

REGULAR MEETING AGENDA

1. Call to Order

2. Approval of Agenda

3. Public Comment

The public may speak to the Commission regarding matters on the agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).

4. Reconsiderations

5. Adoption of Consent Agenda

All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda.

A. Approval of minutes of April 17, 2019 **p. 1**

B. Decisions and Findings document for CUP 19-04 to allow a residential drug and alcohol treatment facility at 397 E. Pioneer Avenue **p. 11**

6. Presentations/Visitors

7. Reports

A. Staff Report 19-34, City Planner's Report **p. 17**

8. Public Hearings

Testimony limited to 3 minutes per speaker. The Commission conducts Public Hearings by hearing a staff report, presentation by the applicant, hearing public testimony and then acting on the Public Hearing items. The Commission may question the public. Once the public hearing is closed the Commission cannot hear additional comments on the topic. The applicant is not held to the 3 minute time limit.

9. Plat Consideration

A. Staff Report 19-35, Lillian Walli Estate Right of Way Vacation Plat Preliminary Plat **p. 35**

B. Staff Report 19-36, Skyline Drive Subdivision 2019 Replat Preliminary Plat **p. 47**

10. Pending Business

A. Staff Report 19-37, Measuring Building Heights **p. 61**

B. Staff Report 19-38, Zoning Permit Process and Building Location Verification **p. 73**

11. New Business

- A.** Staff Report 19-39, Review of Police Station landscaping plan **p. 77**

12. Informational Materials

- A.** City Manager's Report for the April 22, 2019 Homer City Council meeting **p. 99**
- B.** State of Alaska Preliminary Decision Public Notice for a section-line easement vacation within lot 6A-1 Virginia Lynn 2006 Replat **p. 119**
- C.** Kenai Peninsula Borough Planning Commission Notice of Decisions:
- 30' wide public access easement in Tract A, A.A. Mattox 1958 Addition, Plat HM 3746 **p. 129**
 - Oscar Munson No. 25 Preliminary Plat **p. 135**

13. Comments of the Audience

Members of the audience may address the Commission on any subject. (3 min limit)

14. Comments of Staff

15. Comments of the Commission

16. Adjournment

The next regular meeting is scheduled for Wednesday, May 15, 2019. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission.

Session 19-08, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Venuti at 6:30 p.m. on April 17, 2019 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS BANKS, SMITH, VENUTI, HIGHLAND, BOS, PETSKA-RUBACLAVA

ABSENT: COMMISSIONER BENTZ (EXCUSED)

STAFF: DEPUTY CITY PLANNER ENGBRETSSEN
DEPUTY CITY CLERK KRAUSE

The Commission met in a worksession at 5:30 p.m. On the agenda was a presentation from Economic Development Advisory Commission Chair Karin Marks and Commissioner Jeffrey Johnson on developing and implementing a Wayfinding and Streetscape Plan in relation to the update to the Homer Area Transportation Plan and signage and a presentation from Deputy City Planner Engebretsen on the Tsunami inundation zone maps.

APPROVAL OF THE AGENDA

Chair Venuti called for a motion to approve the agenda.

HIGHLAND/SMITH – SO MOVED

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PUBLIC COMMENT

RECONSIDERATION

ADOPTION OF CONSENT AGENDA

A. Approval of minutes of April 3, 2019

Chair Venuti requested a motion to approve the Consent Agenda.

HIGHLAND/BOS - SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VISITORS/PRESENTATIONS

REPORTS

A. Staff Report 19-31, City Planner's Report

Chair Venuti introduced the item into the record by reading of the title.

Deputy City Planner Engebretsen reviewed the City Planner's report and highlighted the following items:

- Status of the Main Street and Sterling Highway Intersection Improvement project
- Status update on the Pioneer Avenue Repaving project
- Status update on Lake Street improvement project
- Welcomed Commissioner Petska-Rubalcava
- Conditional Use Permit follow-up report from Planning Technician Brown

Commissioner Highland informed the Commission that she would be unable to attend the Council meeting on Monday but would attend the May 13, 2019 Council meeting. After a brief discussion Commissioner Smith volunteered to attend the Council meeting on Monday.

PUBLIC HEARINGS

A. Staff Report 19-32, CUP 19-04 to allow a Residential Drug and Alcohol treatment Facility at 397 E Pioneer Avenue

Chair Venuti introduced the item into the record by reading of the title.

Deputy City Planner Engebretsen noted for the record the public comments received and provided as a laydown. She then reviewed her report for the Commission reading into the record the conditions recommended by Staff.

Philip Licht, Executive Director, Set Free Alaska provided information on the organization and the purpose of the organization. He provided information on the planning and intent to assist people overcome addiction by offering services through a residential treatment facility and possible outpatient treatment services in the future. The location was chosen as it is accessible to needed services that would be required by the residents. Mr. Licht provided information on the location in Wasilla, Alaska. He noted that they have been in business since 2012 and providing residential treatment services since 2016.

Mr. Licht noted that there will be staff on location 24 hrs, residents will not be allowed to leave unless they are accompanied and have been approved for a day pass. He emphasized the protocols to enter into the treatment program and that they will have the option to leave if they chose to do so as the facility is not a jail. The facility will have security and cameras around the facility. He noted that traffic will be less and no more than a hotel, bar or restaurant.

Chair Venuti opened the public hearing noting that the public will have three minutes to comments and requesting that they limit their comments to the issue of location.

Stephen Rollins, city resident, commented in support of the project noting the past use of the property and his efforts and involvement with the Refuge Chapel.

Tess Daley, resident, retired mental health clinician, commented on the submitted concerns from property owners and is supportive of the project however expressed concerns on the choice of location and the inaccessibility of the building as it currently is not ADA compliant.

Dotti Harness-Foster, resident, commented on the conditions #2 fencing should be welcoming and no lock down visible, Condition #3 replacing the planters along Pioneer should be this summer Condition #5 should be screen in one year period, requested landscaping along Klondike to buffer the view.

Paul Hueper, resident, property owner commented in support of the location and noted that the location access is down stairs off of the Klondike entrance. Set Free will be putting a lot of money into the building and will add value to the area. He also commented the value added to the community by bringing higher paid employment opportunities and offering as many as 25 men a chance to become contributing members of the community.

Lanny Simpson, resident, commented in support of the proposed project and the improvement to the area and increase to the neighboring property values.

Marilyn Hueper, resident, she is excited to see this project in downtown in relation to other services that are provided in the area and accessible to the potential residents. She also commented on the difficulties there are in getting the needed services and what benefits that having the residential treatment facility would provide for the city and area.

Josh Garvey, resident, commented on the previous testimony provided in Council meetings, the review provided by the Planning staff, the potential to providing employment and the benefits of improving the central business area and how the location will be beneficial.

Chair Venuti closed the Public Hearing. He asked if the Deputy City Planner had any rebuttal.

Deputy City Planner Engebretsen had no rebuttal.

Mr. Licht, applicant responded to the following comments:

- ADA compliance would be addressed in the renovation of the facility
- There is no place in Homer that is not located within walking distance of a bar or liquor store in regards to proximity concerns.

Chair Venuti opened the floor to questions from the Commission.

Commissioner Highland requested clarification on certification process.

Applicant responded that the certification is provided by the State of Alaska Department of Health and Social Services through Medicaid based on location and services. The business is certified through CARF as a whole. They were incorporated in 2009, Outpatient Services in 2010, Children's Services 2016, Womens Residential services fall 2017.

Commissioner Highland then inquired if she was allowed to ask questions with regard to issues other than location.

Deputy City Planner Engebretsen advised the Commission to consider what attributes are already in the general population providing an example compared to the proposed business and also to consider what does City Code regulate. While many concerns have been raised not all of them come under the purview of the City's Conditional Use Permit process.

Commissioner Highland stated that she has concerns regarding written comments submitted against the application.

Mr. Licht, applicant, responded to the health and safety concerns and providing some details on the policies and procedures regarding intake, screenings, harm reduction, client escalation, additionally noting that they adhere to Medicaid standards which are federal and international standards to maintain the certifications that they currently hold. He addressed concerns such as allowing sex offenders into the program is prohibited as a Medicaid provider; stating all potential residents are required to be screened by a medical professional before entering into their program, providing a letter certifying that they are safe to enter into the program. Mr. Licht further stated that they desire to build relationships with the neighboring property owners and respects their concerns but the Commission's decision should be based on the legal right to have the business in the location.

Commissioner Bos commented that it will be based on legality, but they must go through these processes so that everyone gets a good understanding on where they are at and people tend to offer their comments on an emotional level. He inquired if there was anything salvageable, admitting he has not been inside that building in a very long time.

Mr. Licht responded that the building is very nice on Vida's side as well as the Regent side. The downstairs does require significant remodel and their budget is approximately \$800,000.00 He did note that the condo association is responsible for the exterior.

Commissioner Banks stated that there is no compulsion for the Commission to grant this permit. He also asked how many other locations have they looked at in addition to this location and why this location in Homer?

Mr. Licht responded that he did not have an exact number of locations and are still looking at locations just in case this permit is not granted. He additionally stated that being a faith based organization it seemed as if they were led to this location. He provided the story on how they were given the lead on this location.

Commissioner Banks then asked for a comparison of the location in Wasilla out of town and being in a location in town in Homer.

Mr. Licht responded that the location in Wasilla was a result of finding a property that accommodated all the services they provide in one location with room for future expansion. It is located on a 10 acre parcel of land within a residential area and it is difficult to find a location that is large enough to provide such services in one location. Being within the City limits has its pluses and minuses. He provided some details of those being in town and out of town. One of the benefits is co-location of services for the potential of providing outpatient services and co-staffing. If you are too far out of town it makes it difficult in accessing services. He further added that there is those who believe that being out of town can keep residents out of reach of falling back into addiction.

Commissioner Banks then asked about use and the faith based program, if there would be religious teachings associated with this program and if so may it be categorized under a different category than this permit.

Mr. Licht stated that the primary use of the facility is as the planner described and the philosophy is faith based and they are not providing a religious service such a church or masque.

Deputy City Planner Engebretsen read from Homer City Code 21.03 the definition for religious cultural fraternal assembly means a use or building owned or maintained by an organized religious organization or nonprofit entity for assemblies for social, cultural, civic, or philanthropic purposes, or where persons regularly assemble for worship. Noting that this purpose is better defined as a group care home. Otherwise any non-profit could operate a residential treatment facility from their location.

Commissioner Bos inquired if the applicant had any questions on the conditions outlined in the permit.

Mr. Licht requested clarification on the planter boxes.

Deputy City Planner Engebretsen provided definition on the planter boxes noting on page 35 of the application.

Commissioner Bos commented that the Applicant could speak with any of the neighboring property owners on landscaping but requested clarification on when the Applicant expected to be in operation as the permit is stating 36 months.

Mr. Licht responded that they are looking to be in operation by the fall of 2019 to Winter 2020 dependent on the renovation schedule and permitting process.

Chair Venuti inquired about the access to the sleeping rooms and requested clarification on secure access.

Mr. Licht responded that all the doors are secured and alarmed. These are egresses also.

Chair Venuti then questioned that the residents are restricted to the facility 24 hrs per day.

Mr. Licht stated that there is 24 hour wake staff and residents are not permitted to leave unless they are accompanied by staff or special approval later in the program. They will be given passes to attend appointments, shopping and it is usually with a member of staff or sponsor. Typically these passes are limited to 5:00 p.m. It is very rare to allow a resident out in the evening until later in the treatment and it is usually to a meeting or class. Mr. Licht then provided an analogy of the treatment plan to having a broken arm.

Chair Venuti inquired what would stop a resident from leaving through a window since fire Marshal would require the windows to be an egress.

Mr. Licht responded that the windows would be alarmed and they would know if someone was attempting to leave but more importantly they would know if someone was trying to sneak anything in to the facility. It would be more likely if a patient wanted to leave they would leave via the door.

Chair Venuti commented that the concerns expressed from the neighbors regarding safety and then if the renovation budget is \$800,000 that they could build a very nice facility for that amount and believed that putting that amount into this very old structure was a big bandage.

Mr. Licht responded to the concerns expressed of many individuals intoxicated and leaving needles around this community and he believed that there are many from neighboring businesses that present more threat than the people that will be residents in the program. He appreciated the concern and believes that the program will alleviate the problem.

Chair Venuti inquired if there is a plan to lease or buy as the property is listed as a non-profit and was wondering if the property would return to the tax rolls.

Mr. Licht was not aware of how exactly the process went but Set Free is a non-profit and if any exemptions are available he believed that they would be applying for any exemptions available as a non-profit.

Mr. Hueper came forward to respond to the questions on the structure stability and stated that they had Kenton Bloom review the structure and it is quite solid and if anything overbuilt that would allow a third floor if desired.

Commissioner Highland questioned the process on addressing all issues non-conformity and conditional use permit referring to public comments submitted.

Deputy City Planner Engebretsen responded that they address all issues with one permit, one mailing of notice and one public hearing instead of having several this conditional use permit will also address the non-conformity that existed.

Commissioner Banks inquired further about process and requested clarification of advertising the issues in the Notice of Hearing and the permit application.

Deputy City Planner Engebretsen provided input and referred to page 41 in the packet which was the copy of the Notice that was advertised and sent to the property owners and it stated what sections of City code were being addressed by the permit.

Commissioner Banks then inquired if he was correct in understanding that the owner of the building was required to apply for a Conditional Use Permit since 2007.

Deputy City Planner Engebretsen noted that the building had the unresolved issue and they are correcting it at this time with the permit.

Commissioner Smith then stated that the report it indicated that the owner had applied for a permit.

Deputy City Planner Engebretsen hesitated to review the history of the property without the benefit of the official record in front of her to read from but in 2007 there was a non-conforming status without the addition recognized. The majority has gone through the appeal process and been upheld but the addition has not.

Commissioner Banks requested clarification on the access for the residents.

Mr. Licht stated that the primary access would be the rear access however he was not comfortable stating that it would be confined to that access only. He confirmed that any activities would be conducted in the rear of the facility such as a barbeque or seating.

BOS/HIGHLAND MOVE TO ADOPT STAFF REPORT PL 19-32 AND APPROVE CUP 19-04 TO ALLOW A RESIDENTIAL DRUG AND ALCOHOL TREATMENT FACILITY AT 397 E PIONEER AVENUE WITH FINDINGS 1-11 AND CONDITIONS 1-6

Commissioner Highland requested a five minute recess.

Chair Venuti called for a recess at 7:59 p.m. The meeting was called back to order at 8:04 p.m.

There was a brief discussion on consideration additional conditions due to the comments received and since fire marshal approval was required that would address the ADA compliance issues.

Commissioner Banks inquired about addressing the changes to the conditions such as adding 2019 to Condition #3 as suggested by Ms. Harness-Foster.

There was no response from the Commission.

Chair Venuti inquired if there was further discussion.

Chair Venuti requested the Clerk to call for the vote.

Commissioner Banks stated he would like to add Condition #7.

There was a brief discussion between Chair Venuti and Commissioner Banks on whether the floor was closed to further discussion on the motion on the floor.

BANKS/HIGHLAND MOVED TO ADD CONDITION SEVEN TO ADD VISUAL LANDSCAPING ALONG KLONDIKE AVENUE.

A brief discussion on the existing significant vegetation in the area and comments that additional landscaping in that area would not provide any change or was thought to be warranted.

Additional clarification ensued on designating it as screening landscaping and Staff pointing out there were some areas where planting could occur to further screen the parking lot.

Chair Venuti requested the Clerk to call the vote on the amendment to the motion.

VOTE. NO. BOS, SMITH, PETSKA-RUBALCAVA

VOTE. YES. HIGHLAND, BANKS, VENUTI

Motion failed.

Chair Venuti requested the Clerk to call the vote on the Main motion.

VOTE. (Main) YES. SMITH, HIGHLAND, BANKS, PETSKA-RUBALCAVA, SMITH

VOTE. NO. VENUTI.

Motion carried.

Commissioner Smith departed the meeting at 8:12 p.m.

B. Staff Report 19-33, An Ordinance of the Homer City Council Amending HCC 21.05.030(b) to change how building height is measured within areas of special flood hazard.

Chair Venuti introduced the item by reading of the title.

Deputy City Planner Engebretsen provided a summary of the report for the Commission.

Chair Venuti opened the Public Hearing.

Josh Garvey, CEO, Land's End Resort commented in support of the ordinance.

HIGHLAND/BOS MOVED TO ADOPT STAFF REPORT 19-33 AND FORWARD THE DRAFT ORDINANCE AMENDING HOMER CITY CODE 21.05.030(b) TO CHANGE HOW BUILDING HEIGHT IS MEASURED WITHIN AREAS OF SPECIAL FLOOD HAZARD TO CITY COUNCIL FOR APPROVAL.

There was no discussion.

Chair Venuti inquired if there was any dissent.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PLAT CONSIDERATION

PENDING BUSINESS

INFORMATIONAL MATERIALS

- A. City Manager's Report for the April 8, 2019 Homer City Council meeting
- B. Kenai Peninsula Borough Notice of Decision for Commercial Park Unit 2 Preliminary Plat

COMMENTS OF THE AUDIENCE

COMMENTS OF THE STAFF

Deputy City Clerk Krause commented well done.

Deputy City Planner Engebretsen commented thank you for smooth meeting.

COMMENTS OF THE COMMISSION

Commissioner Highland welcomed Commissioner Petska-Rubalcava to the Commission.

Commissioner Bos complimented the Chair on a well-run meeting and welcomed Commissioner Petska-Rubalcava to the commission.

Commissioner Petska-Rubalcava commented that it was an interesting meeting for her first one.

Commissioner Banks welcomed Commissioner Petska-Rubalcava and stated that usually the first meeting is very interesting, at least for most of them they have been. He then commented that when they have a controversial topic if a Commissioner is thinking of voting no that Commissioner should advise the rest of the Commission so it can be considered and discussed.

Chair Venuti welcomed Commissioner Petska-Rubalcava to the Commission and wished everyone a Happy Easter. He then requested a motion to adjourn.

Commissioner Petska-Rubalcava requested clarification from Chair Venuti as to when and how they determine what the Commission talks about specific to a Conditional Use Permit, seeing as the public and Commissioners have comments or questions about the technical aspects of the business and how they conducted their business. She stated that she was unsure what they talk about, as she did have questions but was unsure whether they would be appropriate to the topic since they were directed to focus on the location.

Chair Venuti responded that the focus of the permit was whether this location was appropriate to the business and the conversation about Set Free was held at the Council and in the newspapers, it is not like it is a brand new subject. He tried to direct that to some extent tonight to keep focus on the location. The conversation about the business has already been held.

