

Received
City Clerk's Office

AUG 21 2019

City of Homer
Alaska

Echo Trading Company LLC

PO Box 3368

Homer, AK 99603

(907)-299-2351

tonyneal@popsiefishco.com

20Aug2019

Homer City Council

Re: Memorandum 19-0xx from City Clerk Re: Kenai Peninsula Borough Approval of the vacation of a 10 ft. wide drainage easement on Lot 24-A, AA Mattox Pegg'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.

I am here to ask you to veto the planning commission decision approving the petition to vacate this drainage easement.

Vacating this drainage easement has no public benefit. It is harmful to the Public, and to the neighbors, including Echo Trading Company as an adjacent uplands owner benefited by this drainage easement, and to the integrity of The City of Homer.. It contradicts numerous Homer City codes.

The planning commission did not consider the need to replace the vacated drainage easement with an alternative drainage easement when approving vacation of the existing, platted drainage easement. The planning commission may require easements it determines necessary for the benefit of the public, including drainage easements for ditching or protection of a drainage. See, KPB 20.30.060.A. But this issue was not considered by the planning commission.

If the Homer City Council vetoes the decision to vacate this drainage easement, the petitioner could then reapply and include an alternative drainage easement, with proper location, permitting, and construction that is approved by the City according to City rules, to replace the drainage easement to be vacated.

So I am asking you to veto this vacation to allow petitioners and the land owners the opportunity to negotiate an agreement for an alternative drainage easement to be constructed according to the City Code and laws in replacement of the drainage easement to be vacated, an alternative drainage easement we can all agree on.

History

Delineated official Wetlands along the slope above drained down into a creek. In 1984 the A A Mattox subdivision was approved and the drainage and the creek were protected by a drainage easement on that Plat. Please see this in the packet from the Borough.

In 1999 Petitioners, Pattons, owned lots 24 and 25 A A Mattox and applied for a replat to combine these lots for the purpose of enhancing their land value and expanding their house. This became an involved, contested process, please also review the Borough's packet and see the minutes.

Please note the important detail that the Homer City Council agreed to the Pattons' plat only on the condition that Pattons follow the recommendation of Homer Public Works that a 10' drainage easement be platted to protect the drainage. The minutes state that Petitioners volunteered this drainage easement.

This drainage was described in the minutes to include a 2' wide stream. No place is any alternate drainage on Nelson Avenue described. In fact, at this time Nelson Avenue was a dry undisturbed access street. There was no diversion of drainage on to Nelson Avenue.

This is the drainage easement Pattons now seek to vacate, and we are asking you to veto that vacation.

Some time after that plat was approved, the wetlands and creek were dammed along the Pattons' property line, and a ragged ditch was cut down the middle of the Nelson right-of-way, making Nelson unusable for the required public access. The creek was diverted from its natural course in the drainage easement, and on to Nelson Avenue, thus drying up the easement as it crossed Pattons property but making Nelson unusable as the public access it was created for, and making a quagmire on Kalman Drive.

Homer Code 11.08.050 States that a permit shall be issued by the City for work on the right-of way "for any purpose"... No such permit exists for this work on the right-of-way, The damming of Wetlands and the ditch on Nelson was done in violation of 11.08.050.

The Pattons then built an addition to their house that some say is actually on the drainage easement.

When Echo Trading Company LLC applied to replace the original Quiet Creek Park plat with a new one, there was a great deal of Public Input on drainage, and the Kenai Borough only conditionally approved the plat and required us to bring our engineered drainage plan back to them so that there was additional oversight that the drainage was properly designed.

On June 4, 2018, Peggi Patton wrote the Borough objecting to our drainage plan. Her point was that our drainage plans interfered with her property and the drainage ditch now on Nelson Avenue. She tells the Borough that she, herself, caused the drainage to be dug on Nelson. Our surveyor objected to Borough that the letter was rude and self serving. There is no record that it was taken seriously by the Borough, but... it does exist and was written by Peggi Patton on June 4, 2018. See attached Patton letter and its attachments.

Early 2019 Peggi Patton submitted a request to the Borough on their form "Utility Easement Vacation" to vacate the drainage easement. The form she used was for Utility Easements, and vacation of Utility Easements follows different and more relaxed rules for vacation than does drainage easement. In error, the borough administered this drainage easement vacation petition as a utility easement.

In error, the Borough sent the vacation to the Homer Advisory Planning Commission as a utility easement and it was approved as a consent item. There was no notice to adjacent land owners and no notice of public hearing. These are legal requirements for vacation of drainage easements but this was not done.

I was working overseas at the time and had no idea this was being considered and received no notice.

Drainage easement vacations require public hearing and direct notice..

The Borough planning staff relied on the Patton petition, see the minutes attached.

Attachments:

1. Quiet Creek Park Presentation Plat attached, 1 page. Please see the location of Wetlands and creek that drain down to Patton property and the drainage easement.
2. A A Mattox 1984 Plat, 1 page, see drainage easement.
3. A A Mattox Peggi's Addition plat, 1 page. This is the drainage easement now being vacated.

4. 3 pages of minutes from 1999 Homer City Council meeting approving the Peggi's Addition plat showing 1) recognizing a 2' water flow, 2) City of Homer Public Works understanding that a 10' Drainage Easement will be dedicated, and 3) Staff recommendations that a 10' drainage easement is granted.
5. 1 page aerial photo from Borough showing the easement and relation to the house Pattons built on the property after the Wetlands were dammed and the water was ditched down the middle of Nelson Ave.
6. 4 page letter to Borough dated June 4, 2018 from Peggi Patton in which she complains about the drainage easement and admits contracting the drainage ditch on Nelson Ave.
7. Vacate Utility Easement form, 2 pages, as submitted by Peggi Patton and approved by the Borough and Homer Planning Commission. This is a Utility easement form that plainly says "no Public Hearing Required", but the easement is in truth a drainage easement and Public Hearings are required by law. See the 3 comments on page 2 that conflict with the evidence.
8. 1 page communication to Jordan Rief at Borough in which Peggi Patton incorrectly states "we did not create the drainage on the Nelson Ave. ROW".

Analysis

The June, 2018 letter from Peggi Patton to Borough to object to Quiet Creek Park was a contemporaneous document that can be taken as valuable evidence. This letter is in the official records of the Borough but it was never considered in this vacation application. Obviously, Peggi Patton would hope her letter never came out as she now applied for this vacation.

The June 4, 2018 Peggi Patton letter to the Borough contradicts her 2019 petition to vacate the drainage easement.

The June 4, 2018 letter that I am providing is new evidence to this vacation application, never considered to this point.

