



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

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Memorandum 20-067

TO: MAYOR CASTNER AND HOMER CITY COUNCIL

FROM: MELISSA JACOBSEN, MMC, CITY CLERK

DATE: JUNE 1, 2020

SUBJECT: VACATION OF THE NORTH 5 FEET OF THE 10 FOOT UTILITY EASEMENT ADJOINING THE BOUNDARY OF LOT 36-A BUNNELL'S SUBDIVISION NO. 17 (HM-86-44) GRANTED BY BUNNELL'S SUBDIVISION NO. 17 (HM-86-44) IN SE1/4 NE1/4 SECTION 19, TOWNSHIP 6 SOUTH, RANGE 13 WEST, SEWARD MERIDIAN, ALASKA WITHIN THE KENAI PENINSULA BOROUGH

At their May 11, 2020 meeting, the Kenai Peninsula Borough Planning Commission approved the vacation of the north 5 feet of the 10 foot utility easement adjoining the boundary of Lot 36-A Bunnell's Subdivision No. 17 (HM-86-44) granted by Bunnell's Subdivision No. 17 (HM-86-44) in SE1/4 NE1/4 Section 19, Township 6 South, Range 13 West, Seward Meridian, Alaska within the Kenai Peninsula Borough. KPB File 2020-36V.

Per AS 29.40.140, no vacation of a City right-of-way and/or easement may be made without the consent of the City Council.

The City Council has thirty days from May 11, 2020 in which to veto the decision of the Kenai Peninsula Borough Planning Commission.

The Homer Planning Commission expressed non-objection regarding this vacation as reflected in the April 29, 2020 minutes from regular meeting.

RECOMMENDATION:

Voice non objection and consent to the vacation of the North 5 feet of the 10 foot utility easement adjoining the boundary of Lot 36-A Bunnell's Subdivision No. 17 (HM-86-44) granted by Bunnell's Subdivision No. 17 (HM-86-44) in SE1/4 NE1/4 Section 19, Township 6 South, Range 13 West, Seward Meridian, Alaska within the Kenai Peninsula Borough. KPB File 2020-36V.



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Charlie Pierce
Borough Mayor

May 14, 2020

Homer City Council
491 East Pioneer Avenue
Homer, AK 99603-7645

RE: Utility Easement Vacation

Vacate the north 5 feet of the 10-foot utility easement, adjoining the south boundary of Lot 36-A, Bunnell's Subd. No. 17 (HM 86-44), granted by Bunnell's Subd. No. 17 (HM 86-44); in SE1/4 NE1/4 Section 19, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-036V

Dear Homer City Council Members:

In accordance with AS 29.40.140, no vacation of a city right-of-way and/or easement may be made without the consent of the city council. The KPB Planning Commission approved the referenced right-of-way vacation during their regularly scheduled meeting of May 11, 2020. This petition is being sent to you for your consideration and action.

The City Council has 30 days from May 11, 2020 in which to veto the decision of the Planning Commission. If no veto is received from the Council within the 30-day period, the decision of the Planning Commission will stand.

Attached are draft, unapproved minutes of the pertinent portion of the meeting and other related material.

Sincerely,

Marcus A. Mueller
Interim Planning Director

Encl.

5-11-20 Meeting Packet Materials
5-11-20 Draft PC Meeting Minutes

PUBLIC HEARINGS**C6. Utility Easement Vacation**

- a. Vacate the north 5 feet of the 10-foot utility easement, adjoining the south boundary of Lot 36-A, Bunnell's Subd. No. 17 (HM 86-44), granted by Bunnell's Subd. No. 17 (HM 86-44); in SE1/4 NE1/4 Section 19, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-036V

Staff report given by Scott Huff

PC Meeting: May 11, 2020

Purpose as stated in petition: Vacating the north 5 feet of the 10 foot utility easement, adjoining the south boundary of Lot 36-A, Bunnell's Subd. No. 17 (HM 86-44), will save trees on the lot by moving the building south. This will also allow better use of this small lot (0.28 acres). HEA has no objection to this vacation and it helps make the entrance, which is set in stone, usable.

Petitioners: HOMER PROFESSIONAL OFFICE BUILDING LLC of HOMER, AK

Location: on Bartlett Street, Off West Pioneer Avenue, City of Homer.