Deputy City Planner Engebretsen responded to Commissioner Petska-Rubalcava question stating she will receive additional training and more understanding what is regulated under city code; noting that frequently with any kind of development people will have concerns that may not be something that the city regulates. So learning what the City has the authority to regulate and what comes under the purview of the Commission and where that line is in general she will learn.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 8:25 p.m. The next regular meeting is scheduled for Wednesday, May 1, 2019 at 6:30 p.m. in the City Hall Cowles Council Chambers. There is a worksession scheduled at 5:30 p.m. prior to the meeting.

RENEE KRAUSE, MMC, DEPUTY CITY CLERK

Approved: _____



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

HOMER ADVISORY PLANNING COMMISSION

Approved CUP 19-04 at the Meeting of April 17, 2019

RE: Conditional Use Permit (CUP) 19-04
Address: 397 E Pioneer Ave

Legal Description: T 6S R 13W SEC 20 SEWARD MERIDIAN HM 0000972 GLACIER VIEW SUB NO 2 1953 LOT 5 BLK 7, T 6S R 13W SEC 20 SEWARD MERIDIAN HM 2015004 GLACIER VIEW SUB RESUB LOTS 4 5 6 & E 75 FT OF LOT 7 BLOCK 6 LOT 5 BLK 6, T 6S R 13W SEC 20 SEWARD MERIDIAN HM 0780008 GLACIER VIEW SUB RESUB LOTS 4 5 6 & E 75 FT OF LOT 7 BLOCK 6 LOT 4 BLK 6

DECISION

Introduction

Set Free Alaska, Inc (the “Applicant”) and Refuge Chapel (the landowner) applied to the Homer Advisory Planning Commission (the “Commission”) to approve a conditional use permit (CUP), under Homer City Code (HCC) 21.18.030(k) for a group care home and to exceed a building area of 30% of a lot in the Central Business District per HCC 21.18.040(d).

The applicant requested approval of a group care home to provide an inpatient residential drug and alcohol treatment facility. Additionally, the Applicant requested approval for the structure to occupy more than 30% of the lot as an existing addition had not gained a CUP as required by HCC 21.18.040(d). The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on April 17, 2019. Notice of the public hearing was published in the local newspaper and sent to 56 property owners of 57 parcels prior to the meeting.

At the April 17, 2019 meeting of the Commission, the Commission voted to approve the request with seven Commissioners present. The Commission approved a group care home under Homer City Code (HCC) 21.18.030(k), and the building area to exceed 30% of the lot area, under HCC 21.18.040(d). CUP 19-04 was approved with a vote of six on favor and one opposed.

Evidence Presented

Deputy City Planner Engebretsen read the staff report.

Philip Licht, Executive Director, Set Free Alaska explained the mission of Set Free Alaska, provided information on the organization and facility operations.

In addition to the four letters of objection provided in the Commission meeting packet, five letters of objection were received prior to the meeting. All letters received were provided by property owners within 300 feet of the proposed action. Concerns included potential for increased crime, noise and disturbances, traffic, negative impacts to property values, and that the chosen location was inappropriate due to its proximity to a liquor store.

Oral testimony was heard from seven people. Six people testified in favor of the project. Comments included the increase in neighboring property values due to investment in the building, the need for the service within the community, and that the location within the Central Business District was appropriate. The seventh commenter did not speak for or against the project but commented on the CUP conditions.

Findings of Fact

After careful review of the record, the Commission approves CUP 19-04.

The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030 and 21.71.040.

a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.

Finding 1: HCC 21.18.030(k) authorizes group care homes and HCC 21.18.040(d) authorizes a lot containing more than 30% building area if approved by a Conditional Use Permit.

b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.

Finding 2: The purpose of the Central Business District includes providing a mixture of residential and nonresidential uses, and professional services. The proposal is compatible with the purpose of the district as it combines a residence with professional services.

c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.

Finding 3: A group care home is not expected to negatively impact the adjoining properties greater than other permitted or conditional uses such as gas stations or homeless shelters.

Finding 4: A lot coverage of 38.5% is a small increase over the accepted non-conforming structure size. No evidence has been presented that property values have been or would be affected in a negative way by the 540 square foot addition on the south side of the building.

d. The proposal is compatible with existing uses of surrounding land.

Finding 5: The permitting of a group care home and a structure of 38.5% lot coverage is compatible with existing uses of surrounding land.

e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

Finding 6: Existing public, water, sewer, and fire services are adequate to serve the use and structure.

f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

Finding 7: The Commission finds the proposal will not cause undue harmful effect upon desirable neighborhood character as described in the purpose statement of the district.

g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

Finding 8: The proposal is not unduly detrimental to health, safety, or welfare

h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

Condition 1: A change of use permit is required, and a Fire Marshal Certificate shall be provided prior to occupancy.

Finding 9: The proposal will comply with applicable regulations.

i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

Finding 10: The proposal is not contrary to the applicable land use goals and objects of the Comprehensive Plan. The proposal aligns with Chapter 4 Goal 1 Objective A and no evidence has been found that it is not contrary to the applicable land use goals and objects of the Comprehensive Plan.

j. The proposal will comply with all applicable provisions of the Community Design Manual.

Finding 11: Outdoor lighting must be down lit per HCC 21.59.030 and the CDM

HCC 21.71.040(b). b. In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

- 1. Special yards and spaces:** No specific conditions deemed necessary
- 2. Fences and walls: Condition 2:** Any fencing will be designed to reflect traditional building materials and styles with a maximum height of six feet.
- 3. Surfacing of parking areas:** No specific conditions deemed necessary.
- 4. Street and road dedications and improvements:** No specific conditions deemed necessary.
- 5. Control of points of vehicular ingress and egress:** No specific conditions deemed necessary.
- 6. Special provisions on signs:** No specific conditions deemed necessary.
- 7. Landscaping: Condition 3:** Replace any missing planter boxes.
- 8. Maintenance of the grounds, building, or structures:** No specific conditions deemed necessary.
- 9. Control of noise, vibration, odors or other similar nuisances:** No specific conditions deemed necessary.
- 10. Limitation of time for certain activities:** No specific conditions deemed necessary.
- 11. A time period within which the proposed use shall be developed: Condition 4:** The group care home shall be in operation within 36 months of approval of the CUP. The HAPC may grant an extension to this timeframe. If an extension is not granted, and operations do not commence within 36 months, the CUP for a group care home expires.
- 12. A limit on total duration of use:** No specific conditions deemed necessary.
- 13. More stringent dimensional requirements,** such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when

and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.

14. Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot.

Conclusion: Based on the foregoing findings of fact and law, Conditional Use Permit 2019-04 is hereby approved, with Findings 1-16 and Conditions 1-6.

Conditions

1. A change of use permit is required, and a Fire Marshal Certificate shall be provided prior to occupancy.
2. Any fencing will be designed to reflect traditional building materials and styles with a maximum height of six feet.
3. Replace any missing planter boxes along Pioneer Ave.
4. The group care home shall be in operation within 36 months of approval of the CUP. The HAPC may grant an extension to this timeframe. If an extension is not granted, and operations do not commence within 36 months, the CUP for the group care home expires.
5. Screen the dumpster on three sides within one year of occupancy.
6. If the rear/south wall of the building is painted, it shall be an earth tone.

Date

Chair, Franco Venuti

Date

City Planner, Rick Abboud

NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by

Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on _____, 2019. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date

Travis Brown, Planning Technician

Set Free Alaska
PO Box 876741
Wasilla, AK 99654

Holly C. Wells
Birch, Horton, Bittner & Cherot
1127 West 7th Ave
Anchorage, AK 99501

Refuge Chapel
397 E Pioneer Ave Ste 2
Homer, AK 99603

Katie Koester, City Manager
491 E Pioneer Avenue
Homer, AK 99603



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

TO: Homer Advisory Planning Commission
FROM: Rick Abboud AICP, City Planner
DATE: May 1, 2019
SUBJECT: Staff Report 19-34 City Planner's Report

City Council 4/22/19

Memorandum 19-045 from City Clerk Re: Vacate the 30' Wide Public Access Easement Adjoining the North Boundary of Tract A, A.A. Mattox 1958 Addn, Plat HM 3746. KPB File 2019-026V. Recommend approval.

Appeal decision for the clinic on Cityview

The deadline for the decision from the judge is May 6.

Bluff Stability Project

We have heard that FEMA would like to fund the project. The funding is for the next fiscal year starting October 1, 2019. The Department of Geological & Geophysical Surveys (DGGs) will plan to be in Homer 3 times for a project kickoff, progress, and final public meeting. I will keep you updated as we progress with the more detailed application.

Appeals

Oral arguments regarding the medical clinic have taken place on March 6th. We are now waiting for the judge to render his decision. We have been told to expect a decision by the end of March.

A copy of the Alaska Supreme Court decision regarding Mr. Griswold's standing in the Windjammer CUP is included in the packet. The short version is that he does have standing and the issue will be going before the Board of Appeals.

Work list

- Green Infrastructure – Syverine to attend conference and report back to HAPC. Goal is to increase capacity for a future plan update.
- Medical district – awaiting decision on the appeal
- Transportation plan – nothing to report at this time

City Council report sign up

5.13.19 Tom/Roberta

5.28.19 (Tuesday after Memorial Day)

6.10.19

6.24.19

Attached: State of Alaska Supreme Court Opinion, 4/19/19, Re: Windjammer Hotel Porch CUP

Notice: This opinion is subject to correction before publication in the PACIFIC REPORTER. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, email corrections@akcourts.us.

THE SUPREME COURT OF THE STATE OF ALASKA

FRANK GRISWOLD,	)	
	)	Supreme Court No. S-16267
Appellant,	)	
	)	Superior Court No. 3HO-14-00243 CI
v.	)	
	)	<u>OPINION</u>
HOMER BOARD OF ADJUSTMENT,	)	
JOHN SMITH, NORMA SMITH,	)	
TERRY YAGER, JONNIE YAGER, and	)	
RICK ABBODD,	)	
Appellees.	)	No. 7354 – April 19, 2019
_____	)	

Appeal from the Superior Court of the State of Alaska, Third District, Homer, Charles T. Huguelet, Judge.

Appearances: Frank Griswold, pro se, Homer, Appellant. Holly C. Wells and Jack R. McKenna, Birch Horton Bittner & Cherot, Anchorage, for Appellees Homer Board of Adjustment and Rick Abboud. No appearance by Appellees John Smith, Norma Smith, Terry Yager, and Jonnie Yager.

Before: Stowers, Chief Justice, Winfree, Maassen, Bolger, and Carney, Justices.

CARNEY, Justice.
BOLGER, Justice, dissenting.

I. INTRODUCTION

Frank Griswold appealed a decision of the Homer Advisory Planning Commission to the Homer Board of Adjustment. The Board rejected his appeal for lack

of standing. Griswold appealed to the superior court, arguing that he had standing under the Homer City Code and alleging a number of due process violations. The superior court ruled that Griswold lacked standing as a matter of law and found any due process errors harmless. It also awarded the Board attorney's fees on the appeal, reasoning that Griswold did not qualify for protection from attorney's fees as a public interest litigant.

We reverse the superior court's decision on standing and vacate its award of attorney's fees.

II. FACTS AND PROCEEDINGS

In March 2014 Homer residents Terry and Jonnie Yager applied for a conditional use permit to build a covered porch ten feet into a twenty-foot setback along Pioneer Avenue in Homer's Central Business District. A public hearing before the Homer Advisory Planning Commission (the Commission) was set for the next month.

Frank Griswold is a Homer resident who owns several lots within the Business District, one of which is approximately 3,280 feet from the Yagers' property. Before the hearing he submitted two documents to the Commission, arguing that the setback exceptions required a variance rather than a conditional use permit and that provisions of the Homer City Code (HCC) allowing for setback exceptions by conditional use permits in the Business District conflicted with state law. After a public hearing the Commission approved the Yagers' conditional use permit, which it referred to as CUP 14-05.

In May Griswold filed a notice of appeal of the Commission's decision to the Homer Board of Adjustment (the Board). In his notice Griswold explained that he passed the Yagers' property "often several times a day" and that he appreciated the open space that the setback created along the street. He argued that the Yagers' permit would adversely affect the value of his Business District properties by increasing congestion in the area and that the permit would create a "pernicious precedent" for future setback

exceptions in his neighborhood. Additionally Griswold said this would harm the use and enjoyment of his home.

The city clerk initially rejected Griswold's notice for lack of a legal description of the property that was the subject of the permit. The clerk later accepted Griswold's amended notice and sent out a letter to the parties explaining that she found Griswold's appeal "compliant with [HCC] Sections . . . 21.93.070 and 21.93.080," provisions which respectively describe the time in which an appeal may be filed and what a notice of appeal must contain.

The letter further noted that "[o]nly persons . . . who would be qualified to appeal under [HCC] 21.93.060 may participate as parties in an appeal from the Commission to the Board of Adjustment." HCC 21.93.060 defines standing to appeal from an action of the Commission to the Board, and allows appeals from "[a]ny person who actively and substantively participated in the proceedings before the Commission and is aggrieved by the action or determination."¹

The clerk scheduled a hearing for August 13, 2014, but it was postponed at Griswold's request until September 15. In the meantime City Planner Rick Abboud filed a brief supporting the Commission's decision, and Griswold moved to strike the brief for lack of standing.

On the morning of September 15 Griswold emailed the Board's legal advisor, Holly Wells, asking whether there would be sufficient Board members if he won his motions to disqualify certain members. Wells responded that the hearing would have to be postponed if he successfully moved to disqualify members, but Griswold protested any postponement. The city clerk then issued a notice postponing the hearing until September 29, 2014, over Griswold's objections.

¹ HCC 21.93.060(c) (2014).

Mayor Mary Wythe and all Board members were present — one by telephone — for the hearing on September 29, as were the city clerk, Griswold, and the Yagers. Wells had been replaced by Joseph Levesque as the Board’s legal advisor.

After the Board heard and rejected Griswold’s disqualification motions, Griswold asked if they were ready to address standing, referring to his motion to strike Abboud’s brief for lack of standing. After being told that the Board had to finish preliminary issues first, Griswold asked when they would address his motion. The mayor responded, “I think that’s under the jurisdictional section [of the hearing].” After the Board approved a motion to supplement the record, Griswold asserted that he had no more preliminary issues and again said that he would “like to address [Abboud’s] standing.” The mayor then determined that the Yagers had no preliminary issues of their own, and recessed the hearing briefly.

After the break the mayor opened the floor to questions of standing. She read from HCC 21.93.060’s language regarding standing, and noted that it required an individual appellant be “aggrieved by the action or determination” from which he appealed. She recited the definition of “person aggrieved” from HCC 21.03.040:

a person who shows proof of the adverse effect an action or determination taken or made under the Homer Zoning Code has or could have on the use, enjoyment, or value of real property owned by that person. An interest that is no different from that of the general public is not sufficient to establish aggrievement.

She then asked Griswold if he had any property affected by the decision at issue and if his “use [or] enjoyment thereof affected by [the decision was] something different than . . . that of anyone else in the community.”

Griswold responded that his notice of appeal “was not rejected by the clerk” and had included a statement of standing that listed his properties. Mayor Wythe

acknowledged Griswold's properties in the Business District, but asked him again to identify any proof of adverse impact to those properties or his enjoyment of those properties from the Commission's action. She further noted that his notice of appeal "[did] not identify . . . proof that [his] properties . . . [were] negatively impacted by this . . . CUP." The mayor explained that she was looking for "very specific, tangible proof" of how the permit negatively impacted Griswold. Griswold responded, "[I]f there was no proof [the appeal] would have been rejected by the city clerk."

Griswold then explained that approval of the Yagers' permit would "set . . . a continuing precedent for other properties in the neighborhood." "[I]f my entire neighborhood encroaches into the setbacks," he argued, "it's certainly going to affect my neighborhood, my enjoyment of walking around the Business District." Griswold explained that setbacks were meant to "provide adequate open spaces for light and air, prevent undue concentration of populations, lessen . . . congestion on streets and highways, preserve and enhance the aesthetic environment of the community, and promote the health, safety and general welfare." The mayor asked if the permit would decrease the value of Griswold's property, and Griswold answered that he believed so but could not give an exact figure. But when Griswold asked in response if she could prove it would not devalue his property, the mayor said no. Griswold finally noted that no one had objected to his standing "through this whole event," and argued that standing objections were therefore waived.

The Board voted and found that Griswold did not have standing. The hearing adjourned, and the Board issued a written decision in November explaining its reasoning.

Griswold appealed the Board's decision to the superior court in December 2014. He argued that the Board erred in holding that he did not have standing; that the Board did not have the power to find that he lacked standing after the city clerk had

accepted his notice of appeal; that the Board did not give him sufficient time or notice to argue the standing question; and that Wells, Levesque, and Mayor Wythe were impermissibly biased and had conspired to dismiss Griswold's appeal on standing grounds.

The superior court held that the Board had the authority to review the issue of Griswold's standing even though the clerk had accepted his notice of appeal. The court also held that Griswold had not shown that he was a "person aggrieved" under the HCC. It noted that Griswold had raised a number of due process arguments related to alleged misconduct by Wells, Levesque, and Mayor Wythe, but found no harm to Griswold because of its determination that Griswold lacked standing to appear before the Board.

The court awarded the Board \$4,733.10 in attorney's fees for Griswold's appeal under Alaska Appellate Rule 508(e)(4). Griswold had argued that he was a public interest litigant and was exempt from attorney's fees under AS 09.60.010(c)(2). The court disagreed:

The majority of Appellant's litigation does not appear to represent others' interests. Instead, he often bases standing on his own property values without proof, as in this case. He appears to hold a personal grudge against the City of Homer; and rather than benefitting the other citizens of Homer, his litigation is costing Homer taxpayers a lot of money to defend.^[2]

Griswold now appeals, representing himself.

² Griswold has litigated a number of matters of land-use policy and related issues in Homer. See *Griswold v. City of Homer* (Griswold 2011), 252 P.3d 1020 (Alaska 2011); *Griswold v. City of Homer*, 186 P.3d 558 (Alaska 2008); *Griswold v. City of Homer*, 55 P.3d 64 (Alaska 2002); *Griswold v. City of Homer*, 34 P.3d 1280 (Alaska 2001); *Griswold v. City of Homer*, 925 P.2d 1015 (Alaska 1996).