Peggi Patton said in the 2019 vacation petition ... "that the drainage easement was never used since 1984" ... that is directly contradicted by the minutes of 1999 referring to 2' stream and HCC requirement for a drainage easement.

Peggi Patton again directly contradicts herself when she wrote "the drainage has affected her property for 22 years" in her 2018 letter but wrote "the drainage easement was never used since 1984" in the 2019 petition.

Please refer to page 94 of the Borough minutes and the reply Peggi sent to Borough in support of her petition:

Dear Jordan Mr Neal is incorrect. The drainage easement on our property has not been used for above property drainage. We did not create the drainage on the Nelson ave ROW I encourage the borough to speak with Kerry Meyer at the City of homer. Sent from my iPhone.

In the June, 2018 letter Peggi Patton tells the Borough she contracted digging the ditch on Nelson and included the invoice from the contractor, but in 2019 to support the vacation she tells the Borough “we did not create the drainage on Nelson Avenue”.

Peggi Patton tells the Borough more than once that she had “City approval”. There is not one record of any permit for work on the right-of-way. “City Approval” simply cannot exist without the legally required Permit as required by 11.08 and plat approval required by Chapter 21:

11.08.050 Permit – Application.

Any owner or user or the agent of the owner or user of property abutting City roads, streets, or alleys, before beginning any construction, shall make application for a permit from the City for construction within any dedicated right-of-way for any purpose. All applications shall be submitted to the City Planner who shall transmit the application to the Director of Public Works for approval. The following must accompany applications:

21.14.050 Site development standards.

All [development](#) in the Urban Residential District shall comply with the level one [site](#) development standards contained in HCC [21.50.020](#). [Ord. [08-29](#), 2008].

21.50.020 Site development standards – Level one.

This section establishes level one [site](#) development standards.

b. Drainage. All [development activity](#) on lands shall conform to the following:

1. Development shall provide a drainage system that is designed to deposit all runoff into either an engineered drainage system or into a natural drainage.

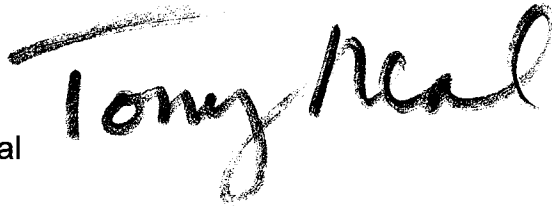
Conclusion and Request

The Borough decision to approve the vacation of this drainage easement without requiring an alternative drainage easement harms Echo Trading Company LLC and its adjacent uplands properties benefited by this drainage easement. Our lots 35 and 34 need this public access for driveways.

So, I conclude by saying, again, that this drainage easement vacation was not legally obtained, the Wetlands dam and ditch on Nelson Ave. is not conforming to City Standards and is not legally permitted, and that this vacation is harmful to the Public and to Echo Trading as an adjacent uplands owner and its properties benefited by this drainage easement. .. Homer City Council has the opportunity to rectify that and protect the Public Interest by denying approval of it.

Legally viable alternatives are available.
Thank you.

Echo Trading Company LLC by Tony Neal

A handwritten signature in black ink that reads "Tony Neal". The signature is written in a cursive style with a prominent horizontal stroke above the first few letters.

1.

PRESENTATION PLAT

PLAT APPROVAL
 THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF KENAI PENINSULA BOROUGH

BY: _____
 AUTHORIZED OFFICIAL

U.S.C.S. D.M.G. SECTION (C-4 & C-5)
 SCALE 1" = 1 MILE

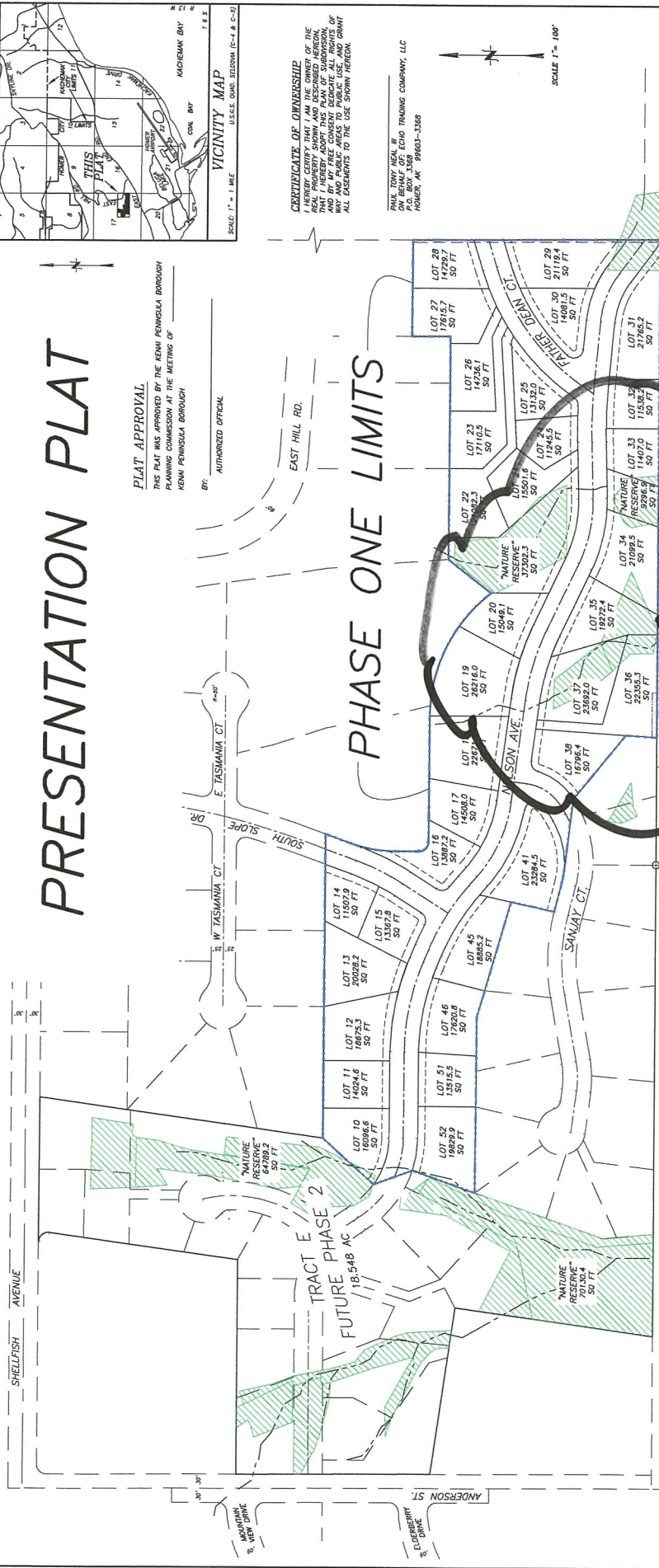
VICINITY MAP

U.S.C.S. D.M.G. SECTION (C-4 & C-5)
 SCALE 1" = 1 MILE

CERTIFICATE OF OWNERSHIP
 OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREIN, AND BY THE INSTRUMENTS REFERENCE TO THE SUBDIVISION MAP AND PUBLIC RECORDS TO THE USE SHOWN HEREON. AND GRANT ALL EGRESS TO THE USE SHOWN HEREON.