Notification: Notice of vacation mailings were sent by regular mail to 15 owners of property within 300 feet. Notice of the proposed vacation was emailed to 9 agencies and interested parties.

The public notice was posted on the Planning Department's bulletin board at the KPB Administration Building.

Staff Comments: Staff mistakenly thought that there was a 15' utility easement adjoining Bartlett Street right of way and requested that this portion not be vacated. After further research it was determined that there is not a 15' utility easement adjoining Bartlett Street right of way. The applicants request to vacate the entire portion of the north 5 feet of the 10-foot utility easement is correct. All utilities reviewed the correct petition.

Comments Received:

ACS: No objection.

ENSTAR Natural Gas: No objection.

GCI: No objection.

HEA: No objection.

Petitioner Findings:

1. The utility easement proposed to be vacated is not in use by a utility company.
2. The vacation will allow the building to move south and will save trees.
3. This will allow better use of this small lot (0.28 acres).
4. Makes the entrance, which is set in stone, usable.

Staff Findings:

5. ACS, ENSTAR, GCI, HEA, provided written non-objection to the vacation of the north 5' portion of the south 10' wide utility easement.
6. No objection from the Traffic, Safety & Utilities Section of State of Alaska DOT&PF.
7. Bunnell's Subd. No. 17, Plat HM 86-44, granted a 20' wide utility easement adjoining the common lot line between Lot 36-A and former Lot 36B, (now Lot 36-B1, Plat HM 90-41).
8. A 10' wide utility easement remains on Lot 36-B1, HM 90-41.
9. KPB GIS information shows an electric line is located within the 10' utility easement on Lot 36-B1.
10. No surrounding properties will be denied utilities.

11. Petition to vacate will be heard by the City of Homer on April 29, 2020.

Based upon the above findings, **staff recommends** granting the vacation as petitioned, subject to:

1. Provide a sketch clearly indicating the portion of the utility easement being vacated to be recorded with KPB Planning Commission Resolution 2020-10, becoming Page 2 of 2.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
4. Approval of the vacation by the City of Homer.

NOTE: Action after denial of vacation (KPB 20.70.120)

- A. **Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. **Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

END OF STAFF REPORT

Mr. Huff add that there were two comments in the desk packet. The comments were from two neighbors who expressed concerns regarding possible drainage issues on their property due to the proposed location of the applicant's new building. Mr. Huff stated that this was a utility easement that was available for utility company use and that the drainage issue was separate and could be addressed by the City of Homer.

Chairman Martin asked if anyone from the public wished to comment on this item. Seeing and hearing no one wishing to comment, Chairman Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Morgan to approve the utility easement vacation as petitioned, vacating the north 5 feet of the 10-foot utility easement, adjoining the south boundary of Lot 36-A, Bunnell's Subd. No. 17 siting the 11 findings provided in the staff report and adherence to borough code.

Commissioner Carluccio asked staff if drainage issues were normally addressed by the borough in relation to utility easement vacations. Mr. Huff responded no, but that drainage is an item that could be considered through the use of an easement. He also restated that the area utilities and the City of Homer had no objection to this utility easement vacation. Commission Carluccio followed up with the question that while this was not a drainage easement, would the neighbors have had the opportunity to express their concerns regarding drainage issues to the City of Homer. Mr. Huff stated that this utility easement vacation would go back to the City of Homer again for their approval or veto and that the neighbors would have another opportunity to express their concerns.

Commission Venuti commented that many of the properties in Homer are on a hillside and that drainage is always an issue. The City of Homer has site development standards to address this type of issue. He read a portion of the standard to the commission: *the standard states that development activity should not adversely impact other properties by causing damage, alteration of surface water drainage, surface water ponding, soil erosion or root damage to trees on neighboring properties.* This standard is already on the books and he is confident that City of Homer can address this.

Commissioner Carluccio sought clarification and asked staff to verify that when this utility easement vacation application was initially brought to the City of Homer it did not include these comments from the neighbors. Mr. Huff stated that she was correct, these comments were not brought up to the Homer Planning and Zoning Commission. Commissioner Carluccio followed up and wanted to know if the neighbors would be notified when this utility easement vacation was brought back to the city council. Mr.