III. STANDARD OF REVIEW

“We resolve issues of standing . . . using our independent judgment because they are questions of law involving matters of judicial policy.”³ “When the superior court acts as an intermediate appellate court, we independently review the merits of the underlying administrative decision. The specific form our independent review takes is de novo review: We adopt the rule of law that is most persuasive in light of precedent, reason, and policy.”⁴

“A trial court’s award of attorney’s fees is generally reviewed for abuse of discretion.”⁵ But a “trial court’s application of law in awarding attorney’s fees is reviewed de novo.”⁶

IV. DISCUSSION

A. Griswold Is A “Person Aggrieved” Under HCC 21.03.040.

We generally interpret standing doctrine broadly, “in favor of ‘increased accessibility to judicial forums.’ ”⁷ But “[i]n the area of land use law, the legislature has

³ *Fairbanks Fire Fighters Ass’n, Local 1324 v. City of Fairbanks*, 48 P.3d 1165, 1167 (Alaska 2002). The dissent cites cases from other states to conclude that aggrievement is a question of fact. Dissent at 14. But in Alaska, standing is a question of law, not a question of fact. We decline to overrule our cases on this matter.

⁴ *Heller v. State, Dep’t of Revenue*, 314 P.3d 69, 72-73 (Alaska 2013).

⁵ *DeVilbiss v. Matanuska-Susitna Borough*, 356 P.3d 290, 294 (Alaska 2015) (quoting *Bachner Co. v. Weed*, 315 P.3d 1184, 1189 (Alaska 2013)).

⁶ *Id.* (quoting *Bachner Co.*, 315 P.3d at 1189).

⁷ *Kanuk ex rel. Kanuk v. State, Dep’t of Nat. Res.*, 335 P.3d 1088, 1092 (Alaska 2014) (quoting *Trs. for Alaska v. State, Dep’t of Nat. Res.*, 736 P.2d 324, 327 (Alaska 1987)).

chosen to limit standing by statute.”⁸ As explained in one of *Griswold*’s earlier cases, *Griswold v. City of Homer*, these provisions effectively “eliminate[] taxpayer-citizen standing in land use cases.”⁹ But injury-interest standing was not abrogated; under AS 29.40.060(a) the legislature provides review for those “aggrieved” when “adversely affected” by the challenged city action.¹⁰ Deciding whether a person is “aggrieved” in a land use case thus still resembles a traditional standing inquiry — an inquiry with a long-held policy “in favor of ‘increased accessibility to judicial forums.’”¹¹ In light of this liberal policy, we interpret AS 29.40.050-.060 to “promot[e] citizen access to the courts,” in harmony with our long-held, expansive views of standing.¹²

Because “[g]eneral Alaska standing law is not applicable,” “we must look to the applicable statutes and ordinance[s] for guidance in determining whether [a party in a land use appeal] has standing.”¹³ There is no dispute that *Griswold* “actively and substantively”¹⁴ participated in the Commission proceedings, so our analysis of standing

⁸ *Griswold 2011*, 252 P.3d 1020, 1029 (Alaska 2011) (alteration in original) (quoting *Earth Movers of Fairbanks, Inc. v. Fairbanks N. Star Borough*, 865 P.2d 741, 743 (Alaska 1993)); see AS 29.40.050, AS 29.40.060.

⁹ *Griswold 2011*, 252 P.3d at 1029.

¹⁰ *Earth Movers*, 865 P.2d at 743.

¹¹ See *Kanuk*, 335 P.3d at 1092 (quoting *Trs. for Alaska*, 736 P.2d at 327); see also *Coghill v. Boucher*, 511 P.2d 1297, 1304 (Alaska 1973) (refusing to limit standing of registered voters to challenge vote-counting regulations due to “the public’s vital interest in maintenance of the integrity of vote-tallying procedures”).

¹² *Kanuk*, 335 P.3d at 1093.

¹³ *Earth Movers of Fairbanks, Inc.*, 865 P.2d at 743.

¹⁴ HCC 21.93.060(c) (granting standing to appeal to the Board to “[a]ny
(continued...)”)

begins with the HCC’s definition of “person aggrieved.” HCC 21.03.040 defines “person aggrieved” as

a person who shows proof of the adverse effect an action or determination taken or made under the Homer Zoning Code has or could have on the use, enjoyment, or value of real property owned by that person. An interest that is no different from that of the general public is not sufficient to establish aggrievement.^[15]

We held previously that Homer’s standing ordinance for land use appeals is “not more restrictive than our interpretation of AS 29.40.060(a).”¹⁶ And the standing requirement in AS 29.40.050(a) — which requires municipal governments to provide appeals from administrative decisions — should be read to provide review to those “aggrieved” within the meaning of AS 29.40.060(a) — which provides for appeals to the superior court.¹⁷

So interpreted, HCC 21.03.040 requires that a property owner make only a minimal showing to qualify as a “person aggrieved.” HCC 21.03.040 requires only that the property owner “*show[] proof*” of — not prove — the adverse effect that an action under the Homer Zoning Code “has *or could have* on the *use, enjoyment, or value*

¹⁴ (...continued)
person who actively and substantively participated in the proceedings before the Commission and would be aggrieved if the . . . determination being appealed were to be reversed on appeal”).

¹⁵ HCC 21.03.040 (2014).

¹⁶ *Griswold 2011*, 252 P.3d 1020, 1028 (Alaska 2011). In that case we examined a prior version of the HCC, but the previous version was substantively identical to the current code. *Id.* at 1028, n.28; *compare* former HCC 21.68.020(c) (2011) (requiring a person to show proof of “adverse effect . . . on the use, enjoyment, or value” of his or her real property to be considered “aggrieved”) *with* HCC 21.03.040 (2014) (same).

¹⁷ *Earth Movers*, 865 P.2d at 743.

of real property owned by that person.” (Emphases added.) The language “shows proof” suggests the HCC does not contain an evidentiary burden, such as a requirement to show standing by a preponderance of the evidence or beyond a reasonable doubt. Rather it requires only that the property owner produce some evidence supporting a claim of impact on real property. Likewise, the language “could have” implies that the causation chain for such evidence is minimal; i.e., that the property owner’s evidence supports a potential, not actual, diminution in “use, enjoyment, or value.” Finally, the language provides that the detrimental impact does not have to be economic — the impact can be on the “use” or “enjoyment” of the owner’s property. The HCC thus requires only that a property owner produce *some evidence* supporting the owner’s claim that the city’s action could *potentially* adversely affect the owner’s *use or enjoyment* of the owner’s property.¹⁸

Griswold met these requirements.¹⁹ Griswold argued that Homer’s enabling ordinance for setback reductions under conditional use permits — HCC

¹⁸ It is the Homer Code, which can be as liberal or restrictive as Homer decides to make it, that establishes whether there is standing. As is true when we interpret any statute, we do not create a new definition but rather interpret and apply the statute. Our interpretation of “aggrieved” thus relies upon the statute in which it appears: section 21.03.040 of the Homer Code.

¹⁹ Griswold also argues he has standing because the city clerk accepted his notice of appeal, constituting a factual finding of standing to which the Board must defer. But standing is a question of law, not fact, and the HCC expressly gives the Board authority to make findings on the question of a person’s standing. *See Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1254-55 (Alaska 2010); HCC 21.93.510(b) (2014). The Board was not required to regard the clerk’s acceptance of Griswold’s notice of appeal as a decision on the issue of standing and it is not relevant to our determination that he has standing. Because the Board found Griswold lacked standing, it did not address his arguments on the legality of HCC 21.18.040(b)(4), so we need not address whether the Board has jurisdiction to determine the legality of its own code.

21.18.040(b)(4) — conflicts with state statutes and illegally circumvented another HCC provision.²⁰ Griswold supported this argument in his notice of appeal by stating that when the setbacks on neighboring properties are reduced, his use and enjoyment of his property are also reduced. Griswold claimed that he lives in the same zoning district as the property for which the conditional use permit was granted and that he owns six other properties in that district, one of which is within 3,300 feet of the permit property. No one disputed this factual support; when discussing standing before the Board the mayor explained, “Okay, so, Mr. Griswold, we do have record of your properties, and . . . and I’m just asking for you to identify the proof of adverse impact to those properties.” But the potential impact of building into the reduced setback is some evidence that Griswold, by virtue of his ownership in the zoning district, may suffer diminished enjoyment of his property.²¹ And if Griswold’s legal claim were successfully adjudicated on the merits, Griswold would be able to prevent setback reductions on all properties near or adjoining his in the zoning district, including the property in dispute. Griswold is therefore a “person aggrieved” under the HCC.²²

²⁰ HCC 21.18.040(b)(4) provides in full: “If approved by a conditional use permit, the setback from a dedicated right-of-way, except from the Sterling Highway or Lake Street, may be reduced.” HCC 21.18.040(b)(1) provides in turn: “Buildings shall be set back 20 feet from all dedicated rights-of-way, except as allowed by subsection (b)(4) of this section.” Subsection (b)(4)’s invalidation would thus result in a mandatory 20-foot setback requirement under subsection (b)(1).

²¹ Griswold cites two law review articles as evidence that the setback reduction could also negatively affect the value of his property. *See* William K. Jaeger, *The Effects of Land-use Regulations on Property Values*, 36 ENVTL. L. 105, 106, 115 (2006); Richard K. Green, *Land Use Regulation and the Price of Housing in a Suburban Wisconsin County*, 8 J. HOUSING ECON. 144, 156 (1999).

²² The superior court reasoned that Griswold “could have hired an
(continued...) ”

The City argues that granting Griswold standing would provide standing to any property owner in the zoning district, rendering the City’s standing requirement “futile.” But because reduced setbacks could potentially harm every property owner in the zoning district, every property owner in that zoning district *does* have standing to challenge their legality.²³ As we explained in *Kanuk ex rel. Kanuk v. State, Department of Natural Resources*, “even federal law recognizes that denying injured persons standing on grounds that others are also injured — effectively preventing judicial redress for the most widespread injury solely because it is widespread — is perverse public policy.”²⁴ An aggrieved property owner is no less aggrieved merely because the neighbors are aggrieved as well.²⁵ Although every property owner in the district has standing, this does

²² (...continued)
appraiser . . . to determine the [permit]’s effect, if any, on [Griswold]’s property values,” an argument the City echoes on appeal. But HCC 21.03.040 does not require an appraisal showing a decrease in property value to demonstrate standing. By the code’s own language the injury may be to a property owner’s “use” or “enjoyment” of the property rather than its value; moreover, “show[ing] proof” of a diminution in value does not necessarily require a professional appraisal. *Cf. Olivera v. Rude-Olivera*, 411 P.3d 587, 592-93 (Alaska 2018) (upholding real property valuation based on property owner’s testimony over argument that valuation was much higher than tax-assessed value).

²³ This basis for injury-interest standing remains distinct from taxpayer-citizen standing because each property owner in the zoning district has an interest that goes beyond being a “suitable advocate” of issues “of significant public concern” as required for taxpayer-citizen standing. *Kleven v. Yukon-Koyukuk School Dist.*, 853 P.2d 518, 526 (Alaska 1993). All of the property owners in the zoning district have the potential injury to their property values and enjoyment; this is an adverse effect not felt by all taxpayer-citizens.

²⁴ 335 P.3d 1088, 1094 (Alaska 2014) (citing *Massachusetts v. EPA*, 549 U.S. 497, 522 (2007)).

²⁵ We recognize the dissent’s concern that a zoning district in a large
(continued...)

not mean that every property owner will prevail on a claim. The individual bringing the claim must still prevail on the merits by showing that a legal remedy against such harm is available.²⁶

V. CONCLUSION

We REVERSE the superior court’s judgment that Griswold lacks standing under the HCC and REMAND for reconsideration by the Homer Board of Adjustment.²⁷ We VACATE the superior court’s award of attorney’s fees against Griswold.²⁸

²⁵ (...continued)
municipality may be so large that allowing every property owner in the district to challenge a zoning decision could “invite[] obstacles to reasonable development.” Dissent at 15. But there is a distinction between a challenge to the legality of a zoning regulation that affects every property owner in a district and a challenge to a particular zoning decision that, although valid under the regulations, wrongly affects certain parcels within the district. The former can and should be available to each property owner; the latter can only succeed if the property owner can show the different and harmful impact upon the particular property.

²⁶ See, e.g., *Spendlove v. Anchorage Mun. Zoning Bd. of Exam’rs & Appeals*, 695 P.2d 1074, 1076 (Alaska 1985) (affirming zoning enforcement prohibiting mineral resource extraction despite existence of harm to individual property owner).

²⁷ Because we are reversing on the basis of standing, we do not address Griswold’s fair notice claims.

²⁸ Because we are reversing and remanding, attorney’s fees must also be vacated. In the event the superior court finds against Griswold and attorney’s fees are again an issue, an analysis must be conducted under AS 09.60.010(c). The former public interest litigant doctrine on which the superior court relied was abrogated by the 2003 statute’s creation of “constitutional claimants.” Ch. 86, § 2, SLA 2003; see *Alaska Conservation Found. v. Pebble Ltd. P’ship*, 350 P.3d 273, 274 (Alaska 2015) (“Alaska Statute 09.60.010 was enacted to abrogate our previous common law public interest litigation attorney’s fees framework and replace it with a narrower constitutional litigation framework.”).

BOLGER, Justice, dissenting.

I disagree with the court’s opinion on the standing issue. When the legislature chose to limit appeals to a “person aggrieved” by a land use decision,¹ it was choosing language that is used across the country to limit participation more strictly than the broad definition of interest-injury standing.

Aggrievement requires a showing of more than minimal or slightly appreciable harm. The adverse effect on a person must be substantial enough to constitute actual aggrievement such that there can be no question that the person should be afforded the opportunity to seek a remedy. To conclude otherwise would choke the courts with litigation over myriad zoning decisions where individual plaintiffs have not been, objectively speaking, truly and measurably harmed. The issue is whether a person has put forth credible evidence to show that she will be injured or harmed by proposed changes to an abutting property, not whether she simply will be “impacted” by such changes.^[2]

Aggrievement is thus a question of fact that must be resolved by a finder of fact.³ I would affirm the Homer Board of Adjustment because the Board reasonably concluded that Frank Griswold was not aggrieved by the Homer Advisory Planning Commission’s setback decision.

I am especially concerned about the court’s conclusion that Griswold, “by virtue of his ownership in the zoning district,” will suffer recognizable harm from a

¹ AS 29.40.060(a).

² 8A EUGENE MCQUILLIN THE LAW OF MUNICIPAL CORPORATIONS § 25:354 (3d ed.) (footnotes omitted).

³ See *Trimar Equities, LLC v. Planning & Zoning Bd. of City of Milford*, 785 A.2d 619, 622 (Conn. App. 2001) (“Aggrievement is an issue of fact . . . for the trier of the facts.”); *Kenner v. Zoning Bd. of Appeals of Chatham*, 944 N.E.2d 163, 168 (Mass. 2011) (“Standing essentially becomes a question of fact.”).

covered porch more than a half-mile away.⁴ In a large municipality, a zoning district could contain many square miles of property. This decision thus invites obstacles to reasonable development proposals, even when the competing interest is very remote or speculative.

⁴ Opinion at 11.



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us
(p) 907-235-3106
(f) 907-235-3118

Staff Report 19-35

TO: Homer Advisory Planning Commission
FROM: Julie Engebretsen, Deputy City Planner
THROUGH: Rick Abboud, City Planner
DATE: May 1, 2019
SUBJECT: Lillian Walli Estate Right of Way Vacation Plat Preliminary Plat

Requested Action: Approval of the preliminary plat, which shows the already approved vacation of a portion of Eric Lane.

General Information:

Applicants:	Loren Myhill 1059 Santa Cruz Circle Costa Mesa, CA 92626	Jordan Jones 36777 Saint Teresa Rd Soldotna, AK 99603	Orion Surveys PO Box 15025 36570 Maria Rd Homer, AK 99603
Location:	Eric Lane, west of West Hill Road		
Parcel ID:	17524178, 17524179		
Size of Existing Lot(s):	0.98 and 1.5 acres		
Size of Proposed Lots(s):	1.207 and 1.742 acres		
Zoning Designation:	Rural Residential District		
Existing Land Use:	Residential rentals, Vacant		
Surrounding Land Use:	North: Vacant RR lot South: Vacant RR lot East: Residential West: Residential		
Comprehensive Plan:	Chapter 4 Goal 1 Objective A: Promote a pattern of growth characterized by a concentrated mixed-use center, and a surrounding ring of moderate-to-high density residential and mixed-use areas with lower densities in outlying areas.		
Wetland Status:	No wetlands present per ACOE POA -2014-220 dated 12/19/2017		
Flood Plain Status:	Zone D, flood hazards undetermined.		
BCWPD:	Not within the Bridge Creek Watershed Protection District.		
Utilities:	City water and sewer are available		
Public Notice:	Notice was sent to 31 property owners of 53 parcels as shown on the KPB tax assessor rolls.		

Analysis: The vacation of a portion of Eric Lane has already been approved. The applicant has one year from approval to record a plat showing the vacation. This plat shows the vacation, and is the final action needed to change the property boundaries.

Homer City Code 22.10.051 Easements and rights-of-way

- A. The subdivider shall dedicate in each lot of a new subdivision a 15-foot-wide utility easement immediately adjacent to the entire length of the boundary between the lot and each existing or proposed street right-of-way.

Staff Response: The plat meets these requirements.

- B. The subdivider shall dedicate in each lot of a new subdivision any water and/or sewer easements that are needed for future water and sewer mains shown on the official Water/Sewer Master Plan approved by the Council.

Staff Response: The plat meets these requirements.

- C. The subdivider shall dedicate easements or rights-of-way for sidewalks, bicycle paths or other non-motorized transportation facilities in areas identified as public access corridors in the Homer Non-Motorized Transportation and Trail Plan, other plans adopted by the City Council, or as required by the Kenai Peninsula Borough Code.

Staff Response: The plat meets these requirements.

Preliminary Approval, per KPB code 20.25.070 Form and contents required. The commission will consider a plat for preliminary approval if it contains the following information at the time it is presented and is drawn to a scale of sufficient size to be clearly legible.

- A. Within the Title Block:
 - 1. Names of the subdivision which shall not be the same as an existing city, town, tract or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion;
 - 2. Legal description, location, date, and total area in acres of the proposed subdivision; and
 - 3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor;

Staff Response: The plat meets these requirements.

- B. North point;

Staff Response: The plat meets these requirements.

- C. The location, width and name of existing or platted streets and public ways, railroad rights-of-way and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;

Staff Response: The plat meets these requirements.

- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries and prominent natural and manmade features, such as shorelines or streams;

Staff Response: The plat meets these requirements.

- E. All parcels of land including those intended for private ownership and those to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision, together with the purposes, conditions or limitation of reservations that could affect the subdivision;

Staff Response: The plat meets these requirements.

- F. The names and widths of public streets and alleys and easements, existing and proposed, within the subdivision; [Additional City of Homer HAPC policy: Drainage easements are normally thirty feet in width centered on the drainage. Final width of the easement will depend on the ability to access the drainage with heavy equipment. An alphabetical list of street names is available from City Hall.]