PAUL TONY NEAL III
 100 E. 1ST AVE. SUITE 200
 HOMER, AK 99603-3368

SCALE 1" = 100'



CURVE TABLE

LINE	BEARING	DISTANCE
L1	S 53°12'48" E	79.23
L2	S 89°10'18" E	118.67
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NOTARY'S ACKNOWLEDGMENT

I, _____, Notary Public for Alaska, do hereby certify that the foregoing is a true and correct copy of the original instrument as the same is on file in my office.

DATE: _____

MY COMMISSION EXPIRES: _____

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WASTEWATER DISPOSAL

PLANS FOR THE WASTEWATER DISPOSAL THAT MEET REGULATORY REQUIREMENTS ARE ON FILE AT THE DEPT. OF ENVIRONMENTAL CONSERVATION.

JOHN BISHOP, CE-10889 DATE: _____

NOTES:

- BASE OF RECORD FOR THIS SURVEY IS BETWEEN THE C-1/4, SECTION 17 AND THE C5 1/4 SECTION 17 AS SHOWN ON RECORD PLAT #77-61 W/30' N 0°10'55" W 90'.
- THE FRONT 15 FEET ALONG THE RIGHTS-OF-WAY AN ADDITIONAL 5 FEET ADJACENT TO SIDE LOT LINES (UNLESS NOTED OTHERWISE) IS A UTILITY EASEMENT. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED WITHIN AN EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
- THESE LOTS WILL BE SERVED BY CITY OF HOMER WATER AND SEWER.
- THE USE OF THE PLAC ON LOT 64 IS LIMITED TO UNDERGROUND UTILITY SERVICES TO LOT 64. DEVELOPMENT OR CONSTRUCTION ACTIVITY TO OBTAIN THE MOST CURRENT METEASUREMENTS (IF ANY).
- PROPERTY OWNERS SHOULD CONTACT THE ARMY CORPS OF ENGINEERS PRIOR TO ANY ON-SITE DEVELOPMENT OR CONSTRUCTION ACTIVITY TO OBTAIN THE MOST CURRENT METEASUREMENTS (IF ANY).
- THE PLAT MAPS AND SUBDIVISION MAPS ARE SUBJECT TO CITY OF HOMER ZONING REGULATIONS, REFER TO THE PLAT MAPS AND SUBDIVISION MAPS FOR ZONING INFORMATION AND RESTRICTIONS.
- CUL-DE-SACS ARE 50 FT RADIUS. ALL CURVE RETURNS ARE 20 FT RADIUS.
- DRAINAGE SUBJECT TO PREVIOUS SEASONAL ANNOTATIONS. UPRILL DEVELOPMENT MAY CHANGE DRAINAGE PATTERNS AT ANY TIME.
- ALL WASTEWATER DISPOSAL SYSTEMS SHALL COMPLY WITH EXISTING APPLICABLE LAWS AT THE TIME OF CONSTRUCTION.
- SET A SELF-IDENTIFYING 2" ALUMINUM CAP AT ALL LOT CORNERS AND ROW POINTS OF CURVATURE FOR THIS SURVEY (UNLESS OTHERWISE NOTED).

NOTES: (CONT.)

- EXCEPTIONS WERE GRANTED TO KPB 20.20.03 (PROPOSED) AND 20.20.120 (STREET CURVE REQUIREMENTS) BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF MARCH 10, 2014.
- THERE IS A 15' WIDE NATURAL GAS EASEMENT CENTERED ON THE NATURAL GAS PIPELINES INSTALLED UNDER, OVER, UPON AND THROUGH THE PLAT MAPS AND SUBDIVISION MAPS. REFER TO THE PLAT MAPS AND SUBDIVISION MAPS FOR EASEMENT INFORMATION.
- THERE IS A GENERAL EASEMENT GRANTED TO HOMER ELECTRIC CORPORATION, INC. THAT AFFECTS THESE LOTS RECORDED BK 318 PG 633.
- THERE IS A 30' WIDE BANKS EASEMENT CENTERED ALONG THE EXISTING CREEKS DEPICTED ON THIS PLAT.

HOMER RECORDING DISTRICT KPB FILE NO. 2014-016

BARNETT'S SOUTH SLOPE SUB. QUIET CREEK PARK UNIT 2

BEING A SUBDIVISION OF THE UNDEVELOPED REMAINDER OF BARNETT'S SOUTH SLOPE SUBDIVISION QUIET CREEK PARK UNIT 1 LOCATED WITHIN THE SEC. 17, T. 6 S., R. 13 W., SEWARD MERIDIAN, CITY OF HOMER, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, ALASKA