Huff replied that he believed that the city council would notify the neighbors of this agenda item.

Commissioner Brantley had a question for staff regarding the site drawing. He believed that the site drawing depicts a drainage gallery right where the new building would be located. Mr. Huff reviewed the site drawing and stated that area that Commissioner Brantley was referring to was not depicting a drainage gallery but the alcove of the proposed building.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

AGENDA ITEM E. PUBLIC HEARINGS

1. Vacate the west 5 feet of the existing 70-foot wide Camelot Drive right-of-way along the east boundary of Lots 6, 7, and 8, Block 2, as dedicated on Camelot by the Sea Subdivision, Plat SW-76. The right-of-way being vacated is developed and located within the NW1/4 SE1/4 of Section 23, Township 1 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-032V.

Staff report given by Scott Huff

PC Meeting May 11, 2020

Purpose as stated in petition: Camelot Drive was dedicated on the plat of Camelot by the Sea (Plat SW-76) as a 70-foot wide right-of-way. The roadway is constructed toward the easterly side of the right-of-way, on the side away from the proposed area to be vacated. In addition, the roadway and the area adjacent is relatively flat so that no slope easements are necessary.

Petitioners: J. Craig Turnbull and Catherine M. Turnbull of Seward, AK.

Notification: Public notice appeared in the April 29, 2020 issue of the Seward Journal as a separate ad. The public hearing notice was published in the May 6, 2020 issue of the Seward Journal as part of the Planning Commission's tentative agenda.

Twenty certified mailings were sent to owners of property within 300 feet of the proposed vacation. Zero receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to twenty-five owners within 600 feet of the proposed vacation.

Twenty-one public hearing notices were emailed to agencies and interested parties.

Public hearing notices were made available to five KPB staff/Departments via a shared database.

Notices were mailed to the Seward Post Office and Seward Community Library with a request to be posted in public locations.

The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: Review, not in their service area

ENSTAR: Reviewed, no comments, recommendations or objections.

City of Seward Electric / Chugach Electric: No response

TelAlaska: No response

***6 Utility Easement Vacations**

- a. Vacate the north 5 feet of the 10-foot utility easement, adjoining Lot 36A, Bunnell's Subdivision No. 17 (HM 86-44) in the SE1/4 NE1/4 Sec 19, T6S, R13W, Seward Meridian, AK; KPB File 2020-036V; Petitioner: Homer Professional Office Building LLC of Homer, AK

AGENDA ITEM C. CONSENT AGENDA

*6. Utility Easement Vacation

- a. Vacate the north 5 feet of the 10 foot utility easement, adjoining the south boundary of Lot 36-A, Bunnell's Subd. No. 17 (HM 86-44), granted by Bunnell's Subd. No. 17 (HM 86-44); in SE1/4 NE1/4 Section 19, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-036V

STAFF REPORT

PC Meeting: May 11, 2020

Purpose as stated in petition: Vacating the north 5 feet of the 10 foot utility easement, adjoining the south boundary of Lot 36-A, Bunnell's Subd. No. 17 (HM 86-44), will save trees on the lot by moving the building south. This will also allow better use of this small lot (0.28 acres). HEA has no objection to this vacation and it helps make the entrance, which is set in stone, usable.

Petitioners: HOMER PROFESSIONAL OFFICE BUILDING LLC of HOMER, AK

Location: on Bartlett Street, Off West Pioneer Avenue, City of Homer.

Notification: Notice of vacation mailings were sent by regular mail to 15 owners of property within 300 feet. Notice of the proposed vacation was emailed to 9 agencies and interested parties.

The public notice was posted on the Planning Department's bulletin board at the KPB Administration Building.

Staff Comments: Staff mistakenly thought that there was a 15' utility easement adjoining Bartlett Street right of way and requested that this portion not be vacated. After further research it was determined that there is not a 15' utility easement adjoining Bartlett Street right of way. The applicants request to vacate the entire portion of the north 5 feet of the 10-foot utility easement is correct. All utilities reviewed the correct petition.

Comments Received:

ACS: No objection.

ENSTAR Natural Gas: No objection.

GCI: No objection.

HEA: No objection.