Staff Response: The plat meets these requirements.

- G. Status of adjacent lands, including names of subdivisions, lot lines, lock numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

Staff Response: The plat meets these requirements.

- H. Approximate location of areas subject to inundation, flooding or storm water overflow, the line of ordinary high water, wetlands when adjacent to lakes or non-tidal streams, and the appropriate study which identifies a floodplain, if applicable;

Staff Response: The plat meets these requirements.

- I. Approximate locations of areas subject to tidal inundation and the mean high water line;

Staff Response: The plat meets these requirements.

- J. Block and lot numbering per KPB 20.60.140, approximate dimensions and total numbers of proposed lots;

Staff Response: The plat meets these requirements.

- K. Within the limits of incorporated cities, the approximate location of known existing municipal wastewater and water mains, and other utilities within the subdivision and immediately abutting thereto or a statement from the city indicating which services are currently in place and available to each lot in the subdivision;

Staff Response: The plat meets these requirements. Information is on file with the City.

- L. Contours at suitable intervals when any roads are to be dedicated unless the planning director or commission finds evidence that road grades will not exceed 6 percent on arterial streets, and 10 percent on other streets;

Staff Response: The plat meets these requirements. No roads are being dedicated by this action.

- M. Approximate locations of slopes over 20 percent in grade and if contours are shown, the areas of the contours that exceed 20 percent grade shall be clearly labeled as such;

Staff Response: The plat meets these requirements.

- N. Apparent encroachments, with statement indicating how the encroachments will be resolved prior to final plat approval; and

Staff Response: The plat meets these requirements.

- O. If the subdivision will be finalized in phases, all dedications for through streets as required by KPB 20.30.030 must be included in the first phase.

Staff Response: The plat meets these requirements.

Public Works Comments: No comments.

Fire Department Comments: No comments received.

Staff Recommendation:

Planning Commission recommend approval of the preliminary plat with the following comments:

1. Include a plat note stating “Property owner should contact the Army Corps of Engineers prior to any on-site development or construction activity to obtain the most current wetland designation (if any). Property owners are responsible for obtaining all required local, state and federal permits.”

Attachments:

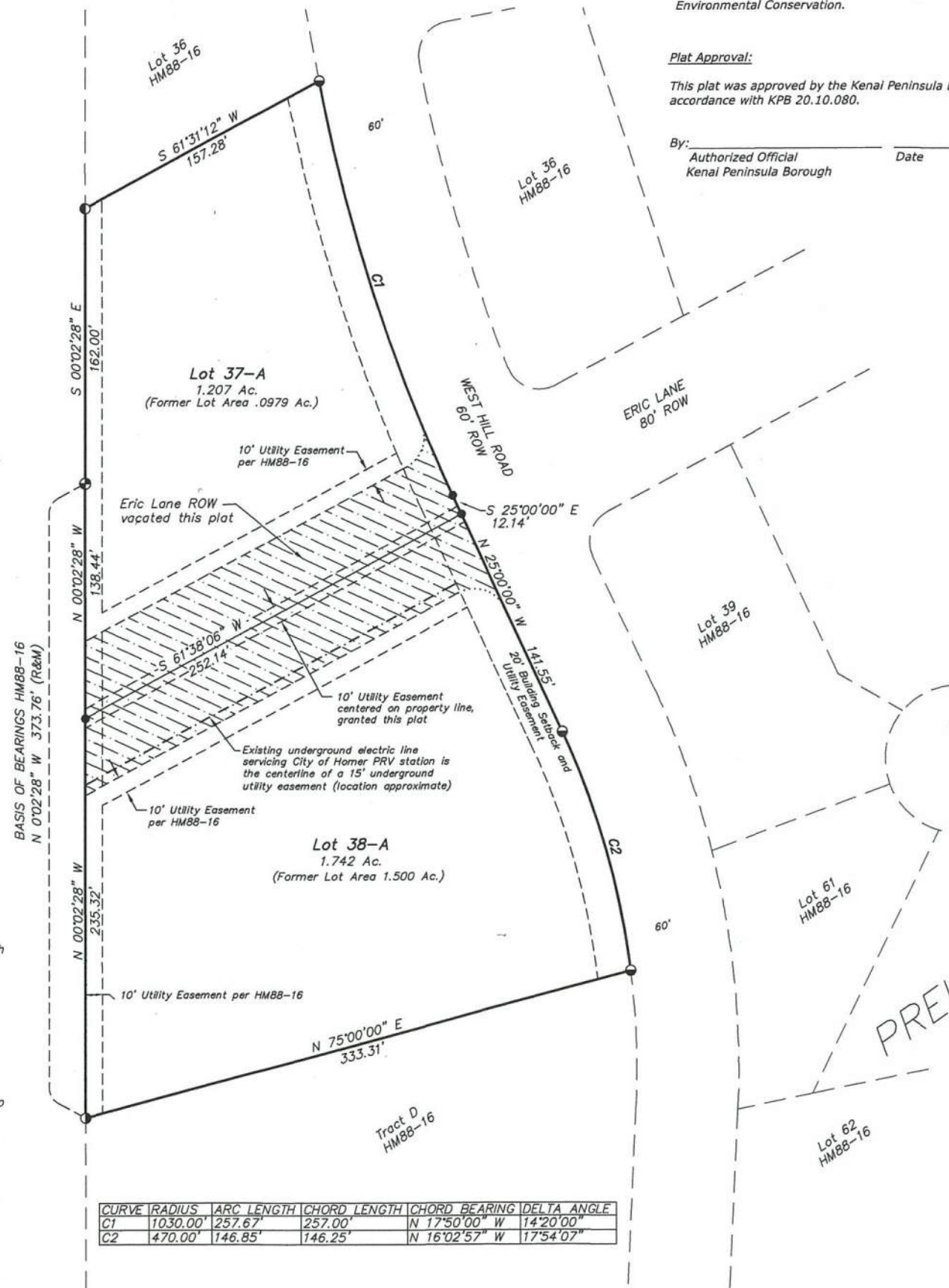
1. Preliminary Plat
2. Surveyor’s Letter
3. Public Notice
4. Aerial Map

LEGEND

- Found 2" Aluminum Mon, 268-S 1987
- Found 2" Alcap, 7538-S, 2005
- Found 1-1/2" Alcap, No LS#, cap damaged
- Found 1/2" rebar
- Set 2" Aluminum Cap on 5/8" x 30" Rebar



Deed Parcel

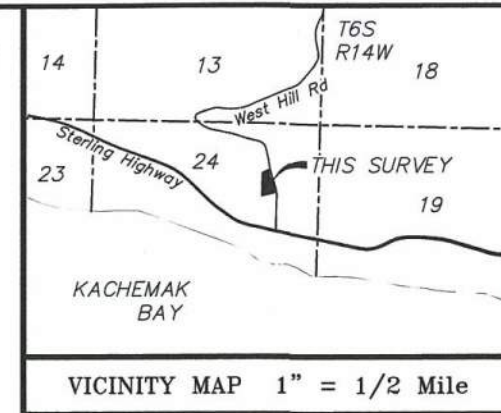


Wastewater Certificate:
Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

Plat Approval:

This plat was approved by the Kenai Peninsula Borough in accordance with KPB 20.10.080.

By: _____ Date _____
Authorized Official
Kenai Peninsula Borough



Ownership Certificate:

We hereby certify that we are the owners of the real property shown and described hereon and 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.

Jordan R. Jones (For former Lot 38)
For the Jones Development Company Inc.
36777 St. Theresa Rd
Soldotna, AK 99669

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day of _____, 20__.

Notary Public for Alaska
My commission expires: _____

Loren Myhill (For former Lot 37)
For the Loren and Susie Myhill Living Trust
1059 Santa Cruz Circle,
Costa Mesa, CA 92626

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day of _____, 20__.

Notary Public for _____
My commission expires: _____

NOTES:

- The purpose of this plat is to depict right of way approved for vacation under KPB 20.70 with the vacated portions attaching to the adjacent parcels in compliance with KPB 20.70.150 and AS 29.40.150 under KPB 20.10.080.
- Per HM 88-16 a building setback of 30' is required from West Hill Road to allow for ROW widening unless a lesser standard is approved by the appropriate Planning Commission.
- Per HM88-16 the front 20' of the building setback along West Hill Road is also a utility easement. No permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement.
- Per HM88-16 no direct access to state maintained ROWs permitted unless approved by the State of Alaska Department of Transportation.
- This ROW vacation was approved by the Kenai Peninsula Borough Planning Commission at the meeting of January 7, 2019 and by the City of Homer Advisory Planning Commission on December 5, 2018.
- There is a Blanket Easement to HEA affecting these lots recorded at Bk. 17, Pg. 328, H.R.D.

PRELIMINARY



**LILLIAN WALLI ESTATE
RIGHT OF WAY VACATION PLAT**
VACATING A PORTION OF THE ERIC LANE RIGHT OF WAY
ADJACENT TO LOTS 37 AND 38,
LILLIAN WALLI ESTATE SUBDIVISION, HM88-16
Within NE1/4, Sec. 24, T6S, R14W, SM
City of Homer, Homer Recording District,
Third Judicial District, Alaska
Containing 2.949 Acres

Owners:
Jones Development Co. Inc.
36777 St. Theresa Rd.
Soldotna, AK 99669 and
Loren and Susie Myhill
Living Trust
1059 Santa Cruz Circle,
Costa Mesa, CA 92626

Prepared by:
Orion Surveys
PO Box 15025,
36570 Maria Road
Fritz Creek, AK 99603
(907) 399-7028
tom@orionsurveys.com

Scale: 1"=50' Date: 3/20/2019
FB: 15 Job# 737 KPB File No. 2018-149-V

RECEIVED

APR 09 2019

CITY OF HOMER
PLANNING/ZONING

Orion Surveys
PO Box 15025
Fritz Creek, AK 99603

April 9, 2019

Planning Staff,
City of Homer Planning Department
491 East Pioneer Avenue,
Homer, AK 99669

RECEIVED

APR 09 2019

CITY OF HOMER
PLANNING/ZONING

Re: Eric Lane Right of Way Vacation, Preliminary Plat submittal,

Staff,

This plat has been prepared to finalize the vacation of a portion of the Eric Lane Right of Way adjacent to Lots 37 and 38 in the Lillian Walli Estate Subdivision, HM88-16.

The vacation petition was approved by the City of Homer Advisory Planning Commission at the meeting of December 5, 2018 and by the Kenai Peninsula Borough Planning Commission at the meeting of January 7, 2019.

Please review and issue comment on this plat for use by the Kenai Peninsula Borough in their approval process.

Sincerely



Tom Latimer

encl

Full size paper plat

Reduced paper plat (11"x17")

Plat fee \$300.00, Check #194

minutes - KPB approval

NOTICE OF SUBDIVISION

Public notice is hereby given that a preliminary plat has been received proposing to subdivide or replat property. You are being sent this notice because you are an affected property owner within 500 feet of a proposed subdivision and are invited to comment.

Proposed subdivision under consideration is described as follows:

Lillian Walli Estate Right of Way Vacation Plat Preliminary Plat

The location of the proposed subdivision affecting you is provided on the attached map. A preliminary plat showing the proposed subdivision may be viewed at the City of Homer Planning and Zoning Office. Subdivision reviews are conducted in accordance with the City of Homer Subdivision Ordinance and the Kenai Peninsula Borough Subdivision Ordinance. A copy of the Ordinance is available from the Planning and Zoning Office. **Comments should be guided by the requirements of those Ordinances.**

A public meeting will be held by the Homer Advisory Planning Commission on Wednesday, May 01, 2019 at 6:30 p.m. at Homer City Hall, Cowles Council Chambers, 491 East Pioneer Avenue, Homer, Alaska.

Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

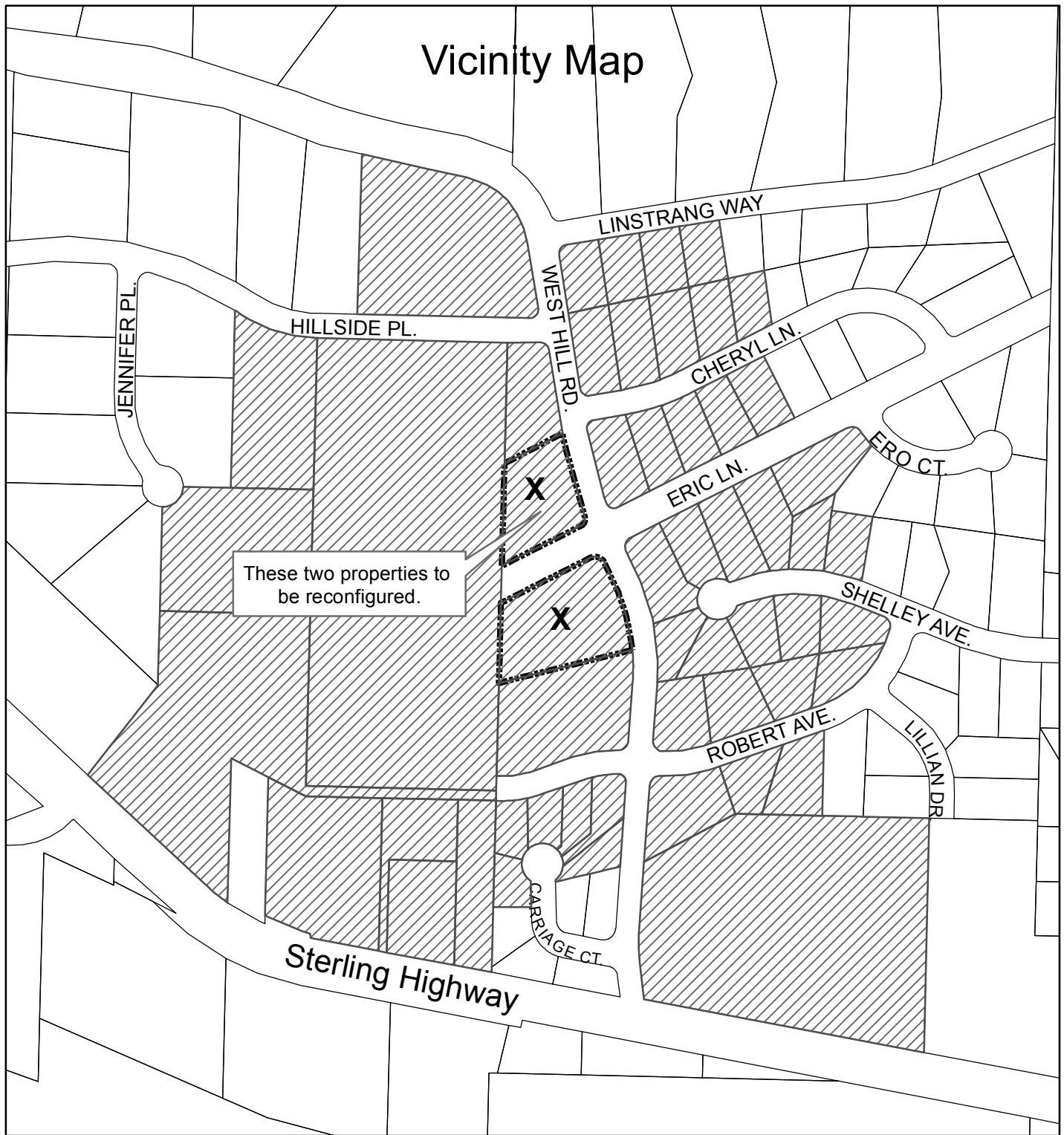
The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Travis Brown in the Planning and Zoning Office, 235-3106.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 500 FEET OF PROPERTY.

.....

VICINITY MAP ON REVERSE

Vicinity Map

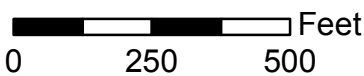


City of Homer
Planning and Zoning Department

April 15, 2019

Lillian Walli Estate Right of Way Vacation Plat Preliminary Plat

Marked lots are within 500 feet
and property owners notified.



Disclaimer:
It is expressly understood the City of
Homer, its council, board,
departments, employees and agents are
not responsible for any errors or omissions
contained herein, or deductions, interpretations
or conclusions drawn therefrom.

LEGEND

- Found 2" Aluminum Mon, 268-S 1987
- Found 2" Alcap, 7538-S, 2005
- Found 1-1/2" Alcap, No LS#, cap damaged
- Found 1/2" rebar
- Set 2" Aluminum Cap on 5/8" x 30" Rebar



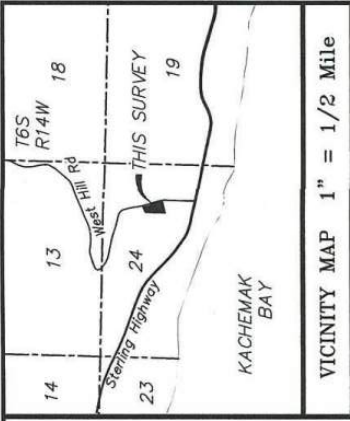
Dead Parcel

Wastewater Certificate:
Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

Plat Approval:

This plat was approved by the Kenai Peninsula Borough in accordance with KPB 20.10.080.

By: _____ Date _____
Authorized Official
Kenai Peninsula Borough



VICINITY MAP 1" = 1/2 Mile

Ownership Certificate:

We hereby certify that we are the owners of the real property shown and described hereon and 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.

Jordan R. Jones (For former Lot 38)
For the Jones Development Company Inc.
36777 St. Theresa Rd
Soldotna, AK 99669

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day of _____, 20____.

Notary Public for Alaska
My commission expires: _____

Loren Myhill (For former Lot 37)
For the Loren and Susie Myhill Living Trust
1059 Santa Cruz Circle,
Costa Mesa, CA 92626

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day of _____, 20____.

