a copy of the application itself. Additionally, the requesting person may make comments and requests verbally to Council during public comment.

Unfortunately, in light of City responsibilities and obligations in practice and as a matter of disclosure and transparency laws, the City needs to receive requests for Council consideration of a Borough vacation within 10 business days after the Borough issues its approval. This provides the City itself approximately 10 business days to (1) seek input from the Public Works Director and City Planner and alert them to the request and its inclusion on the next Council meeting agenda; (2) afford the public, the requesting party, and the applicant notice of the topic and an opportunity to comment on it; and (3) prepare and submit packet materials to the Clerk, if needed.

While the administration and Council did not have sufficient time to consider your request before the end of the 30-day period imposed by Borough Code, we did consult with the Borough regarding the process and any remaining options available to you. In response, the Borough

August 2, 2019

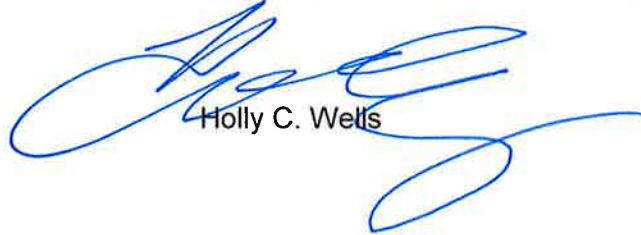
Page 2 of 2

informed the City Planner that your client's protest is being brought before the Borough Assembly. Although we are unsure of the Borough's process regarding protest before the Assembly, the City Manager has transferred your request to the Clerk for inclusion on the agenda for the next regularly scheduled Council meeting, which is on August 12, 2019. While the City cannot guarantee that Council will take action on the vacation or that the Borough will consider Council comments at this late date, this approach will ensure that your client's request is given consideration to the greatest extent possible given the time constraints.

If you have any questions regarding this process, please do not hesitate to contact me.

Sincerely,

BIRCH HORTON BITTNER & CHEROT



Holly C. Wells

Easement Hearing Agenda

Homer City Hall
491 East Pioneer Ave.
Homer, AK 99603
(907)235-8121

September 4, 2019

5:30 PM

A hearing before the Homer City Council on the Petition to the Kenai Peninsula Borough Planning Director for Vacation of a Drainage Easement at 4510 Heidi Court is scheduled for September 4, 2019 at 5:30pm at Homer City Hall. While City Council has the authority to conduct the scheduled hearing in any manner or order that best serves Council's role in the vacation process, the following agenda is intended to provide the parties with the hearing process that will more likely than not be used by Council.

A. MAYOR INTRODUCTION AND PROCEDURAL DETERMINATIONS BY COUNCIL

- Council will introduce the veto power granted Council and the scope of Council's role in the vacation process.
- Mayor will lead Council through the establishment of basic procedural standards such as the standard of review Council intends to apply and Council's consideration, or lack thereof of materials and/or evidence presented at the hearing.

B. STAFF OVERVIEW - EXPLANATION OF BOROUGH PROCEEDINGS (5 Minutes)

- Council will have an opportunity to ask Staff questions after its overview.

C. PARTY ORAL PRESENTATIONS (15 Minutes Each)

- Parties of record in Borough vacation proceedings will have the opportunity to reserve time for rebuttal.
- Council will have an opportunity to ask questions of parties.

D. INTERESTED PERSONS (3 Minutes Each)

- Any person interested in addressing Council on this matter will have 3 minutes to do so.

E. COUNCIL MEMBERS' FINAL QUESTIONS AND DELIBERATIONS

- Council may deliberate in public or private.
- Council may ask additional questions of any and all attendees at the hearing.

F. COUNCIL ORDER

- Council will issue an order vetoing or not vetoing the Borough's consent to the vacation.
- Council will announce its verbal order at the end of the hearing and will circulate a written order to the Borough and the parties no later than September 11, 2019.