Petitioner Findings:

1. The utility easement proposed to be vacated is not in use by a utility company.
2. The vacation will allow the building to move south and will save trees.
3. This will allow better use of this small lot (0.28 acres).
4. Makes the entrance, which is set in stone, usable.

Staff Findings:

5. ACS, ENSTAR, GCI, HEA, provided written non-objection to the vacation of the north 5' portion of the south 10' wide utility easement.
6. No objection from the Traffic, Safety & Utilities Section of State of Alaska DOT&PF.
7. Bunnell's Subd. No. 17, Plat HM 86-44, granted a 20' wide utility easement adjoining the common lot line between Lot 36-A and former Lot 36B, (now Lot 36-B1, Plat HM 90-41).
8. A 10' wide utility easement remains on Lot 36-B1, HM 90-41.
9. KPB GIS information shows an electric line is located within the 10' utility easement on Lot 36-B1.
10. No surrounding properties will be denied utilities.

11. Petition to vacate will be heard by the City of Homer on April 29, 2020.

Based upon the above findings, **staff recommends** granting the vacation as petitioned, subject to:

1. Provide a sketch clearly indicating the portion of the utility easement being vacated to be recorded with KPB Planning Commission Resolution 2020-10, becoming Page 2 of 2.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
4. Approval of the vacation by the City of Homer.

NOTE: Action after denial of vacation (KPB 20.70.120)

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

END OF STAFF REPORT

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2020-10
KENAI RECORDING DISTRICT**

Vacate the north 5 feet of the 10-foot utility easement adjoining the south boundary of Lot 36-A, Bunnell's Subd. No. 17 (HM 86-44), granted by Bunnell's Subd. No. 17 (HM 86-44); in SE1/4 NE1/4 Section 19, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-036V

WHEREAS, HOMER PROFESSIONAL OFFICE BUILDING LLC of HOMER, AK requested the vacation of the north 5 foot of the 10 foot utility easement adjoining the south boundary of Lot 36-A, Bunnell's Subd No 17, Plat HM 86-44, granted by Bunnell's Subd No 17 (Plat HM 1986-44); and

WHEREAS, affected utility companies provided written non-objection to the proposed vacation; and

WHEREAS, per the petition, the easement is not in use by any utility companies, will save trees on the lot by moving the building south, able to better use this small lot (0.28 acres) and it helps make the entrance, which is set in stone, usable; and

WHEREAS, the proposed vacation will not deny utility easement(s) to surrounding properties; and

WHEREAS, on May 11, 2020, the Kenai Peninsula Borough Planning Commission considered the background information, all comments received, and recommendations from KPB Planning Department staff regarding the proposed vacation; and

WHEREAS, the Planning Commission found that vacating the utility easement will not be detrimental to the public interest; and

WHEREAS, 20.70.140 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish vacations by Resolution.

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

Section 1. That the north 5 feet of the 10-foot utility easement adjoining the south boundary of Lot 36-A, Bunnell's Subd. No. 17 (HM 86-44), granted by Bunnell's Subd. No 17 (Plat HM 86-44), is hereby vacated.

Section 2. That an as-built survey or sketch, showing the location of the portion of the utility easement to be vacated be attached to and made a part of this Resolution, becoming page 2 of 2.

Section 3. That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.