Notary Public for _____
My commission expires: _____

PRELIMINARY



LILLIAN WALLI ESTATE PLAT RIGHT OF WAY VACATION PLAT

VACATING A PORTION OF THE ERIC LANE RIGHT OF WAY
ADJACENT TO LOTS 37 AND 38,
LILLIAN WALLI ESTATE SUBDIVISION, HM88-16
Within NE1/4, Sec. 24, T6S, R14W, S4M
City of Homer, Homer Recording District,
Third Judicial District, Alaska
Containing 2.949 Acres

Owners:
Orion Surveys
PO Box 15025,
36777 St. Theresa Rd.
Soldotna, AK 99669 and
Loren and Susie Myhill
Living Trust
1059 Santa Cruz Circle,
Costa Mesa, CA 92626

Prepared by:
Orion Surveys
PO Box 15025,
36777 St. Theresa Rd.
Soldotna, AK 99669 and
Loren and Susie Myhill
Living Trust
1059 Santa Cruz Circle,
Costa Mesa, CA 92626

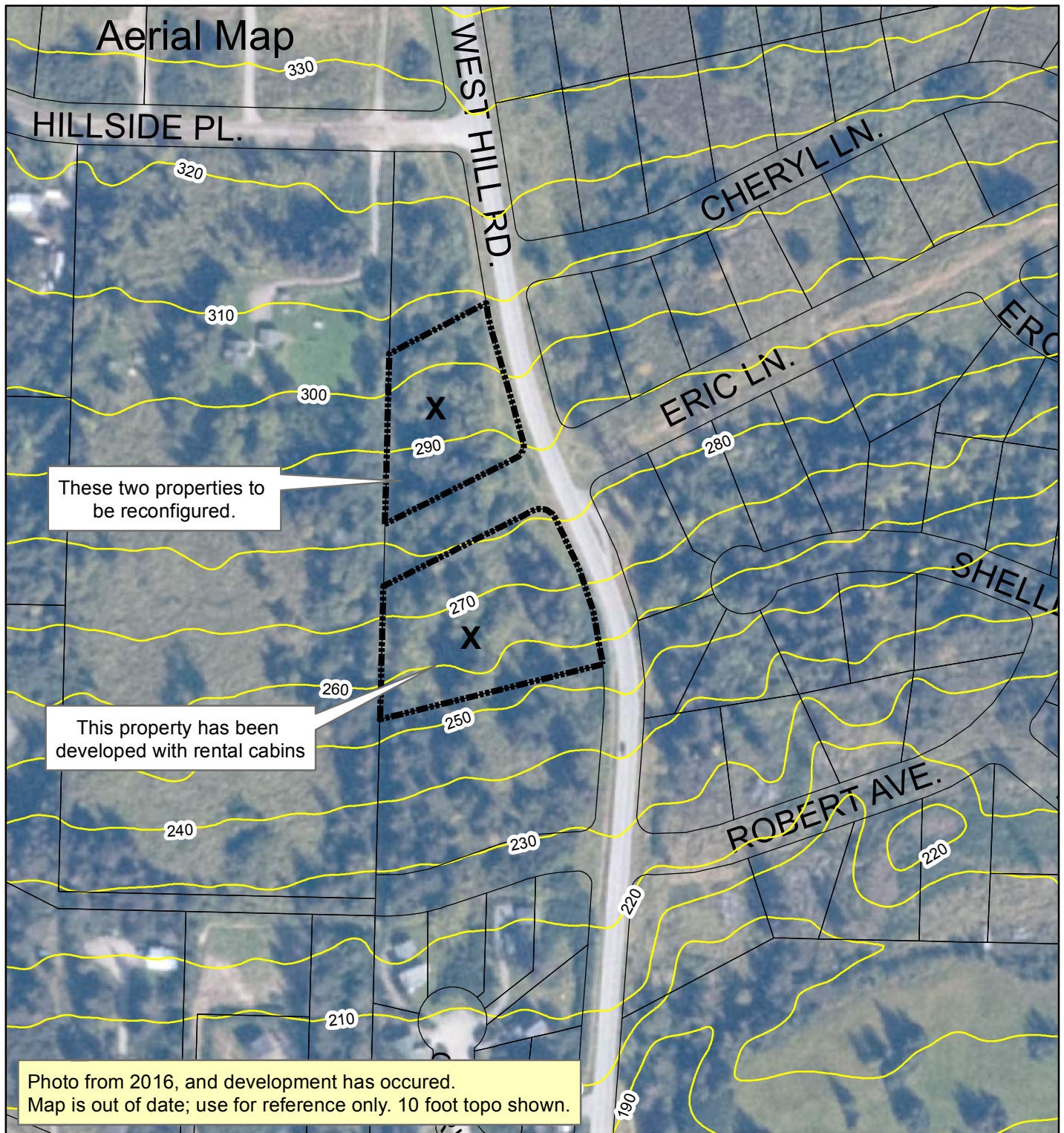
Date: 3/20/2019
KPB File No. 2018-149-V

Scale: 1"=50'
Job# 737



NOTES:

- The purpose of this plat is to depict right of way approved for vacation under KPB 20.70. With the vacated portions attaching to the adjacent parcels in compliance with KPB 20.70.150 and AS 25-40.150 under KPB 20.10.080.
- Per HM 88-16 a building setback of 30' is required from West Hill Road to allow for ROW widening unless a lesser standard is approved by the appropriate Planning Commission.
- Per HM88-16 the front 20' of the building setback along West Hill Road is also a utility easement. No permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement.
- Per HM88-16 no direct access to state maintained ROWs permitted unless approved by the State of Alaska Department of Transportation.
- This ROW vacation was approved by the Kenai Peninsula Borough Planning Commission at the meeting of January 7, 2019 and by the City of Homer Advisory Planning Commission on December 5, 2018.
- There is a Blanket Easement to HEA affecting these lots recorded at Bk. 17, Pg. 328, H.R.D.



City of Homer
Planning and Zoning Department

April 23, 2019

Lillian Walli Estate Right of Way Vacation Plat Preliminary Plat

0 250 500 Feet



Disclaimer:
It is expressly understood the City of Homer, its council, board, departments, employees and agents are not responsible for any errors or omissions contained herein, or deductions, interpretations or conclusions drawn therefrom.



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us
(p) 907-235-3106
(f) 907-235-3118

Staff Report 19-36

TO: Homer Advisory Planning Commission
FROM: Julie Engebretsen, Deputy City Planner
THROUGH: Rick Abboud, City Planner
DATE: May 1, 2019
SUBJECT: Skyline Drive Subdivision 2019 Replat Preliminary Plat

Requested Action: Approval of a preliminary plat to shift a common lot line between two parcels.

General Information:

Applicants:		Anthony Sandoval & Josea Busby PO Box 64 Chicken, AK 99732	Orion Surveys PO Box 15025 36570 Maria Rd Homer, AK
Eileen Mullen PO Box 1394 Homer, AK 99603	Wesley, & Kyenna Busby 915 Soundview Ave Homer, AK 99603		
Location:		West Hill Road, Claudia Street and Blue Sky Ave	
Parcel ID:		17503025, 17503045	
Size of Existing Lot(s):		2.64 and 0.75 acres	
Size of Proposed Lots(s):		2.473, 0.918 acres	
Zoning Designation:		Rural Residential District	
Existing Land Use:		Residential	
Surrounding Land Use:		North: Residential/Vacant South: West Hill Road, residential East: Residential West: Residential	
Comprehensive Plan:		Chapter 4 Goal 1 Objective A: Promote a pattern of growth characterized by a concentrated mixed-use center, and a surrounding ring of moderate-to-high density residential and mixed-use areas with lower densities in outlying areas.	
Wetland Status:		The very northern portion of lot 6 contains Bidarki Creek and associated riparian wetlands.	
Flood Plain Status:		Zone D, flood hazards undetermined.	
BCWPD:		Not within the Bridge Creek Watershed Protection District.	
Utilities:		City water and sewer are not available at this time.	

Public Notice:	Notice was sent to 39 property owners of 32 parcels as shown on the KPB tax assessor rolls.
----------------	---

Analysis: This subdivision is within the Rural Residential District. This plat shifts the common lot line between two parcels. HCC 21.12.040(a)(1) requires a minimum lot size of 40,000 square feet. Lot 5 currently calculates out to an area of 39,988 square feet. Staff recommends the surveyor verify that lot 5 meets this requirement, or increase the size of the lot so it meets the requirement.

Access

Blue Sky Avenue is not a City maintained road and does not meet city standards. There is a constructed driveway within an existing public access easement across lot 5, so legal and physical access is provided. Typically, a property owner would be required to dedicate right of way as part of this plat. However, dedicating a 60 foot right of way would likely result in creating an encroachment; the existing house is 30 feet from the center of the existing roadway easement. If a 60 foot dedication were required, the home would be right up against the right of way and could not comply with a 20 foot building setback as required in the Rural Residential Zoning District. Additionally, of the six homes located on Blue Sky Ave, all have legal access from West Hill Road, and there is a roadway easement across the subject lot. An exemption from HCC 21.10.040, and the requirement to dedicate a 60 foot right of way is appropriate.

HCC 22.10.040 Applicable and exempted subdivisions. (Homer City Title 22, Subdivisions)

The standards of this chapter shall apply to all subdivisions in the City of Homer. Exemptions from the requirements of this chapter may be granted concurrent with preliminary plat approval by the Homer Advisory Planning Commission under the following conditions:

a. Resubdivision of existing subdivisions not to exceed three lots, and involving no new dedications of rights-of-way;

Finding: This proposal includes two lots and does not involve new dedications of rights of way.

b. Special conditions and circumstances exist which are peculiar to the property involved, and are not generally applicable to other properties in the City. These special conditions cannot be caused by the actions of the applicant;

Finding: The existing lot was created in 1977, prior to modern Borough subdivision rules and Homer City Zoning Code adoption. The applicant did not build the home or create a roadway easement as a means to avoid dedicating a public right of way.

c. Financial hardship or inconvenience shall not be considered grounds for granting exception;

Finding: Financial hardship or inconvenience have not been cited as grounds for the exception.

d. Previous exceptions shall not be considered grounds for granting exception. [Ord. 87-8(S), 1987].

Finding: No previous exceptions have been used as grounds for granting this exception.

Homer City Code 22.10.051 Easements and rights-of-way

- A. The subdivider shall dedicate in each lot of a new subdivision a 15-foot-wide utility easement immediately adjacent to the entire length of the boundary between the lot and each existing or proposed street right-of-way.

Staff Response: The plat does not meet these requirements. See Public Works comments and staff recommendations.

- B. The subdivider shall dedicate in each lot of a new subdivision any water and/or sewer easements that are needed for future water and sewer mains shown on the official Water/Sewer Master Plan approved by the Council.

Staff Response: The plat meets these requirements.

- C. The subdivider shall dedicate easements or rights-of-way for sidewalks, bicycle paths or other non-motorized transportation facilities in areas identified as public access corridors in the Homer Non-Motorized Transportation and Trail Plan, other plans adopted by the City Council, or as required by the Kenai Peninsula Borough Code.

Staff Response: The plat meets these requirements.

Preliminary Approval, per KPB code 20.25.070 Form and contents required. The commission will consider a plat for preliminary approval if it contains the following information at the time it is presented and is drawn to a scale of sufficient size to be clearly legible.

- A. Within the Title Block:
1. Names of the subdivision which shall not be the same as an existing city, town, tract or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion;
 2. Legal description, location, date, and total area in acres of the proposed subdivision; and
 3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor;

Staff Response: The plat meets these requirements.

- B. North point;

Staff Response: The plat meets these requirements.

- C. The location, width and name of existing or platted streets and public ways, railroad rights-of-way and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;

Staff Response: The plat meets these requirements.

- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries and prominent natural and manmade features, such as shorelines or streams;

Staff Response: The plat meets these requirements.

- E. All parcels of land including those intended for private ownership and those to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision, together with the purposes, conditions or limitation of reservations that could affect the subdivision;

Staff Response: The plat meets these requirements.

- F. The names and widths of public streets and alleys and easements, existing and proposed, within the subdivision; [Additional City of Homer HAPC policy: Drainage easements are normally thirty feet in width centered on the drainage. Final width of the easement will depend on the ability to access the drainage with heavy equipment. An alphabetical list of street names is available from City Hall.]

Staff Response: The plat meets these requirements.

- G. Status of adjacent lands, including names of subdivisions, lot lines, lock numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

Staff Response: The plat meets these requirements.

- H. Approximate location of areas subject to inundation, flooding or storm water overflow, the line of ordinary high water, wetlands when adjacent to lakes or non-tidal streams, and the appropriate study which identifies a floodplain, if applicable;

Staff Response: The plat shows the 100 foot creek and drainage maintenance easement along Bidarki Creek.

- I. Approximate locations of areas subject to tidal inundation and the mean high water line;

Staff Response: The plat meets these requirements.

- J. Block and lot numbering per KPB 20.60.140, approximate dimensions and total numbers of proposed lots;

Staff Response: The plat meets these requirements.

- K. Within the limits of incorporated cities, the approximate location of known existing municipal wastewater and water mains, and other utilities within the subdivision and immediately abutting thereto or a statement from the city indicating which services are currently in place and available to each lot in the subdivision;

Staff Response: The plat meets these requirements.

- L. Contours at suitable intervals when any roads are to be dedicated unless the planning director or commission finds evidence that road grades will not exceed 6 percent on arterial streets, and 10 percent on other streets;

Staff Response: The plat meets these requirements. No roads are dedicated.

- M. Approximate locations of slopes over 20 percent in grade and if contours are shown, the areas of the contours that exceed 20 percent grade shall be clearly labeled as such;

Staff Response: The plat does not meet these requirements. Steep areas along Bidarki Creek are not shown.

- N. Apparent encroachments, with statement indicating how the encroachments will be resolved prior to final plat approval; and

Staff Response: The plat meets these requirements.

- O. If the subdivision will be finalized in phases, all dedications for through streets as required by KPB 20.30.030 must be included in the first phase.

Staff Response: The plat meets these requirements.

Public Works Comments: Provide a 15' utility easement fronting the ROW for lot 6 along Claudia Street and lot 5 along West Hill Road.

Fire Department Comments: No comments received.

Staff Recommendation:

Planning Commission recommend approval of the preliminary plat with the following comments:

1. Include a plat note stating "Property owner should contact the Army Corps of Engineers prior to any on-site development or construction activity to obtain the most current wetland designation (if any). Property owners are responsible for obtaining all required local, state and federal permits."
2. Show areas of slope over 20% in grade.
3. Verify that lot 5 meets the minimum lot size standard of 40,000 square feet as required by HCC 21.12.040(a)(1).

Attachments:

1. Preliminary Plat
2. Surveyor's Letter
3. Public Notice
4. Aerial Map

NOTES:

1. This subdivision is subject to Homer City Code.
2. No permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of the utility to use the easement.
3. A blanket easement to HEA affecting former Lot 4-B is recorded at Bk. 92/189 H.R.D.
4. No direct access to state maintained right of way permitted unless approved by the State of Alaska Department of Transportation.

RECEIVED

APR 12 2019

**CITY OF HOMER
PLANNING/ZONING**

WASTEWATER CERTIFICATE: Lot 6
Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation

WASTEWATER CERTIFICATE: Lot 5
Soil conditions, water table levels, and soil slopes in these lots have been found suitable for conventional onsite wastewater treatment and disposal systems serving single-family or duplex residences and meeting the regulatory requirements of the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed by a qualified engineer, registered to practice in Alaska, and the design must be approved by the Alaska Department of Environmental Conservation.

Engineer _____ License # _____ Date _____



Eileen Mullen
PO Box 1394
Homer, AK 99603

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day
of _____, 20____.

Notary Public for _____
My commission expires: _____

Josea Busby
PO Box 64
Chicken, AK 99732

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day
of _____, 20____.

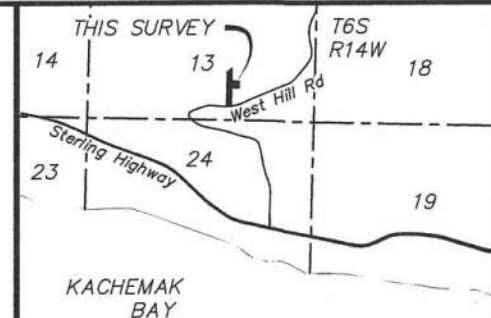
Notary Public for _____
My commission expires: _____

Anthony Sandoval
PO Box 64
Chicken, AK 99732

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day
of _____, 20____.

Notary Public for _____
My commission expires: _____



VICINITY MAP 1" = 1/2 Mile

Ownership Certificate:

We hereby certify that we are the owners of the real property shown and described hereon and 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.

Wesley T. Busby
915 Soundview Ave.
Homer, AK 99603

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day
of _____, 20____.

Notary Public for Alaska
My commission expires: _____

Kyenna Busby
915 Soundview Ave.
Homer, AK 99603

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day
of _____, 20____.

Notary Public for _____
My commission expires: _____



**SKYLINE DRIVE SUBDIVISION
2019 REPLAT**

A REPLAT OF LOT 4-B, SKYLINE DRIVE SUBDIVISION HM77-26
and
LOT 3A-1 JOHN CHILDS SUBDIVISION #3 HM93-46
Within SW1/4 SE1/4, Sec. 13, T6S, R14W, SM
City of Homer, Kenai Peninsula Borough
Homer Recording District, Third Judicial District, Alaska
Containing 3.391 Acres

Owners:
Wesley and Kyenna Busby
915 Soundview, Homer AK 99603
Josea Busby and Anthony Sandoval
PO Box 64
Chicken, AK 99732
Eileen Mullen
Box 1394, Homer AK 99603

Prepared by:
Orion Surveys
PO Box 15025,
36570 Maria Road,
Fritz Creek, AK 99603
(907) 399-7028
tom@orionsurveys.com

Scale: 1"=80'

FB: 15

Job# 745

Date: 4/10/2019

KPB File No.

Orion Surveys
PO Box 15025
Fritz Creek, AK 99603

April 9, 2019

Planning Staff,
City of Homer Planning Department
491 East Pioneer Avenue,
Homer, AK 99669

Re: Skyline Drive 2019 Replat (Name to Change), preliminary plat submittal

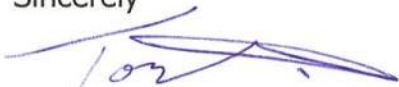
Staff,

Please find enclosed one full size copy and one reduced (11"x17") copy of this plat and check #196 for the \$300.00 plat submittal fee.

This proposed plat reconfigures two adjoining lots off Claudia Street on lower West Hill Road. No additional right of way needs to be dedicated. Neither lot is served by City water or sewer. Both lots have existing septic systems. Soils investigations are proceeding on proposed Lot 5 and will determine the appropriate Wastewater note for the plat.

Please contact me if you have any questions.

Sincerely



Tom Latimer

encl
Full size paper plat
Reduced paper plat (11"x17")
Plat fee \$300.00, Check #196

RECEIVED

APR 12 2019

**CITY OF HOMER
PLANNING/ZONING**

NOTICE OF SUBDIVISION

Public notice is hereby given that a preliminary plat has been received proposing to subdivide or replat property. You are being sent this notice because you are an affected property owner within 500 feet of a proposed subdivision and are invited to comment.