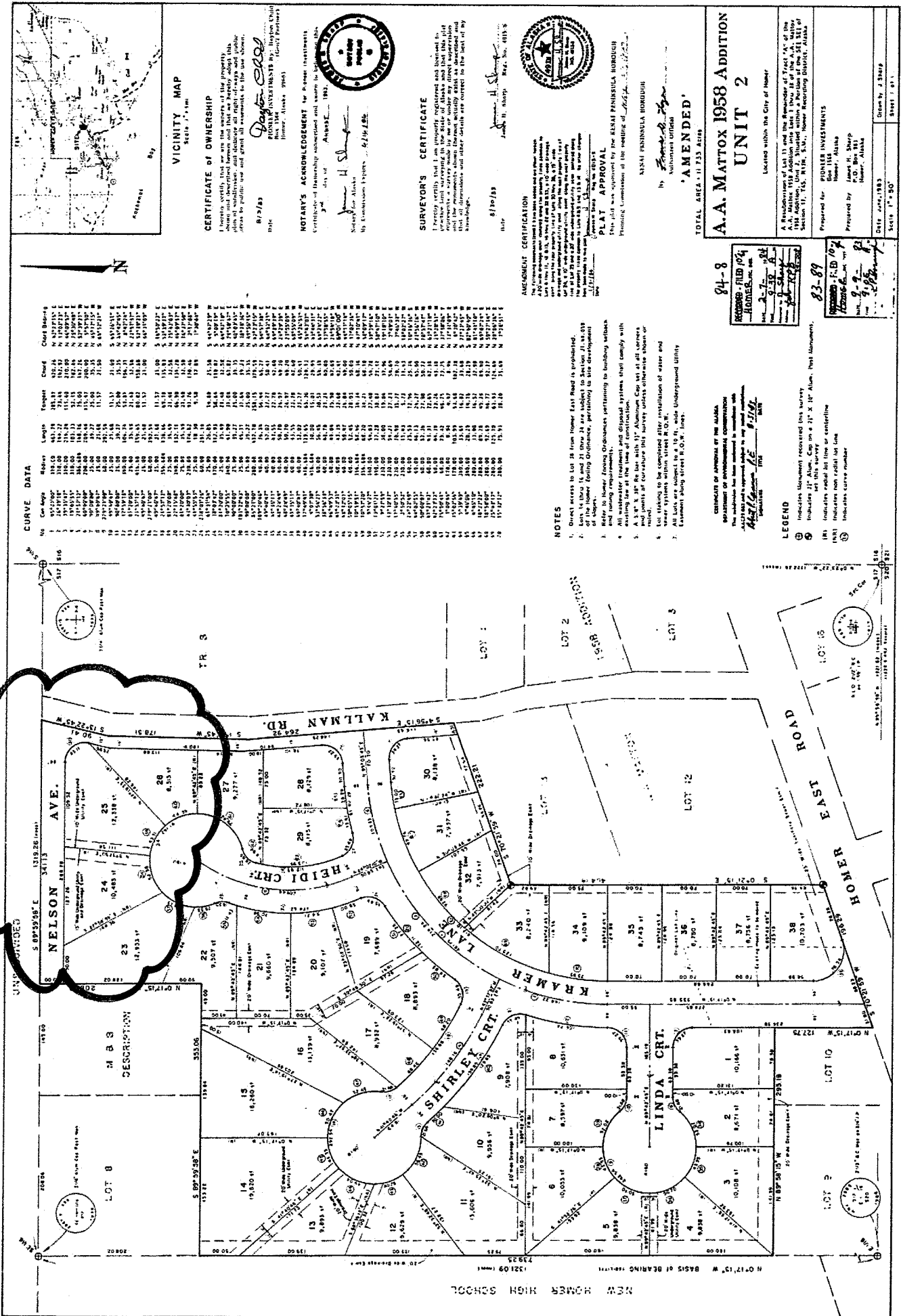
OWNER: PAUL TONY NEAL III, MANAGER
 HOMER, AK 99603-3368

SEABRIGHT SURVEY + DESIGN
 1044 EAST ROAD, SUITE A
 HOMER, ALASKA 99603
 (907)837-2700

DRAWN BY: K.C. DATE: 04/28/2017 SCALE: 1" = 100'

CHE BY: K.C. JOB #13-08 SHEET 1 OF 2

2.



CURVE DATA

No	Chord Length	Radius	Central Angle	Chord Bearing	Chord	Chord
1	100.00	100.00	90.00	S 45° 00' 00" E	70.71	70.71
2	100.00	100.00	90.00	N 45° 00' 00" E	70.71	70.71
3	100.00	100.00	90.00	S 45° 00' 00" W	70.71	70.71
4	100.00	100.00	90.00	N 45° 00' 00" W	70.71	70.71
5	100.00	100.00	90.00	S 45° 00' 00" E	70.71	70.71
6	100.00	100.00	90.00	N 45° 00' 00" E	70.71	70.71
7	100.00	100.00	90.00	S 45° 00' 00" W	70.71	70.71
8	100.00	100.00	90.00	N 45° 00' 00" W	70.71	70.71
9	100.00	100.00	90.00	S 45° 00' 00" E	70.71	70.71
10	100.00	100.00	90.00	N 45° 00' 00" E	70.71	70.71
11	100.00	100.00	90.00	S 45° 00' 00" W	70.71	70.71
12	100.00	100.00	90.00	N 45° 00' 00" W	70.71	70.71
13	100.00	100.00	90.00	S 45° 00' 00" E	70.71	70.71
14	100.00	100.00	90.00	N 45° 00' 00" E	70.71	70.71
15	100.00	100.00	90.00	S 45° 00' 00" W	70.71	70.71
16	100.00	100.00	90.00	N 45° 00' 00" W	70.71	70.71
17	100.00	100.00	90.00	S 45° 00' 00" E	70.71	70.71
18	100.00	100.00	90.00	N 45° 00' 00" E	70.71	70.71
19	100.00	100.00	90.00	S 45° 00' 00" W	70.71	70.71
20	100.00	100.00	90.00	N 45° 00' 00" W	70.71	70.71
21	100.00	100.00	90.00	S 45° 00' 00" E	70.71	70.71
22	100.00	100.00	90.00	N 45° 00' 00" E	70.71	70.71
23	100.00	100.00	90.00	S 45° 00' 00" W	70.71	70.71
24	100.00	100.00	90.00	N 45° 00' 00" W	70.71	70.71
25	100.00	100.00	90.00	S 45° 00' 00" E	70.71	70.71
26	100.00	100.00	90.00	N 45° 00' 00" E	70.71	70.71
27	100.00	100.00	90.00	S 45° 00' 00" W	70.71	70.71
28	100.00	100.00	90.00	N 45° 00' 00" W	70.71	70.71
29	100.00	100.00	90.00	S 45° 00' 00" E	70.71	70.71
30	100.00	100.00	90.00	N 45° 00' 00" E	70.71	70.71
31	100.00	100.00	90.00	S 45° 00' 00" W	70.71	70.71
32	100.00	100.00	90.00	N 45° 00' 00" W	70.71	70.71
33	100.00	100.00	90.00	S 45° 00' 00" E	70.71	70.71
34	100.00	100.00	90.00	N 45° 00' 00" E	70.71	70.71
35	100.00	100.00	90.00	S 45° 00' 00" W	70.71	70.71
36	100.00	100.00	90.00	N 45° 00' 00" W	70.71	70.71
37	100.00	100.00	90.00	S 45° 00' 00" E	70.71	70.71
38	100.00	100.00	90.00	N 45° 00' 00" E	70.71	70.71



NOTARY'S ACKNOWLEDGEMENT
 I, the undersigned, a Notary Public in and for the State of Alaska, do hereby certify that the foregoing is a true and correct copy of the original as the same appears to me and that the same has been duly acknowledged by the parties thereto in my presence and in full view of my eyes and that all the formalities and other details required by law have been observed.

SURVEYOR'S CERTIFICATE
 I hereby certify that I am a duly registered and licensed Surveyor in the State of Alaska, and that the foregoing is a true and correct copy of the original as the same appears to me and that the same has been duly acknowledged by the parties thereto in my presence and in full view of my eyes and that all the formalities and other details required by law have been observed.