Section 4. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

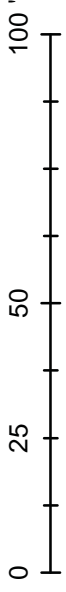
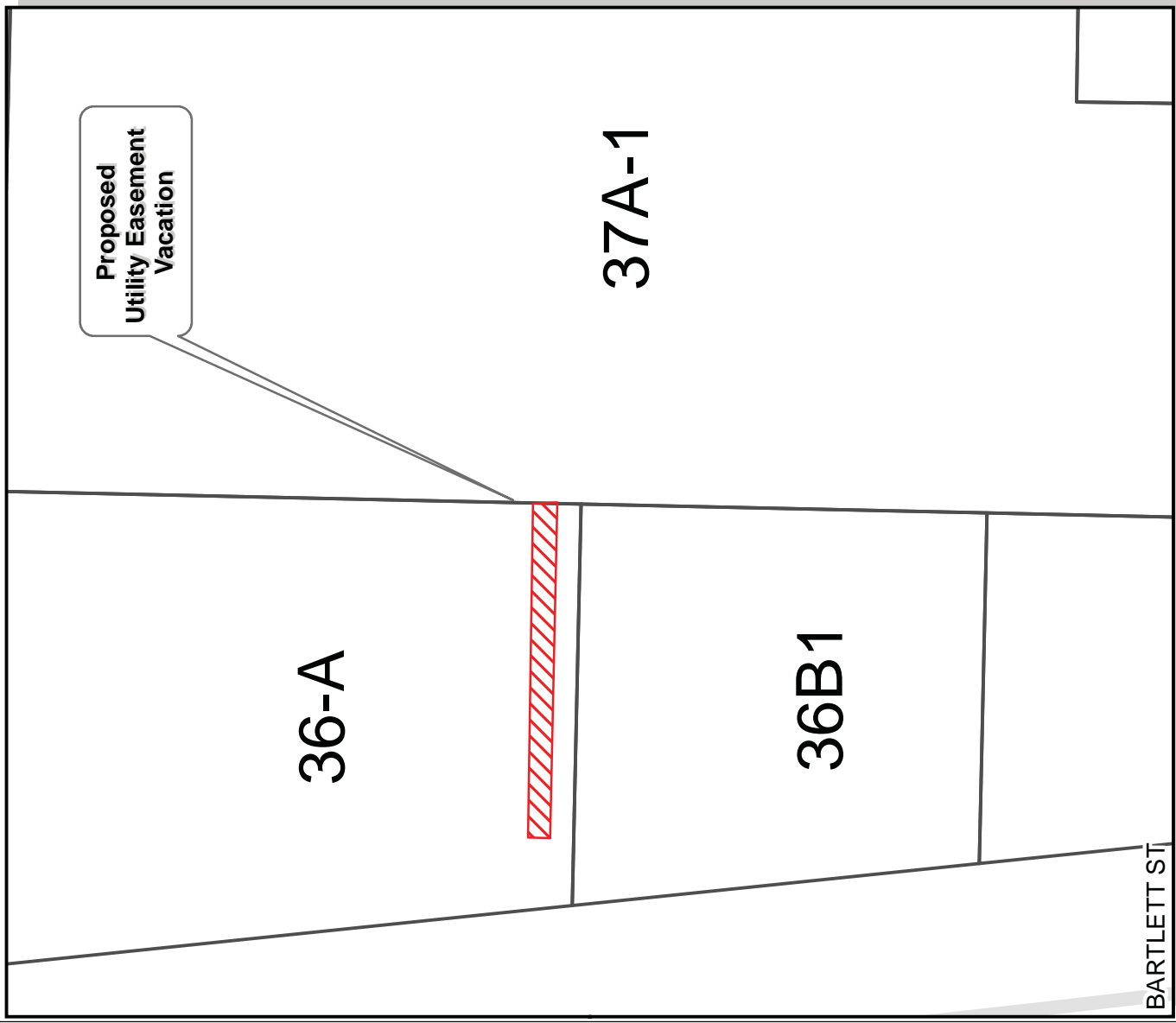
ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 11TH DAY OF MAY, 2020.

Blair J. Martin, Chairperson
Planning Commission

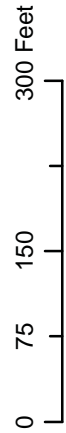
ATTEST:

Ann Shirnberg
Administrative Assistant

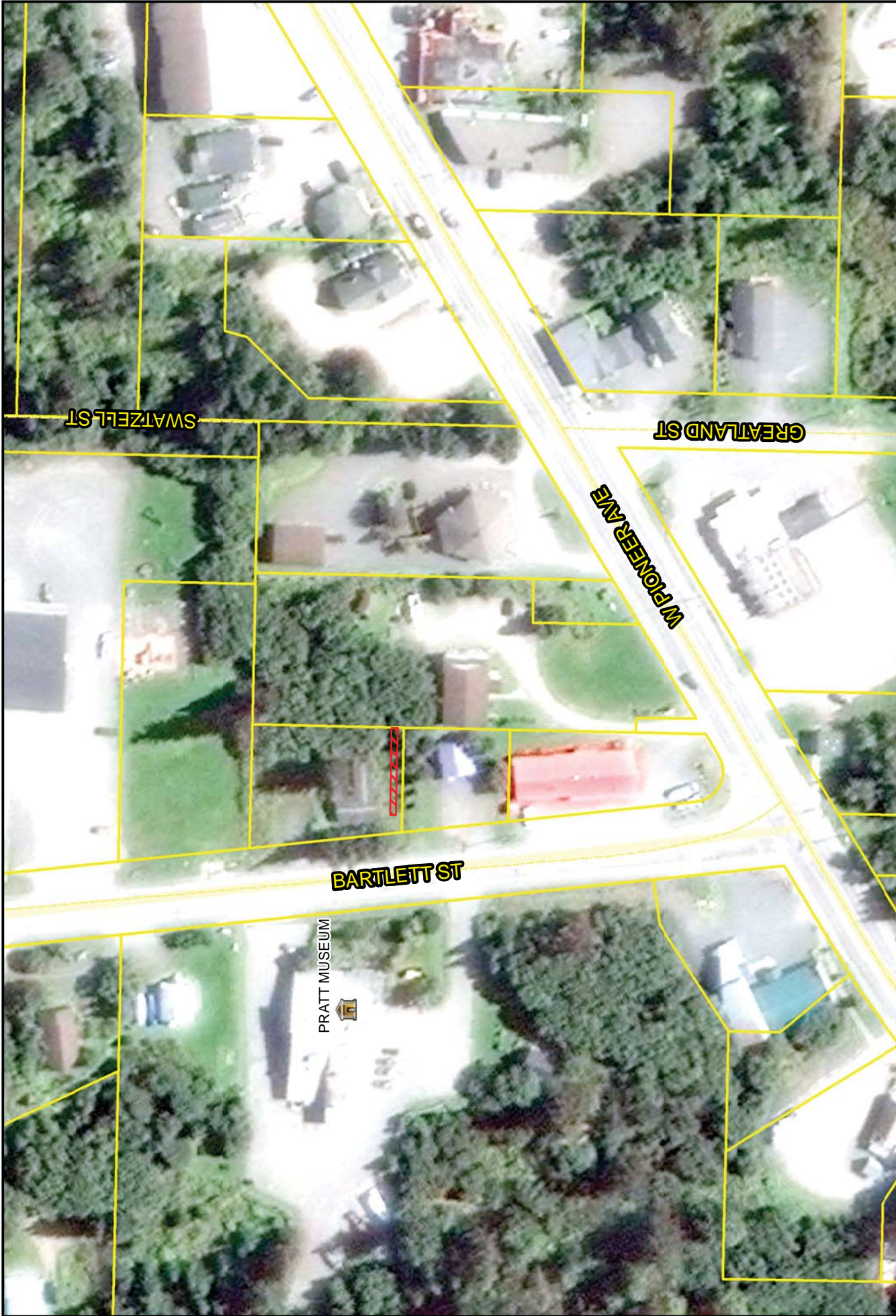
Return to:
Kenai Peninsula Borough Planning Department
144 North Binkley Street
Soldotna, Alaska 99669



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.