Proposed subdivision under consideration is described as follows:

Skyline Drive Subdivision 2019 Replat Preliminary Plat

The location of the proposed subdivision affecting you is provided on the attached map. A preliminary plat showing the proposed subdivision may be viewed at the City of Homer Planning and Zoning Office. Subdivision reviews are conducted in accordance with the City of Homer Subdivision Ordinance and the Kenai Peninsula Borough Subdivision Ordinance. A copy of the Ordinance is available from the Planning and Zoning Office. **Comments should be guided by the requirements of those Ordinances.**

A public meeting will be held by the Homer Advisory Planning Commission on Wednesday, May 01, 2019 at 6:30 p.m. at Homer City Hall, Cowles Council Chambers, 491 East Pioneer Avenue, Homer, Alaska.

Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

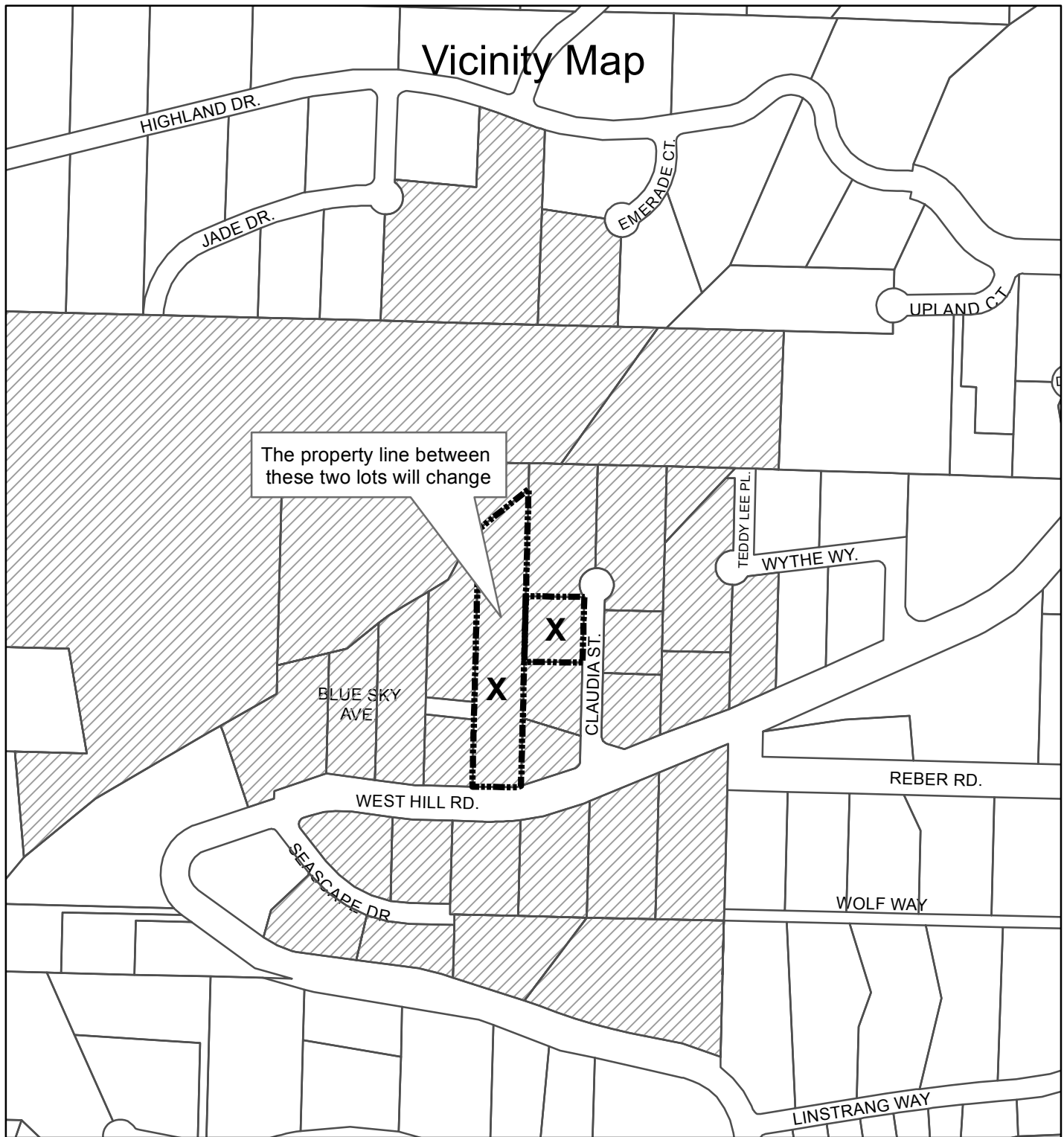
The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Travis Brown in the Planning and Zoning Office, 235-3106.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 500 FEET OF PROPERTY.

.....

VICINITY MAP ON REVERSE

Vicinity Map



City of Homer
Planning and Zoning Department

April 17, 2019

Skyline Drive Subdivision 2019 Replat Preliminary Plat

Marked Lots are w/in 500 feet
and property owners notified.

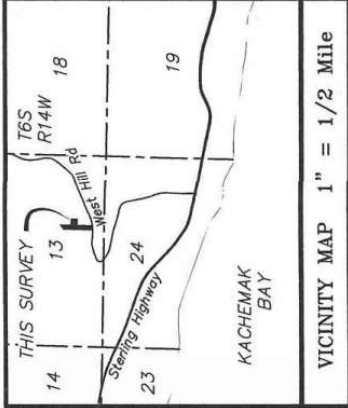
0 250 500 Feet



*Disclaimer:
It is expressly understood the City of
Homer, its council, board,
departments, employees and agents are
not responsible for any errors or omissions
contained herein, or deductions, interpretations
or conclusions drawn therefrom.*

NOTES:

1. This subdivision is subject to Homer City Code.
2. No permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of the utility to use the easement.
3. A blanket easement to HEA affecting former Lot 4-B is recorded at Bk. 927189 H.R.D.
4. No direct access to state maintained right of way permitted unless approved by the State of Alaska Department of Transportation.



VICINITY MAP 1" = 1/2 Mile

Ownership Certificate:

We hereby certify that we are the owners of the real property shown and described hereon and 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.

Wesley T. Busby
915 Soundview Ave.
Homer, AK 99603

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day
of _____, 20____.

Notary Public for Alaska
My commission expires: _____

Kyenna Busby
915 Soundview Ave.
Homer, AK 99603

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day
of _____, 20____.

Notary Public for _____
My commission expires: _____



SKYLINE DRIVE SUBDIVISION
2019 REPLAT

A REPLAT OF LOT 4-B, SKYLINE DRIVE SUBDIVISION HM77-26

and

LOT 3A-1 JOHN CHILDS SUBDIVISION #3 HM93-46

Within SW1/4 SE1/4, Sec. 13, T6S, R14W, S1M

City of Homer, Kenai Peninsula Borough

Homer Recording District, Third Judicial District, Alaska

Containing 3.391 Acres

Prepared by:

Orion Surveys

PO Box 15025,

36570 Maria Road,

Fritz Creek, AK 99603

(907) 399-7028

tom@orionsurveys.com

Owners:

Wesley and Kyenna Busby

915 Soundview, Homer AK 99603

Josea Busby and Anthony Sandoval

PO Box 64

Chicken, AK 99732

Elleen Mullen

Box 1394, Homer AK 99603

Date: 4/10/2019

KPB File No.

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day
of _____, 20____.

Notary Public for _____
My commission expires: _____

Josea Busby
PO Box 64
Chicken, AK 99732

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day
of _____, 20____.

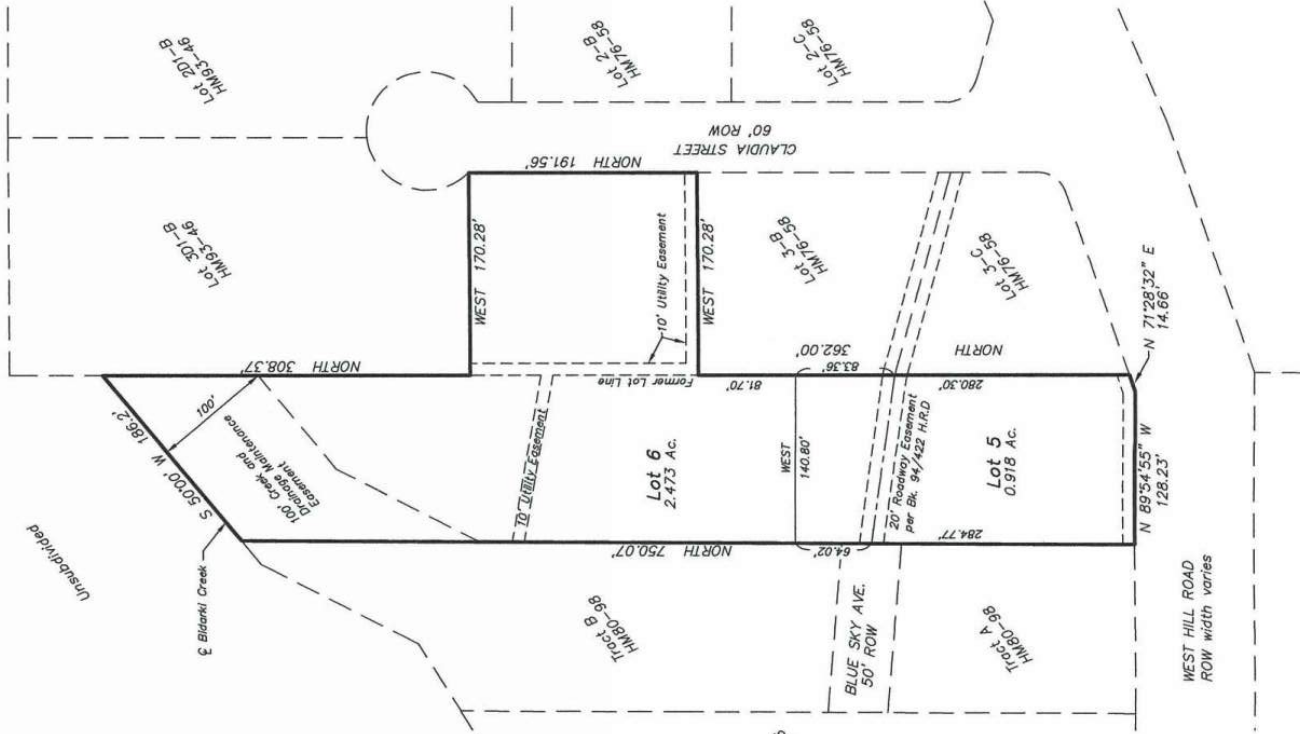
Notary Public for _____
My commission expires: _____

Anthony Sandoval
PO Box 64
Chicken, AK 99732

Notary's Acknowledgement:

For _____
Acknowledged before me this _____ day
of _____, 20____.

Notary Public for _____
My commission expires: _____



RECEIVED

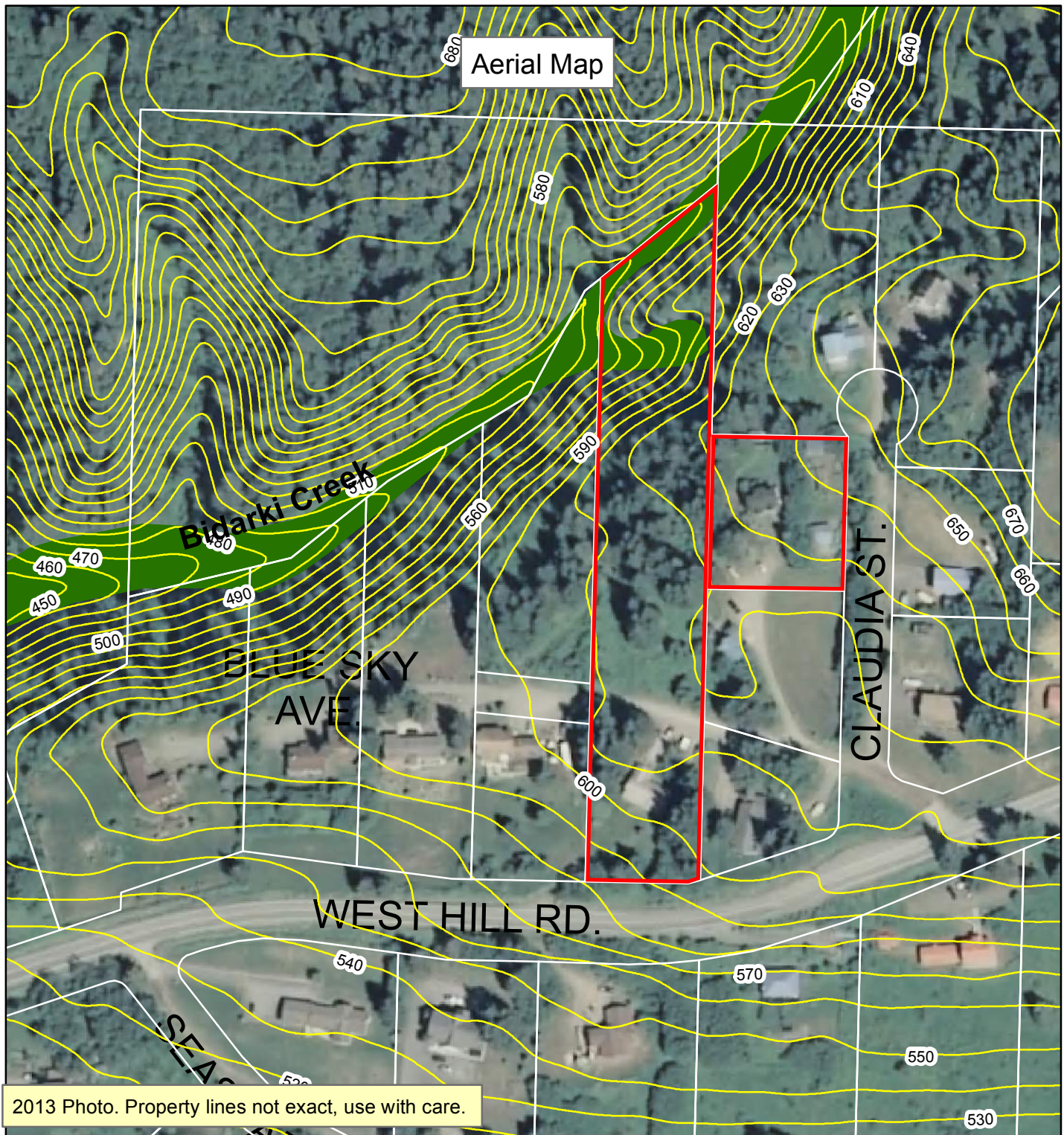
APR 12 2019

CITY OF HOMER
PLANNING/ZONING

WASTEWATER CERTIFICATE: Lot 6
Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation

WASTEWATER CERTIFICATE: Lot 5
Soil conditions, water table levels, and soil slopes in these lots have been found suitable for conventional onsite wastewater treatment and disposal systems serving single-family or duplex residences and meeting the regulatory requirements of the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed by a qualified engineer, registered to practice in Alaska, and the design must be approved by the Alaska Department of Environmental Conservation.

Engineer _____ License # _____ Date _____



City of Homer
Planning and Zoning Department

April 17, 2019

Skyline Drive Subdivision 2019 Replat Preliminary Plat

0 150 300 Feet



Disclaimer:
It is expressly understood the City of Homer, its council, board, departments, employees and agents are not responsible for any errors or omissions contained herein, or deductions, interpretations or conclusions drawn therefrom.



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

Staff Report PL 19-37

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: May 1, 2019
SUBJECT: Measuring Building Heights

Introduction

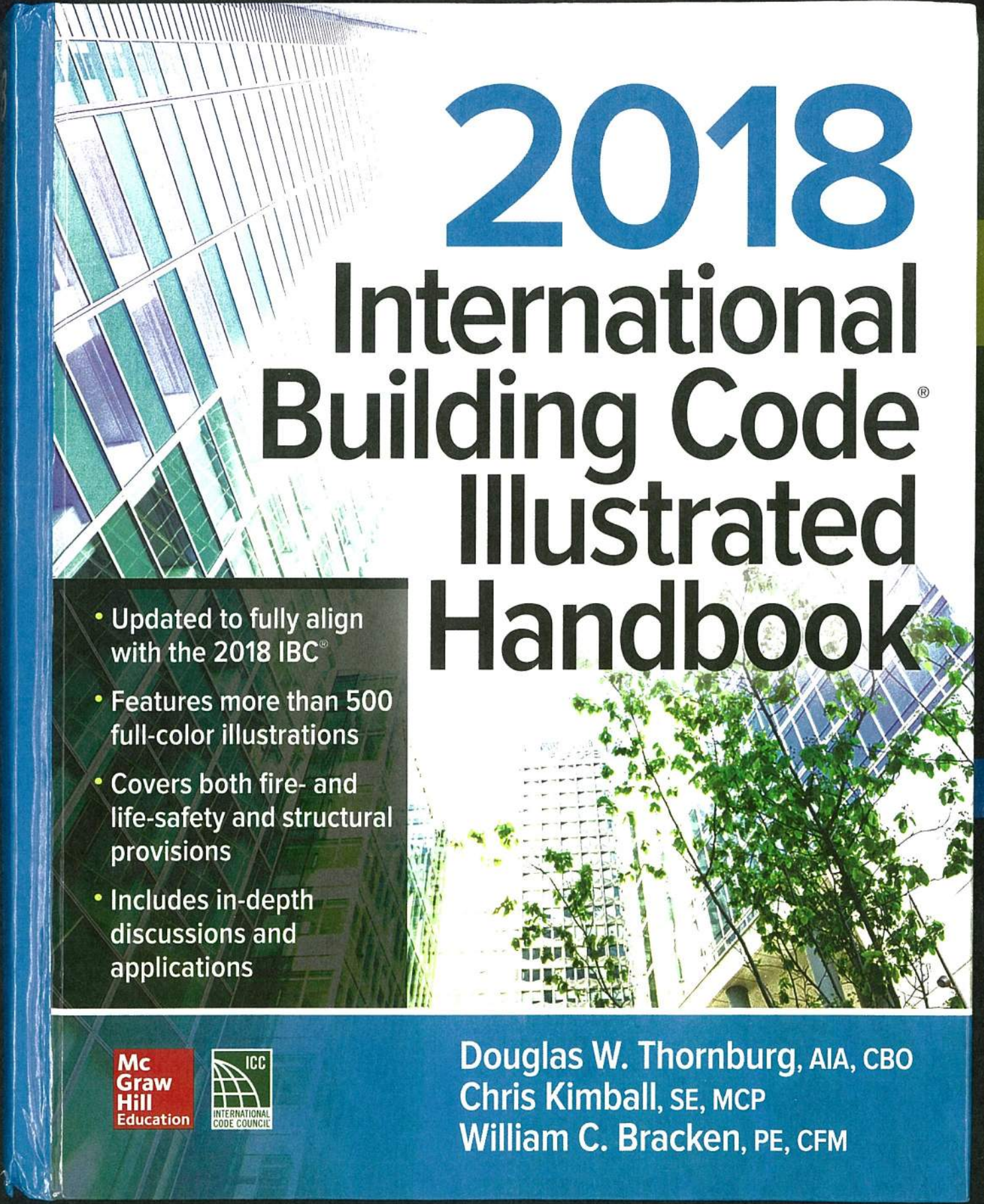
No action is requested on this topic for this meeting. The information is provided so the Commission may become more educated on the topics of grade, building height, and how stories are measured. Staff does not have specific recommendations for code amendments yet, although the discussion of Height, Building, on pages 35-37 differs from Homer City Code. Food for thought!