CERTIFICATE OF OWNERSHIP
 I hereby certify that we are the owners of the property described in the foregoing plat and that we have no other claims or interests in the same and that we have no other persons or entities who have any claim or interest in the same.

VICINITY MAP
 Scale 1" = 1/2 mi.
 Prepared by: [Signature]
 Date: 8/10/83

AMENDMENT CERTIFICATION
 This plat was approved by the Planning Commission at the meeting of 8/10/83, held at the City of Homer, Alaska, at 7:00 P.M.

PLAT APPROVAL
 Planning Commission at the meeting of 8/10/83, held at the City of Homer, Alaska, at 7:00 P.M.

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 This plat was approved by the Planning Commission at the meeting of 8/10/83, held at the City of Homer, Alaska, at 7:00 P.M.

HM 99-64

OWNERSHIP CERTIFICATE

We hereby certify that we are the owners of the real property shown and described herein and that we hereby adopt this plan of subdivision and by our free consent dedicate all rights-of-way to public use and grant all easements to the use shown.

We further certify that the Deed of Trust affecting this property does not contain restrictions which would prohibit this subdivision, or require signature and approval of the beneficiary.

Robert D. Patton Peggy L. Patton
 owner of former Lot 24 owner of former Lots 24 and 25
 Peggi L. Patton Date
 450 Heidi Court Date
 Homer, AK 99603 Date
 45 Peggi L. Forester



Notary's Acknowledgment
 Subscribed and sworn to me before on this 13 day
 of August, 1999
 for Robert D. Patton and Peggy L. Patton
Maureen Dawn
 Notary Public for Alaska
 My Commission Expires 1-30-02

WASTEWATER DISPOSAL

Plans for wastewater that meet regulatory requirements are on file at the State of Alaska Department of Environmental Conservation.

Robert W. Ishauff August 6, 1999
 Reg. W. Ishauff LS 5730 Date

PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of

May 24, 1999

KENAI PENINSULA BOROUGH

By: Maureen Dawn
 Authorized Official

SURVEYORS CERTIFICATE

I hereby certify that I am a Registered Land Surveyor and that this plan represents a survey made by me or under my direct supervision and the measurements shown hereon actually exist as described and that the dimensions and other details are correct to the best of my knowledge.

Robert W. Ishauff August 6, 1999
 Reg. W. Ishauff LS 5730 Date

99-64 2000
 RECORDED - 2000
 HOMER REC DIST
 Date: 11/16/99
 Fee: \$143.80
 Requested by
 Roger Ishauff, RLS
 P.O. Box 2588
 Homer, AK 99603

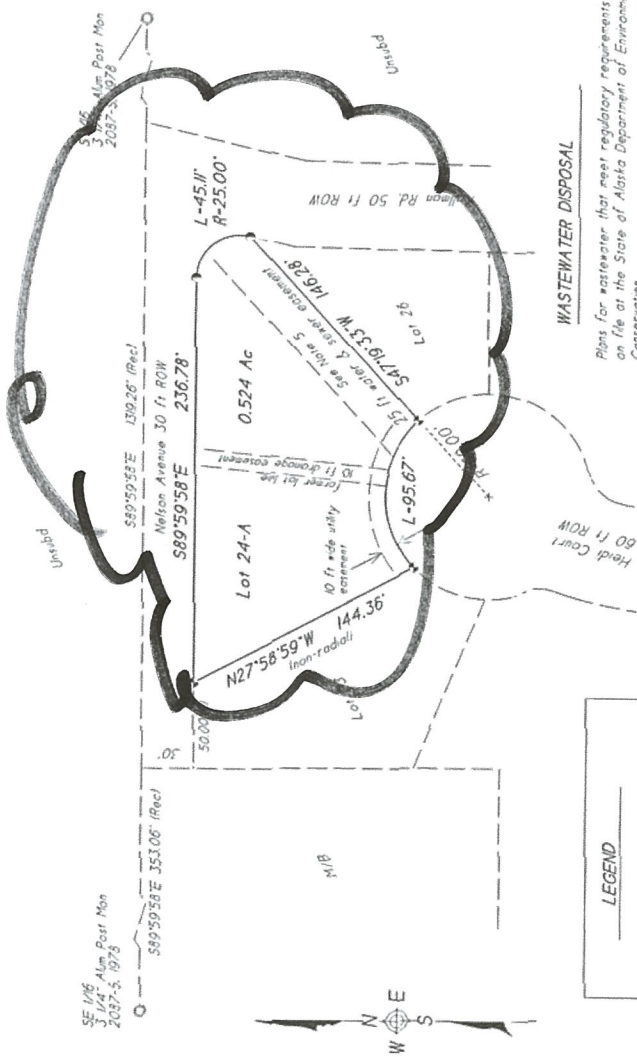


NOTES

- All wastewater disposal systems shall comply with existing applicable laws at the time of construction.
- No permanent structures shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
- Basin of Bearing is AA Mattox 1958 Addition Unit 2 Amended as shown on Record Plat 84-8 Homer Recording District. Dimensions are record.
- Utility and Drainage Easements as shown on the Parent Plat 84-8 HRD were vacated by action of the Homer City Council at their meeting on March 22, 1999.
- The 25 ft water and sewer easement as shown hereon is not in use at this date. Any use of this easement must be approved by the City of Homer Public Works Dept. and the ground must be restored to its original condition after construction. Furthermore, this easement shall be vacated by request of the City of Homer if water and sewer mains are placed in Kalkan Road.
- General easement for electric lines or system is recorded in Book 19 Page 82 HRD in favor of Homer Electric Association, no definite location given.
- Covenants affecting the lot shown hereon are on file at the Homer office of the State Recorder. See Bl. 141 P263, Bl. 145 P204, Bl. 145 P068, Bl. 152 P338, Bl. 169 P478.

LEGEND

- Found 5/8" rebar as per Plat No. 84-8 HRD
- Found 2" Aluminum Cap on 5/8" steel rebar 5780-S, 1997



Vicinity Map 1" = 1000 ft

**AA Mattox
 Peggi's Addition**

Being a Parcel of Lots 24 and 25 AA Mattox
 1958 Addition Unit 2 Amended as shown on
 Record Plat 84-8 Homer Recording District

Located within the
 SE 1/4 SE 1/4 Sec. 17, T6S, R13W, S4M,
 in the City of Homer
 Third Judicial District, Alaska

Contains 0.524 Acres, more or less

Clients: Robert and Peggi Patton 450 Heidi Court Homer, AK 99603	Surveyor: Roger W. Ishauff, RLS P.O. Box 2588 Homer, AK 99603
Drawn: RW	Date: 3-23-99
Scale 1" = 50 ft	File patterned KPB File No. 99-264

4 1) 13

VOTE: The third amendment passed by a majority vote.