KPB 2020-036V
T06S R13W S19
HOMER



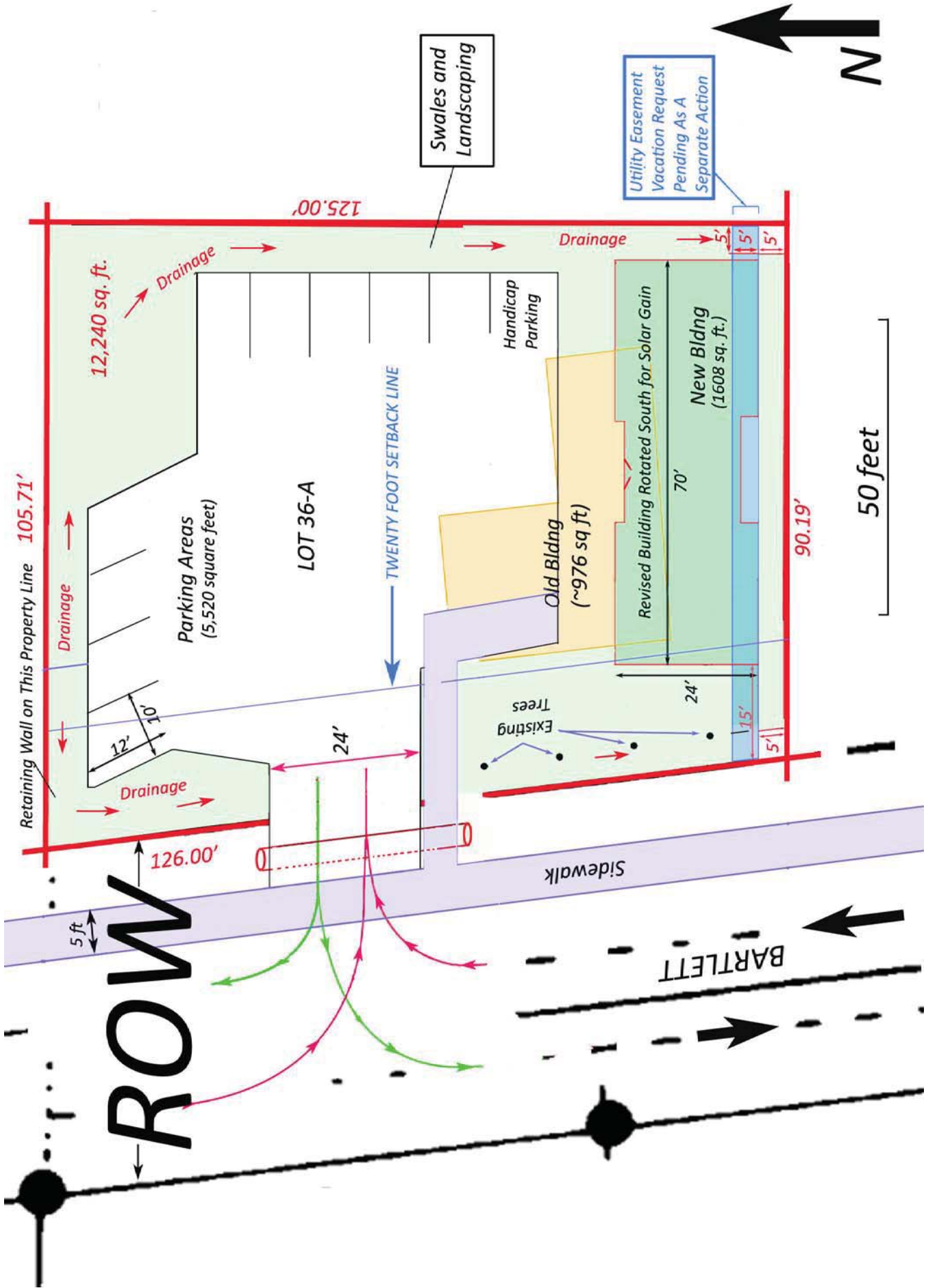
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

Aerial View



 Utility Easement Vacation

PClements, KPB
Date: 4/14/2020
Imagery: 2016 Homer



KPB 2020-036V

Session 20-06, a Special Meeting of the Planning Commission was called to order by Chair Venuti at 5:36 p.m. on April 29, 2020 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska via Zoom Webinar.

PRESENT: COMMISSIONERS BENTZ, HIGHLAND, PETSKA-RUBALCAVA, BOS, SMITH, DAVIS
AND VENUTI

STAFF: CITY PLANNER ABBOUD
CITY CLERK JACOBSEN
DEPUTY CITY CLERK KRAUSE

APPROVAL OF THE AGENDA

Chair Venuti called for a motion to approve the agenda.

HIGHLAND – SO MOVED. (There was no second offered.)

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PUBLIC COMMENT ON ITEMS ALREADY ON THE AGENDA

RECONSIDERATION

ADOPTION OF CONSENT AGENDA

- A. Minutes of March 4, 2020 Planning Commission Meeting
- B. Petition to Vacate a Utility Easement at 3780 Bartlett Street
- C. Time Extension Request for Christensen Tracts 2009 Addition Preliminary Plat

Chair Venuti requested a motion to approve the Consent Agenda.

SMITH/HIGHLAND – SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VISITORS/PRESENTATIONS