Staff Recommendation

Review the attached information, and ask any questions at the meeting. At the May 15th work session, the Commission will specifically learn about height changes in the East End Mixed Use District. Fire Chief Purcell and two area business owners have been invited to the work session.

Attachments

2018 International Building Code Illustrated Handbook, excerpt pages



2018

International Building Code[®] Illustrated Handbook

- Updated to fully align with the 2018 IBC[®]
- Features more than 500 full-color illustrations
- Covers both fire- and life-safety and structural provisions
- Includes in-depth discussions and applications

**Mc
Graw
Hill**
Education



Douglas W. Thornburg, AIA, CBO
Chris Kimball, SE, MCP
William C. Bracken, PE, CFM

Projections extending beyond an exterior wall or column line that are not intended to create usable space below are not to be considered in the determination of gross floor area. Areas often considered accessory-type spaces, such as closets, corridors, elevator shafts, and stairways, must also be considered a part of the gross floor area, as are area, occupied by furniture, fixtures, and equipment.

FLOOR AREA, NET. The net floor area is considered the portion of the gross floor area that is typically occupied. Normally unoccupied accessory areas such as corridors, stairways, closets, toilet rooms, equipment rooms, and similar spaces are not to be included in the calculation of net floor area. In addition, the measurements are based on clear floor space, allowing for the deduction of building construction features such as interior walls and columns, as well as elevator shafts and plumbing chases. The use of net floor area in the calculation of design occupant load is typically permitted only in assembly and educational uses as set forth in Table 1004.5. It is important to note that in calculating net floor area, as well as gross floor area, the floor space occupied by furniture, fixtures, and equipment is not to be excluded in the calculation. The floor-area-per-occupant factor established in Table 1004.5 includes any such anticipated furnishings in the establishment of an appropriate density estimate.

FLOOR FIRE DOOR ASSEMBLY. Although a fire door is typically viewed as an element protecting an opening in a vertical building element such as a wall, it is possible that such doors can be effective if installed horizontally for the protection of an opening in a fire-resistance-rated floor. The floor fire door assembly, like other fire door assemblies, includes the door, frame, hardware, and other accessories that make up the assembly, and provides a specified level of fire protection for the opening.

FOLDING AND TELESCOPING SEATING. Folding and telescoping seats are structures that provide tiered seating, which can be reduced in size and moved without dismantling. Utilized quite often in school gymnasiums, such seating presents the same concerns and risks as permanently installed bleacher seating when occupied. Such seating is regulated by ICC 300, *Standard for Bleachers, Folding and Telescopic Seating, and Grandstands*.

GRADE PLANE. The code indicates that the grade plane is a reference plane representing the average of the finished ground level adjoining the building at its exterior walls. Under conditions where the finished ground level slopes significantly away from the exterior walls, that reference plane is established by the lowest points of elevation of the finished surface of the ground within an area between the building and lot line, or where the lot line is more than 6 feet (1,829 mm) from the building, between the building and a line 6 feet (1,829 mm) from the building. Where the slope away from the building is minimal (typically provided only to drain water away from the exterior wall), the elevation at the exterior wall provides an adequate reference point.

The method for calculating grade plane can vary based on the site conditions. Where the slope is generally consistent as it passes across the building site, it may only require the averaging of a few points along the exterior wall of a rectangular-shaped building, as illustrated in Figure 202-12. Where the slope is inconsistent or retaining walls are utilized, or where the building footprint is complex, the determination of grade plane can be more complicated. In such cases, a more exacting method for calculating the grade plane must be utilized. In addition, where fire walls are present, the elevation points should be taken at the intersections of the fire wall and the exterior walls.

This definition is important in determining the number of stories above grade plane within a building as well as its height in feet. In some cases, the finished surface of the ground may be artificially raised with imported fill to create a higher grade plane around a building so as to decrease the number of stories above grade plane or height in feet. The code does not prohibit

Grade plane is reference plane representing average of finished ground level adjoining building. In this example, the grade plane is approximately 101.5.

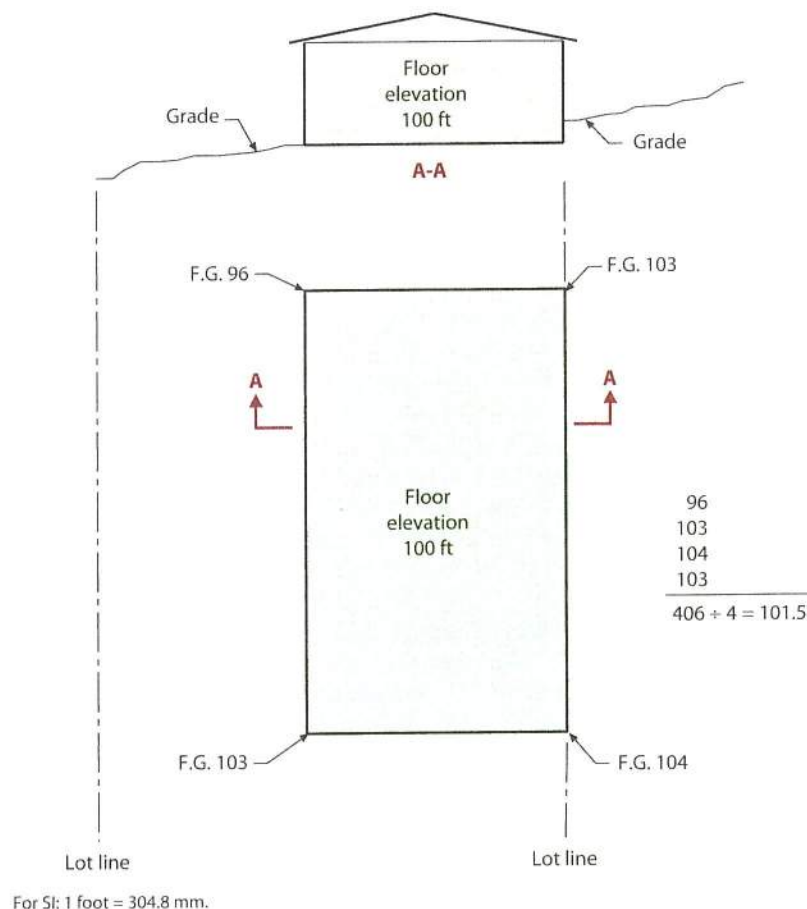


Figure 202-12 Grade plane calculation.

this practice, provided the building meets the code definition and restriction for height or number of stories above grade plane. See Figure 202-13.

It is important to note that for the vast majority of buildings, it is not necessary to precisely calculate the grade plane. In such buildings, a general approximation of grade plane is sufficient to appropriately apply the code. A detailed calculation is only necessary in those limited situations where it is not obvious how the building is to be viewed in relationship to the surrounding ground level.

GRANDSTAND. The definition of grandstand is also applicable to bleachers. Further information is provided in the discussion of the definition of bleachers. Grandstands are to be regulated by ICC 300, *Standard for Bleachers, Folding and Telescopic Seating, and Grandstands*.

GUARD. A component or system of components whose function is the minimization of falls from an elevated area is considered a guard. Placed adjacent to the elevation change, a guard

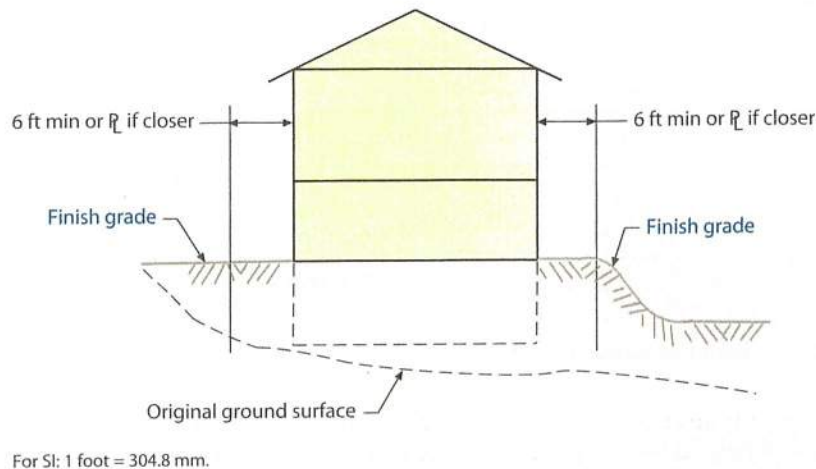


Figure 202-13 **Use of built-up soil to raise finished grade.**

must be of adequate height, strength, and configuration to prevent someone from falling over or through the guard. Outside of the code, this element is more commonly described as a guardrail.

HABITABLE SPACE. An area within a building, typically a residential occupancy, used for living, sleeping, eating, or cooking purposes would be considered habitable space. Those areas not considered to meet this definition include bathrooms, closets, hallways, laundry rooms, storage rooms, and utility spaces. Obviously, habitable spaces as defined in this section are those areas usually occupied, and as such are more highly regulated than their accessory use areas. Although typical, it is not necessary that a room or area be finished in order to be considered habitable space. It is not uncommon for a dwelling unit to have a large basement that is not completely finished-out. Nevertheless, the basement may be used as living space, particularly for children who use it as a playroom. Such a basement would be considered habitable space, as the definition is simply based on the use of the room or area.

HANDRAIL. Typically used in conjunction with a ramp or stairway, a handrail is intended to provide support for the user along the travel path. A handrail may also be used as a guide to direct the user in a specified direction.

HEIGHT, BUILDING. Once the elevation of the grade plane has been calculated, it is possible to determine the building's height. This height is measured vertically from the grade plane to the average height of the highest roof surface. Examples of this measurement are shown in Figure 202-14.

Where the building is stepped or terraced, it is logical that the height is the maximum height of any segment of the building. It may be appropriate under certain circumstances that the number of stories in a building be determined in the same manner. Because of the varying requirements of the code that are related to the number of stories, such as means of egress, type of construction, and fire resistance of shaft enclosures, each case should be judged individually based on the characteristics of the site and construction. In addition to those factors better related to the number of stories, other items to consider are fire department access, location of exterior exit doors, routes of exit travel, and types of separation between segments.

Height of building is the vertical distance above grade plane measured to:

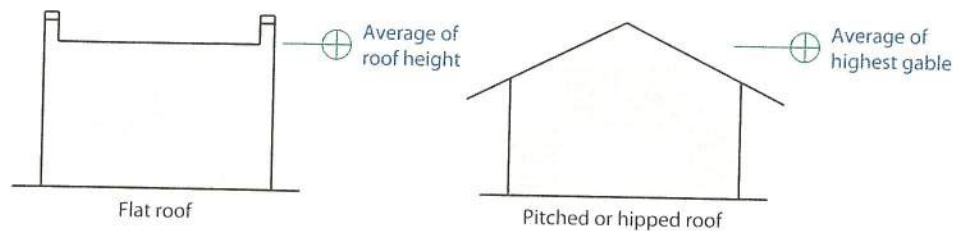


Figure 202-14 **Height of building.**

Figure 202-15 illustrates one example in which the height of the building and number of stories are determined for a stepped or terraced building. In the case of a stepped or terraced building, the language *total perimeter* is used to define the situation separating the first story above grade plane from a basement and is intended to include the entire perimeter of the segment of the building. Therefore, in the cross section of Figure 202-16, the total perimeter of the down-slope segment would be bounded by the retaining wall, the down-slope exterior wall, and the east and west exterior walls. In the case illustrated, the building has three stories above grade plane and no basement for the down-slope segment. The measurement for the

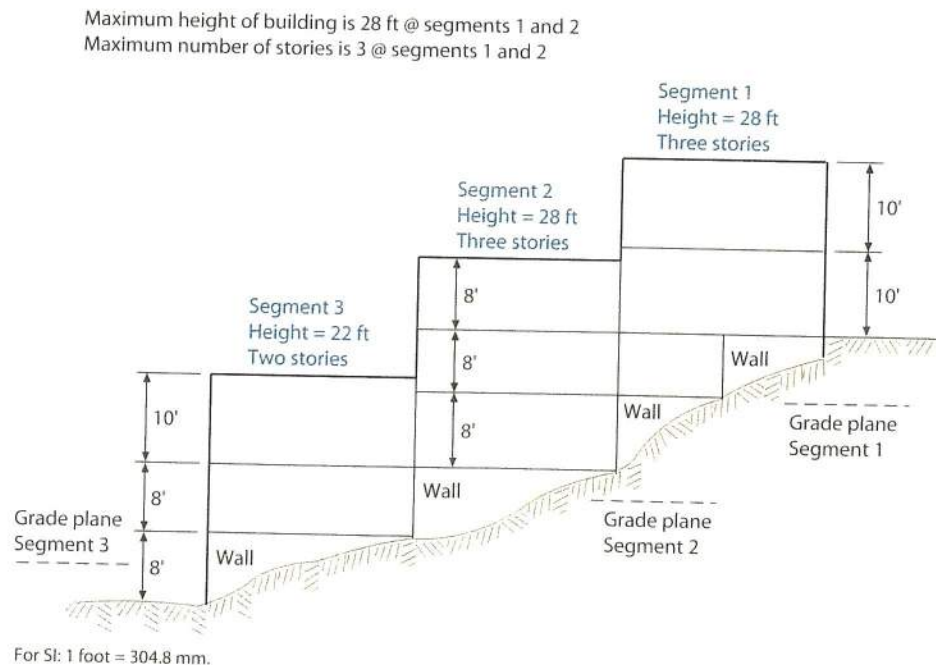
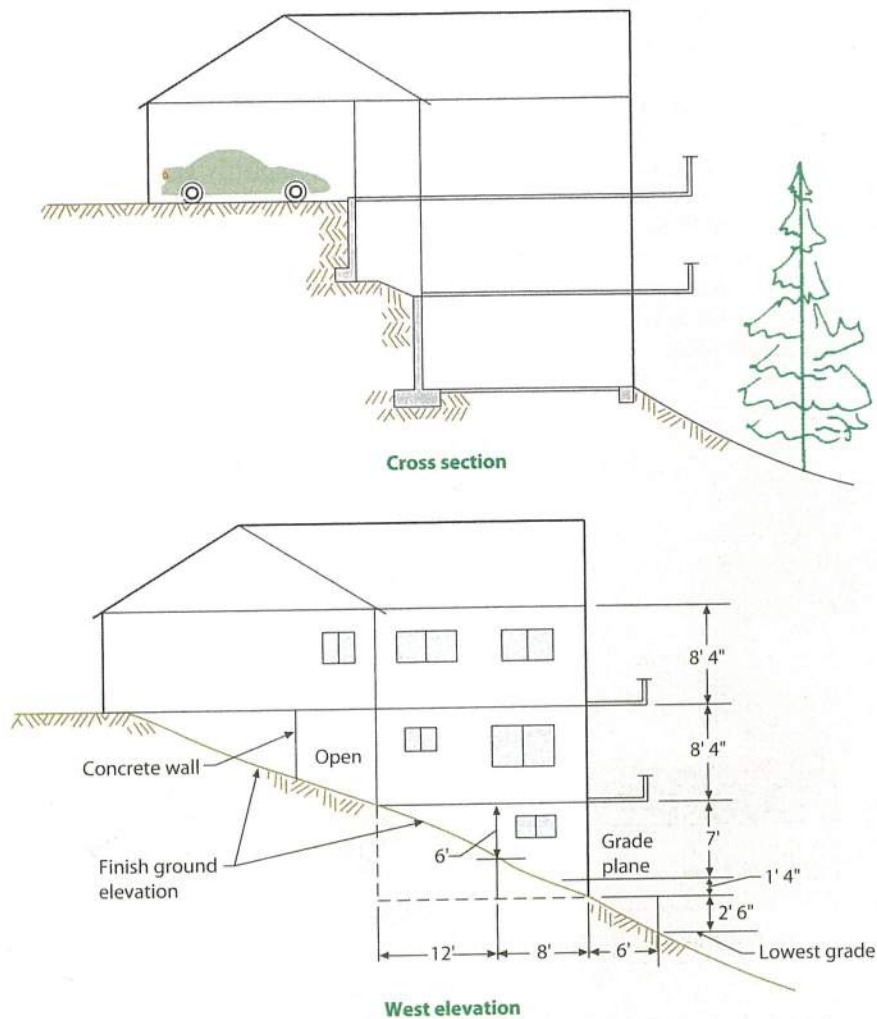


Figure 202-15 **Terraced building.**



For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

Figure 202-16 **Three-story building.**

maximum height of the building would be based on the maximum height of the down-slope segment.

Similar to an unnecessarily detailed calculation of grade plane, there is seldom a need to precisely calculate the height of a building. Typically, a general determination of building height is adequate to ensure compliance with the code. For example, it is not necessary to go into great detail evaluating the average roof elevation of a built-up roof that has a low degree of slope for drainage purposes. The need for a more exacting determination of roof height is directly related to any uncertainty that may occur in reviewing for code compliance.

contained within the originating area or prevented from entering other areas of the building. The use of smoke compartments is predominant in Group I-2 and I-3 occupancies.

SMOKE DAMPER. Test standard UL 555S states that leakage-rated dampers (smoke dampers in the terminology of the IBC) are intended to restrict the spread of smoke in heating, ventilating, and air-conditioning (HVAC) systems that are designed to automatically shut down in the event of a fire, or to control the movement of smoke within a building when the HVAC system is operational in engineered smoke-control systems. The IBC simply identifies smoke dampers as listed devices designed to resist the passage of air and smoke through ducts and air-transfer openings. Smoke dampers must operate automatically unless manual control is desired from a remote command station.

SMOKE-PROTECTED ASSEMBLY SEATING. Where the means of egress for assembly seating areas is designed to be relatively free of the accumulation of smoke, the seating is considered to be smoke protected. Protection may be achieved in one of the two ways, either through the design of a passive system or through ventilation by mechanical means. In order to qualify as smoke protected, the seating area and its exiting system must comply with the provisions of Section 1029.6.2, which addresses the methods of smoke control, the minimum roof height, and the possible installation of sprinklers in adjacent enclosed spaces. Exterior seating facilities such as stadiums or amphitheaters are commonly considered as open-air assembly seating due to the natural ventilation that is available.