HAMMELMAN YES	BRYSON YES	WHITMORE-PAINTER YES	BOSCACCI YES	CARPENTER YES	CLUTTS NO
COLEMAN ABSENT	GANNAWAY NO	HENSLEY ABSENT	JOHNSON NO	SKOGSTAD YES	SIX YES THREE NO TWO ABSENT

Chairman Hammelman asked the Commission if they needed to have the main motion as amended re-stated. No requests to have the main motion repeated were heard.

VOTE: The motion as amended passed by a majority vote.

HAMMELMAN YES	BRYSON YES	WHITMORE-PAINTER YES	BOSCACCI YES	CARPENTER YES	CLUTTS NO
COLEMAN ABSENT	GANNAWAY YES	HENSLEY ABSENT	JOHNSON YES	SKOGSTAD YES	EIGHT YES ONE NO TWO ABSENT

Chairman Hammelman said the Commission would recommend enactment of Ordinance 98-33 Substitute including the Commission's recommended amendments. He thanked everyone for their comments. He thanked Assembly Members Scalzi and Drathman for attending.

AGENDA ITEM E. UNFINISHED BUSINESS

- Petition to vacate the entire of the fifteen foot wide drainage and underground utility easement within the easterly fifteen feet of Lot 24, AA Mattox 1958 Addition Unit 2 Amended (Plat 83-89 & 84-8 HRD); and vacate the ten foot wide utility easement within the westerly ten feet of Lot 25, of said AA Mattox subdivision; being within Section 17, T5S, R13W, Seward Meridian, Alaska. Within the City of Homer; KPB File - 98-264 — Carried forward from November 23, 1998

Staff report as read by Lisa Parker.

PC Meeting 1/26/99

Petitioners: Peggi L. Patton of Homer, Alaska

Purpose as stated in petition:

There is a house on Lot 24. Lot 25 is vacant. The owners may vacate the common lot line between the lots sometime in the coming year. For the present however, they wish to extend their garage easterly and develop the existing driveway on Lot 25 for access. The driveway for Lot 24 would be abandoned and reclaimed for lawn.

These plans and other construction plans require the removal of 15 foot utility and draining easement on Lot 24. The Pattons have offered and the City of Homer has agreed to dedicating a 10 foot drainage easement on Lot 25. There is an existing 10 foot utility easement already in place. Since a drainage and utility easements are not necessarily compatible, we therefore ask that the utility easement for Lot 25 also be vacated.

There is an existing 2 foot wide ditch close within Lot 25 handling the current water flow, primarily for breakup.

Notice of vacation mailings were sent to owners of property within a 300 foot radius.

During the November 23, 1998 public hearing, Bob Barnett of Homer spoke against the vacation. Following the hearing, the motion to postpone until January 26, 1999 carried.

4 2) 12

Since the November meeting, the City of Homer, on January 5, 1999 submitted a letter wherein they state the City has no objection to the easement vacation as originally submitted. When water and sewer service would be extended to the north of the referenced subdivision, the City would plan to have the utilities placed in the Kallman right-of-way rather than in the referenced easement. The City prefers the utilities be placed in the right-of-way for the following reasons:

- 1) The utilities could serve the lots to the east of Kallman Road;
- 2) The existing 25' wide utility easement is marginal in width for accommodating both the water and sewer lines; and
- 3) Maintenance of the utilities would be more easily accomplished in the ROW than in an easement on private property. The City has also stated — *The existence of a utility easement on the referenced lots should not be interpreted to mean that the City would approve the location for placement of water and sewer mainlines.*

No other comments have been submitted since the November 23rd hearing.

Statement of non-objection — November hearing

Homer Electric Association

PTI Communications

GCI Cablevision — GCI has no objections to the vacation but has requested grandfather rights to provide service in the future to two existing CATV underground service drops.

Statement of objection — November hearing

Bernadine and Bob Barnett - no address provided. A signed letter was sent via fax. Mr. Barnett objected to the vacation stating the easements were intended (he believed) and required to provide services to adjoining property on the north.

City of Homer comments

- 9/16/98 City of Homer Public Works stated no objection with the understanding that a 10' drainage easement will be dedicated along the western property line of Lot 25.
- 10/30/98 Handwritten on the 9/16/98 City of Homer Public Works letter is the notation "OK, does not need planning commission review" — signed by Eileen R. Bechtol.
- 11/18/98 Homer Planning Commission meeting - Mr. Barnett requested a letter from the City indicating they had received an objection. The Planning Director agreed to do so.
- 11/19/98 Memorandum from City of Homer Planning/Zoning advised that Mr. Barnett objected to the vacation; that he believed the easement was in place for future development of the property to the north of Nelson Avenue. The easement was to be used to bring the sewer main to the north property for development. The City Planning Department requested the City Public Works to see if there is a viable alternative.
- 11/20/98 City of Homer Public Works - sent via E-mail: It has been verified in the field that the sewer mainline can be extended through the Kallman ROW rather than exclusively through the existing utility easement between Lots 24 and 25 of AA Mattox Sub. It may require running additional piping, but the Kallman ROW provides an adequate corridor for future utility expansion to Barnett's Subdivision.

Borough staff has reviewed the file for A.A. Mattox 1958 Addition Unit 2 and made the following findings.

The preliminary plat did not show the easements currently under review for vacation.

The City staff did not request the easements along the lot line common to Lots 24 and 25; nor did the City Commission.

The Borough staff did not request the easements along the lot line common to Lots 24 and 25, nor did the Borough Plat Committee or Planning Commission.

The utility companies reviewing the plat did not request the easement in this location.

The plat was filed on September 9, 1983 in the Homer Recording District as Plat 83-89 without these easements.

On February 7, 1984, an amended plat was filed in the Homer Recording District as Plat 84-8. The plat was amended to add these easements, as well as other drainage easements.

FINDINGS

4 3 0/3

1. No utility company objects to the vacation.
2. The City has stated no objections.
3. The City has advised that Kallman right-of-way provides an adequate corridor for future utility expansion to Barnett's Subdivision.
4. The existing easements were not requested or recommended by either the City or the Borough.
5. GCI Cablevision has requested rights to provide service in the future to two existing CATV underground service drops; however, they did not provide information showing the location of these existing facilities.

Based on the above findings and facts, staff has no basis upon which to recommend a denial of the vacation and is recommending the vacation be approved.

STAFF RECOMMENDATIONS:

- A. Planning Commission make their findings, and approve KPBPC Resolution 99-03, thereby granting the vacation subject to the following conditions:
 1. Granting the ten foot drainage easement within the westerly ten feet of Lot 25, as requested by City of Homer Public Works Department.
 2. Granting easement for use of GCI's existing facilities.

NOTE: If the vacation is denied, the petitioner has eight calendar days in which to appeal the Planning Commission denial. Written appeal must be submitted to the Homer City Clerk.

END OF STAFF REPORT

MOTION: Commissioner Carpenter moved, seconded by Commissioner Boscacci, to concur with, accept the findings, and approve KPBPC Resolution 99-03, thereby granting the vacation subject to staff recommendations.

Commissioner Gannaway opposed the motion. Mr. Barnett is being asked to put utilities along more than 400' of Kallman Road. However, the distance along the utility easement is about 100'. Commissioner Gannaway understood the expenses involved. Mr. Barnett will not recover the money he will spend on the utilities because the City does not refund money paid for utilities. The proposed vacation will force Mr. Barnett to spend three times the amount to put in utilities.

1. Bob Barnett

Mr. Barnett did not think much development would occur on the northern side in the near future. The extra cost of running a sewer line several hundred feet unnecessarily seemed like a ridiculous requirement. The easement was put in by the developer so the property to the north could be served from the cul-de-sac. Mr. Barnett thought it was unreasonable to vacate the easement.

Recalling previous discussions, someone asked if it would be acceptable to move the easement to the east or west. Mr. Barnett would not object if the easement is moved either to the east or west. He did not want the easement vacated.

2. Roger Imhoff

Mr. Imhoff said he was representing Peggy Patton. He noticed an omission from the City of Homer comments. An additional letter dated January 5, 1999 was written. In trying to resolve everyone's concerns, he asked the Homer Public Works Department if they would object to moving the easement 25' to the eastern side of Lot 25. The Public Works Department said they did not care about the location of the easement on the lot because Mr. Barnett had to use Kallman Road if he wanted to develop the property to the north. The Public Works Department does not want the water/sewer lines going through a private lot. They want the lines in the right-of-way where they can work on them without disrupting private property.

Commissioner Gannaway commented that water and sewer lines crossed private property throughout Homer.

S.

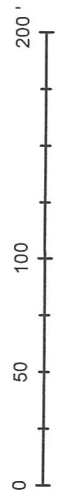



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

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Aerial View



 Drainage Easement Vacation

JReif, KP
Date: 4/25/2019
Imagery: Aug 2016

6 1/4

June 4, 2018

Peggi & Robert Patton
4510 Heidi CT.
Homer, Alaska 99603

Kenai Peninsula Borough
Planning Department
144 N. Binkley ST.
Soldotna, AK 99669

ATTN: Maria Sweppy

Reference: KPB File 2014-016 Prelim Platt Approval Postponed to June 11, 2018

Maria Sweppy,

My Husband and I own Lot 24-A of A.A.Mattox Peggi's Addition by AA Mattox Peggi's Addition Plat HM 99-064. KPB File 2017-003.

We firmly object to the approval of Barnett's South Slope Subdivision, Quiet Creek Park. A 64 Lot proposal being considered.

I have a copy of the proposed drainage system for this subdivision (Attached).

Since we purchased the property in 1995 there has been adverse water damage to our home. This is due to poor drainage behind our home and a culvert that consisted of two 50-gallon drums welded together across a dedicated, across but never developed, 30' ROW called Nelson Ave. This failed drainage has been draining onto the back of our property, causing problems in our crawl space, plumbing and electrical systems for 22 years.

Since the discovery of the failed drainage. We hired Paul Hodgedon, dba Homer Winter Services Inc. to come and give us a bid to do the remediation with the appropriate permits/Permissions from the City of Homer. The remediation consisted of removing of the (Inappropriate culvert), complete new drainage

6 2/4

behind our garage, and the drainage ditch on the 30' Nelson Ave. Row. This remediation was at a cost of \$14854.00. There has been no compensation from the City of Homer for the 22 years of adverse drainage, nor remediation of the drainage issue to our property. We are certainly not interested in having further drainage problems due to poor planning.

This new subdivision is proposing to culvert Nelson Ave. into the natural drainage, and the ditch in 30' Nelson Ave. Row, (low volume ditch). This proposed drainage plan would dump even more water from the hillside above us onto our property. (See attached Plat).

The new proposed Nelson Avenue, (the main thoroughfare into this new subdivision), with lot numbers 36, 37 & 38, (with lot 38 being a big flag lot), all abutting the North side of our property.

The above-described culvert will empty into the drainage between lots 37 & 36, and the NE corner of lot 38. Again all of which abut the North side of our property. This particular drainage plan has ZERO plan to prevent further adverse drainage issues to our property, as well as, other properties below the proposed subdivision.

It is our position that this contractor has a very poor reputation in our community for poor quality development projects. This particular proposed project would inflict further financial damage and is devaluing our property. We also feel that the City of Homer and the Kenai Peninsula Borough have been Complicit in protecting surrounding properties, when approving past and present developments, which usually results in further financial damages and devaluation of their properties.

PLEASE, take further consideration to the poorly designed drainage that are clearly present. Also, consider a report from an outside engineering company that shows all adverse effects to the existing drainage plan. Also, please remember we are property tax payers as well.

We appreciate your attention and considerations.

Robert D. & Peggi L. patton

6 394

Homer Winter Services, Inc.
 P.O. Box 3055
 Homer, AK 99603

907-235-7119 Fax 907-235-8332
 hws@acsalaska.net

Invoice

Date	Invoice #
8/25/2017	4832

Bill To
Bob Patton Heidi Court

PAID
 08/25/2017

Terms	Account #

Serviced	Qty	Description	Rate	Amount
8/14/2017		Service Provided - Remove old culvert and reline ditch	0.00	0.00T
	6.5	9020 Backhoe	250.00	1,625.00T
	6.5	Labor	85.00	552.50T
		Subtotal		2,177.50
8/15/2017		Service Provided - stock piling drain rock and cement blocks	0.00	0.00T
	11	Labor	85.00	935.00T
		Subtotal		935.00
8/16/2017		Service Provided - haul away trees and brush	0.00	0.00T
	6.5	9020 Backhoe	250.00	1,625.00T
	6.5	Dump Truck	105.00	682.50T
	6.5	Labor	85.00	552.50T
		Subtotal		2,860.00
8/17/2017		Service Provided - hooking up temp fuel tank	0.00	0.00T
	4	Labor	85.00	340.00T
	1	Dump Truck	105.00	105.00T
		Subtotal		445.00
8/21/2017		Service Provided - Remove old tank	0.00	0.00T
	4	Labor	85.00	340.00T
		Subtotal		340.00
8/23/2017		Service Provided - Installing under drains	0.00	0.00T
	8	9020 Backhoe	250.00	2,000.00T
	13	Labor	85.00	1,105.00T
	3	Dump Truck	105.00	315.00T
		Subtotal		3,420.00
8/25/2017		Service Provided	0.00	0.00T
	6	Dump Truck	105.00	630.00T
	2.5	9020 Backhoe	250.00	625.00T

Thank You	Total
	Payments/Credits
	Balance Due

Homer Winter Services, Inc.
 P.O. Box 3055
 Homer, AK 99603

907-235-7119 Fax 907-235-8332
 hws@acsalaska.net

6494

Invoice

Date	Invoice #
8/25/2017	4832

Bill To
Bob Patton Heidi Court

PAID
 08/25/2017

		Terms	Account #	
Serviced	Qty	Description	Rate	Amount
	6.5	Skidsteer/Takeuchi Loader	165.00	1,072.50T
	16	Labor	85.00	1,360.00T
	60	Gravel	24.00	1,440.00T
		Service Provided - Clean up	894.00	894.00T
		Subtotal		6,021.50
		Homer Sales Tax	37.50	37.50
		Customer Discount	-1,382.50	-1,382.50
		Sales Tax	0.00%	0.00
Thank You		Total		\$14,854.00
		Payments/Credits		-\$14,854.00
		Balance Due		\$0.00



Kenai Peninsula Borough Planning Department
 144 North Binkley
 Soldotna, Alaska 99669-7599
 Toll free within the Borough 1-800-477-4441, extension 2200
 (907) 714-2200

7
192

Petition to Vacate Utility Easement
No Public Hearing Required

Submit completed form to the Kenai Peninsula Borough Planning Department, 144 North Binkley St., Soldotna, AK 99669

Upon receipt of complete application with all required attachments the vacation will be scheduled for Planning Commission action. The petitioner must secure and submit written comments from utility companies. If the easement is within city limits; secure and submit city's written comments. The completed petition, with all required attachments, accompanied by a \$75.00 non-refundable fee, must be submitted to the Planning Department a minimum of thirty (30) days prior to the meeting at which the Planning Commission will take action.

Fees - \$75.00 non-refundable fee attached.

To accomplish an approved vacation; a Planning Commission Resolution must be filed with the State Recorder to enter the vacation into the public records unless the vacation is accomplished by plat. Petitioner must pay filing fees (usually \$22-\$27).

Utility easement requested to be vacated was granted by plat of Subdivision, filed as Plat No. 99-64 in Homer Recording District. *NOT utility easement (drainage)*

Utility easement proposed to be vacated was granted by (specify type of document) as recorded in Book _____ Page _____ of the _____ Recording District. (Copy of recorded document must be submitted with petition) *COULDN'T FIND ANY RECORDED DOCUMENT*

- Comments from *HEA* Electric Association attached.
- Comments from *NIA* Gas Company attached. *emailed to Scott*
- Comments from *ACS* Telephone Company attached. *emailed*
- Comment from *GCT* Cable Company attached. *emailed*
- Comments from the KPB Roads Department attached if applicable.
- Comments from City of _____ attached.

Please note comments or no comments on the sketch or plat that is to be submitted with the petition.

One copy of plat or map (sketch) showing area proposed to be vacated. If easement was granted by document; one copy of recorded document must be submitted.

If an existing structure is encroaching into easement; As-Built showing encroachment must be attached.

Is easement being used by utility company? Yes No
 If yes, which utility _____

The petitioner must provide reasonable justification for the vacation. Reason for vacating:

SEE ATTACHED REASON FOR VACATING:

The petition must be signed (written signature) by owners of the land subject to the easement proposed to be vacated. Each must include mail address and legal description of his/her property.

Submitted by: Signature *Peggy L. Patton* As Petitioner Representative
 Name: PEGGY L. PATTON
 Address: 4510 HEIDI CT.
HOMER, AK 99603
 Phone: 907-399-4055

Petitioners:

Signature _____	Signature _____
Name _____	Name _____
Address _____	Address _____
_____	_____
Owner of _____	Owner of _____
Signature _____	Signature _____
Name _____	Name _____
Address _____	Address _____
_____	_____
Owner of _____	Owner of _____

7 2/2

The petitioner's reasonable justification for vacation of 10' drainage easement.

Subject Property: Lot 24A AA Mattox Peggi's Addition Plat No. 99-64

The 10' drainage easement on the above mentioned subject property has not been used since it was platted on the subject property original plat 84-HRD. 1

There is an alternative corridor in place on the Nelson Avenue ROW above the north lot line of the subject property. A long driveway permit on the Nelson Avenue ROW has been issued by the City Of Homer to the Quiet Creek Park LLC Project. The long driveway permit requires that the existing Drainage corridor remain in place on the North side of the long driveway. (see driveway permit, original and current subject property plats 84-HRD and 99-64, attached) 2

The current corridor on the Nelson Avenue ROW handles any storm or seasonal water runoff from the Quiet Creek Park LLC Project and above, as well as, the drainage plan in place in the Quiet Creek Park LLC Project.

It is my understanding that the City of Homer prefers not to cross personal property when other more adequate options or corridors are available to the City of Homer for drainage and seasonal runoff.

The subject property is currently for sale and buyers are concerned about the future use of the subject property 10' drainage easement, therefor preventing them from making an offer on the subject property. This is creating an adverse effect to the subject property.

Vacating this easement would not create any adverse effects to the surrounding properties. 3

8

From: [peggi_patton](#)
To: [Reif, Jordan](#)
Subject: Re: AA Mattox Peggi's Addition Lot 24-A Drainage Easement Vacation KPB 2019-048V
Date: Tuesday, June 11, 2019 6:42:38 AM
Attachments: [image001.png](#)

Dear Jordan

Mr Neal is incorrect. The drainage easement on our property has not been used for above property drainage. We did not create the drainage on the Nelson ave ROW I encourage the borough to speak with Kerry Meyer at the City of Homer.

Sent from my iPhone

On Jun 10, 2019, at 8:38 AM, Reif, Jordan <jreif@kpb.us> wrote:

Hi Peggi,

Attached please find a comment from the public on AA Mattox Peggi's Addition Lot 24-A Drainage Easement Vacation KPB 2019-048V. The comment will be presented to the Planning Commission for their review.

Best,

Jordan Reif
Platting Technician
(907) 714-2200
(907) 714-2378 Fax

KENAI PENINSULA BOROUGH
144 North Binkley Street
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