STAIR. Where one or more risers are provided to address a change in elevation, a stair is created. A stair may simply be a slight change in height from one floor level to another, commonly referred to as a step, or may be a series of treads and risers connecting one floor level or landing to another. Also described in the code as a flight of stairs, a stair does not include the landings and floor levels that interrupt stairway travel.

STAIRWAY. Where one or more flights of stairs occur, including any intermediate landings that connect the stair flights, a stairway is created. The term *stairway* describes the entire vertical travel element that is made up of stairs, landings, and platforms.

STAIRWAY, EXTERIOR. To be classified as an exterior stairway, it must be open on at least one side. The open side must then adjoin an open area such as a yard, egress court, or public way. By limiting the number of enclosed sides, an exterior stairway will be sufficiently open to the exterior to prevent the accumulation of smoke and toxic gases. Additional criteria for defining an exterior stairway used as a means of egress are found in Section 1027.3.

STAIRWAY, INTERIOR. By definition, a stairway that does not comply with the definition for an exterior stairway is considered an interior stairway. In other words, if all sides of a stairway are enclosed by the building's construction, it is considered interior. Stairways that fail to meet the openness criteria of Section 1027.3 are, by default, considered interior stairways.

STAIRWAY, SPIRAL. A spiral stairway is a stairway configuration where the treads radiate from a central pole. The treads are uniform in shape, with a tread length that varies significantly from the inside of the tread to the outside. The dimensional characteristics of a spiral stairway cause it to be limited in its application.

STORY. Although seemingly quite obvious, the definition of a story is that portion of a building from a floor surface to the floor surface or roof above. In the case of the topmost story, the height of a story is measured from the floor surface to the top of the ceiling joists, or to the top of the roof rafters where a ceiling is not present. The critical part of the definition of a story involves the definition of *story above grade plane* as described in the following discussion.

It is not uncommon for a roof level to be utilized for purposes other than weather protection or mechanical equipment. A roof patio, garden, or sports area is sometimes provided in order to

utilize as much of the building as possible. Although an occupied roof does not meet the definition of "story," there are certain provisions in the IBC that would be applicable due to the fact occupants can be present. For example, an occupied roof must be provided with a complying means of egress designed for the anticipated occupant load of the roof level. Full compliance with applicable accessibility requirements must also be provided. Required fire alarm system protection should be extended to such occupied roofs. However, the roof level would not be considered part of the building area for allowable area purposes. In addition, its consideration in the evaluation of a building's allowable number of stories varies based upon the provisions of Section 503.1.4. A careful analysis should be made when determining which provisions are applicable to an occupied roof.

Although stories are typically identified as above-ground floor levels, basements are also considered as stories. For example, a building with four stories above grade plane and one level of basement would be considered as a five-story building. The provisions specific to stories are typically addressing concerns within a building, while those related more toward stories above grade plane and basements are focused on exterior issues.

STORY ABOVE GRADE PLANE. Throughout the code, the number of qualifying stories in a building is a contributing factor to the proper application of the provisions. As an example, a building's allowable types of construction are based partly on the limits in height in stories placed on various occupancy groups. In this case, the code is limiting construction type based on the number of stories above grade plane. The code defines a story above grade plane as any story having its finished floor surface entirely above grade plane. However, floor levels partially below the grade at the building's exterior may also fall under this terminology. The critical part of the definition involves whether or not a floor level located partially below grade is to be considered a story above grade plane. There are two criteria that are important to the determination if a given floor level is to be considered a story above grade plane:

1. If the finished floor level above the level under consideration is more than 6 feet (1,829 mm) above the grade plane as defined in Section 202, the level under consideration is a story above grade plane, or
2. If the finished floor level above the level under consideration is more than 12 feet (3,658 mm) above the finished ground level at any point, the floor level under consideration shall be considered a story above grade plane.

Where either one of these two conditions exists, the level under consideration is to be considered a story above grade plane.

Conversely, if the finished floor level above the level under consideration is 6 feet (1,829 mm) or less above the grade plane, and does not exceed 12 feet (3,658 mm) at any point, the floor level under consideration is not considered a story above grade plane. By definition, it is regulated as a basement. Figures 202-20 and 202-21 illustrate the definitions of "story," "basement," and "story above grade plane."

Although the criteria for establishing the first story above grade plane in Item 2 indicates that such a condition occurs where the 12-foot (3,658-mm) limitation is exceeded, the application of this provision is not that simple. It is not the intent of the code to classify a story that is completely below grade except for a small entrance ramp or loading dock as a *story above grade plane*, provided there is no adverse effect on fire department access and staging. An analysis of the impact of such limited elevation differences is necessary to more appropriately apply the code's intended result.

T RATING. The T rating is defined as the time required for a specific temperature rise on the unexposed side of a penetration firestop system. More specifically, the penetration firestop system as well as the penetrating item must provide for a maximum increase in temperature of

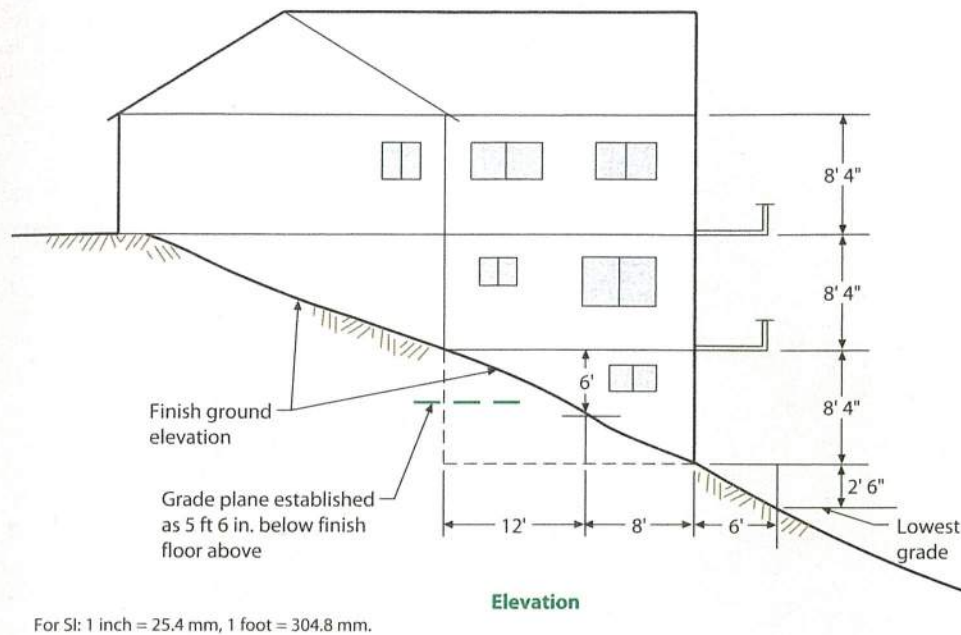


Figure 202-20 Building with two stories above grade plane and one basement level.

325°F (163°C) above its initial temperature for the time period reflected in the fire-resistance rating. The establishment of the rating of the through-penetration firestop is determined by tests in accordance with ASTM E 814 or UL 1479. A more detailed discussion of the subject is found in Chapter 7.

TECHNICAL PRODUCTION AREA. Many auditoriums and performance halls, as well as other types of entertainment and sport venues, are provided with elevated technical support areas used for lighting, sound, scenery, and other performance effects. The code regulates these as technical production areas. The areas may or may not be associated with a stage, but are typically an integral part of the production. These spaces are generally limited in floor area, and access is always restricted to authorized personnel. The term “technical production areas” is intended to encompass all technical support areas, regardless of their traditional name. Special requirements for these types of areas are addressed in Section 410.

THROUGH PENETRATION. A through penetration is considered an opening that passes through an entire assembly, accommodating various penetrating items such as cables, conduit, and piping. Where membrane construction is provided, such as gypsum board applied to both sides of a stud wall, a through penetration would pass entirely through both membranes and the cavity of the wall.

THROUGH-PENETRATION FIRESTOP SYSTEM. In order to adequately protect the penetration of a fire-resistance-rated assembly by conduit, tubing, piping, and similar items, a through-penetration firestop system is sometimes required. Such a system may selectively include various materials or products that have been designed and tested to resist the spread of fire through the penetration. Through-penetration firestop systems are fire-resistance rated

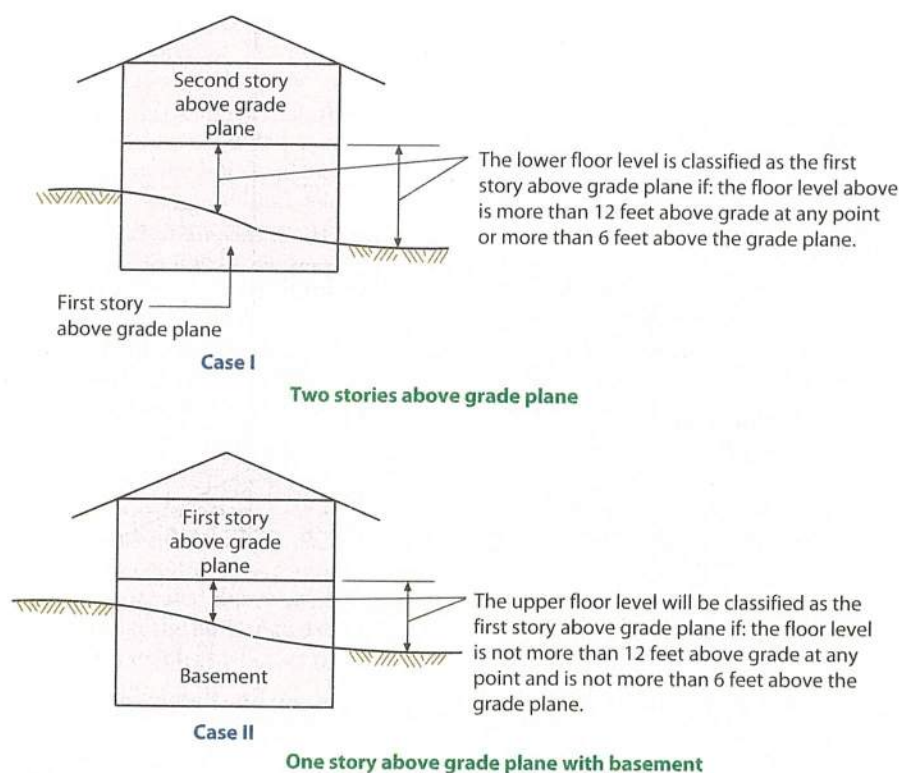


Figure 202-21 **Multistory building.**

based on the criteria of ASTM E 814 or UL 1479, and are provided with an hourly rating for both fire spread (F rating) and temperature rise (T rating).

WALKWAY, PEDESTRIAN. Described as a walkway used exclusively as a pedestrian trafficway, a pedestrian walkway provides a connection between buildings. A pedestrian walkway may be located at grade, as well as above ground level (bridge) or below grade (tunnel). The provisions addressing pedestrian walkways are optional in nature and utilized primarily to allow for the consideration of the connected buildings as separate structures. Regulations for pedestrian walkways and tunnels are found in Section 3104. An example of a pedestrian walkway is shown in Figure 202-22.

WINDER. A winder, or winder tread, is a type of tread that is used to provide for a gradual change in direction of stairway travel. Although the directional change created by winders is typically 90 degrees (1.57 rad), other configurations are also acceptable. Owing to a reduced level of safe stairway travel, winders may typically only be used in a required means of egress stairway when located within a dwelling unit.

YARD. Used throughout the code to describe an open space at the exterior of a building, a yard must be unobstructed from the ground to the sky and located on the same lot on which the building is situated. A court, which is bounded on three or more sides by the exterior walls of



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

Staff Report PL 19-38

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Travis Brown, Planning Technician
DATE: May 1, 2019
SUBJECT: Zoning Permit Process and Building Location Verification

Introduction

Currently, City code requires a Zoning Permit for all new residential construction in Homer. In order to gain this permit, the property owner must provide a site plan drawing depicting the proposed location of new buildings in relation to required setbacks; however, there is currently no mechanism for verifying the actual placement of new buildings covered by the permit.

An increased level of accuracy for building placement is beneficial to the community. Future owners and neighbors will be assured houses are not encroaching on a setback or worse – on their neighbor's property. Considering houses are permanent improvements that are often bought and sold repeatedly, their legal placement has a lasting effect on the built environment. Legally placed structures improve the overall quality of Homer's housing stock, furthering our Comprehensive Plan goals.

For these reasons, the commission is seeking a way to encourage new construction to adhere to proposed site plans and ensure buildings are placed in their proper location.

Analysis

Setback verification is common practice throughout Alaska and the nation. Some cities verify setbacks in the field during routine foundation inspections, while others require a surveyor to independently verify the setback. Many cities require in-field verification of foundation setbacks as well as as-builts, stamped by a licensed surveyor, upon project completion.

All examples of building setback verification that I could find in other communities had a common theme - a building inspection program. Homer's lack of a building department make it difficult to...well...perform inspections of this nature. The community's appetite for establishing a building department is unclear at this time. An effort toward this end will involve a larger community discussion with consideration of many more factors than what is on the table at this time - building placement is a small piece of this puzzle. Fortunately, three options have been identified

to provide better assurance of building placement, without imposing a building inspection program.

Option 1 - Require property owners to have a surveyor stake those portions of property lines nearest the building site, when the proposed building location is within 20 feet of required setbacks.

This option will ensure that the property owner knows precisely where their boundaries are in relation to the building site for those projects that have potential to encroach on setbacks. It will not verify the structure's location, but will greatly reduce the risk of improper placement by ensuring the property owner knows the precise location of their boundaries.

In practice, the property owner or contractor will need to schedule a surveyor in advance of their project and the cost of the surveyor's fieldwork will be relatively inexpensive. The property owner/contractor will assume responsibility for the building's location. The property owner would submit a City form (signed by the surveyor) verifying the property lines near the proposed building site, as indicated by the site plan, were staked prior to starting construction of the foundation. The property owner or contractor would have the freedom to pull their own control lines for the structure location, or have the surveyor do this work.

Option 2 - Require the property owner to have a surveyor verify the foundation location when the proposed building location is within 20 feet of required setbacks.

This is the only option that will verify the structure's location prior to construction for those projects that have potential to encroach on setbacks.

In practice, the property owner or contractor will need to schedule a surveyor during a specific window of time. The cost of the surveyor's fieldwork will be relatively inexpensive. The property owner would submit a City form (signed by the surveyor) verifying the foundation forms meet the setbacks, prior to pouring the foundation.

Option 3 – Require an as-built, produced by a licensed surveyor, upon project completion.

This option will result in a product that documents the finished improvement. It will not ensure the building meets setbacks, although, there may be added incentive for property owners to positively identify their lot lines and setbacks in advance of the project. In practice, this will not come with additional upfront costs or affect the project timeline, but the added cost of an as-built will be passed along to the property owner.

The as-built would be kept on file in the Planning Office. Our office will have little use for the document, although it may be useful for property owners looking to build additions or sell their property, as well as to prospective buyers of the property. Note that City code already requires commercial buildings to submit as-builts upon completion (HCC 21.70.040).

Staff Recommendation

I believe option 1 is the most practical action to take for encouraging new construction meets setbacks. Making sure property owners know where their property boundaries are, as they relate to their project, is the most important step toward ensuring buildings don't encroach on setbacks. This step alone will constitute a big step in the right direction.

Please discuss each option and make a recommendation for staff to draft code for one or more of the options.



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

Staff Report PL 19-39

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: May 1, 2019
SUBJECT: Review of Police Station landscaping plan

Introduction

As part of the approval of CUP 19-02, for the police station, the Planning Commission is to review the landscaping plan. After hearing Commission comments, the City Planner may approve the plan. At this point the Landscaping Plan is complete, but installation is likely to be spring of 2021. (The building construction will begin shortly, and last into spring/summer 2020).

“Condition 4: Landscape plan to be reviewed by the Planning Commission and approved by City Planner prior to planting. Plantings along Heath Street shall screen the parking lot and vehicle storage shed, if public art is not used to soften the long shed wall. Landscaping shall be installed no later than the first full growing season after the opening new station.”

Analysis

The City contracted with Brenda Adams, owner of Garden By Designs, to create this landscaping plan. (The actual plants and planting work will undergo another bidding process.) A wide variety of native and non-native perennial plants have been chosen for this site. They generally are not plants that moose will eat, and all have been used in Homer area gardens. There are five planted areas in the site plan – depicted as A through F. The remainder of the landscaped grounds will have a mowed lawn.

Areas A and Area B are a mounded planted beds with a wide variety of plants providing color, texture, and a 3 season focal point.

Area C is the raingarden. The City acquired grant funding for construction. It will be a showcase for the community on what a rain garden can look like. Planning staff regularly refer to the rain garden here at City Hall, but other than city hall and college pedestrians, this garden is largely unfamiliar to the community. Having a raingarden prominently located, along with similar features in the Library, will help citizens and developers better understand the range of landscaping and functions that a raingarden can provide.

Note: See attachments for Areas D,E &F for specific plants and diagrams.

Area D: This planting area is along the fence for the evidence storage area. Three plants are used. #4 on sheet D will create a focal point along the fence by planting white ("snowmound") Spirea. #33 is a blue purple Clematis (flowering climbing vine) that will provide color most of the summer. The third element is #7, Calamagrostis acutiflora, is tall grass that grows up to seven feet in height. With the exception of heavy snow years, the grass should remain standing year round. This grass is not our native species, it is an ornamental, but it does not spread. You can see examples of grasses used in landscaping at South Peninsula Hospital. Both the emergency room entrance and the lower level main entrance have planted areas with tall grasses, although those are a shorter variety than is planned here. Staff note: the hospital trimmed the grass this week at the lower entrance, presumably to be ready for new spring growth. Using grasses as screening is something we do not regularly see in the City. Staff is intrigued by this idea and supports using it on this site. If the grasses provide screening as intended, it may create a new option for other landowners needing a landscaping idea. While alder and spruce trees are commonly used, it would be ideal to showcase the landscaping at this location as another landscaping idea.

Area E: is a planted mounded bed that will include small spruce trees, mock orange and barberry. This bed should provide some softening of the parking lot and visual interest from the street and sidewalk.

Area F: Planting of three Colorado Spruce. This species is Alaska hardy and also does not grow as large (and lanky) as our native Spruce. That area of lawn is a fairly large area, and the spruce trees will break up the large space.

Carport area along Heath Street

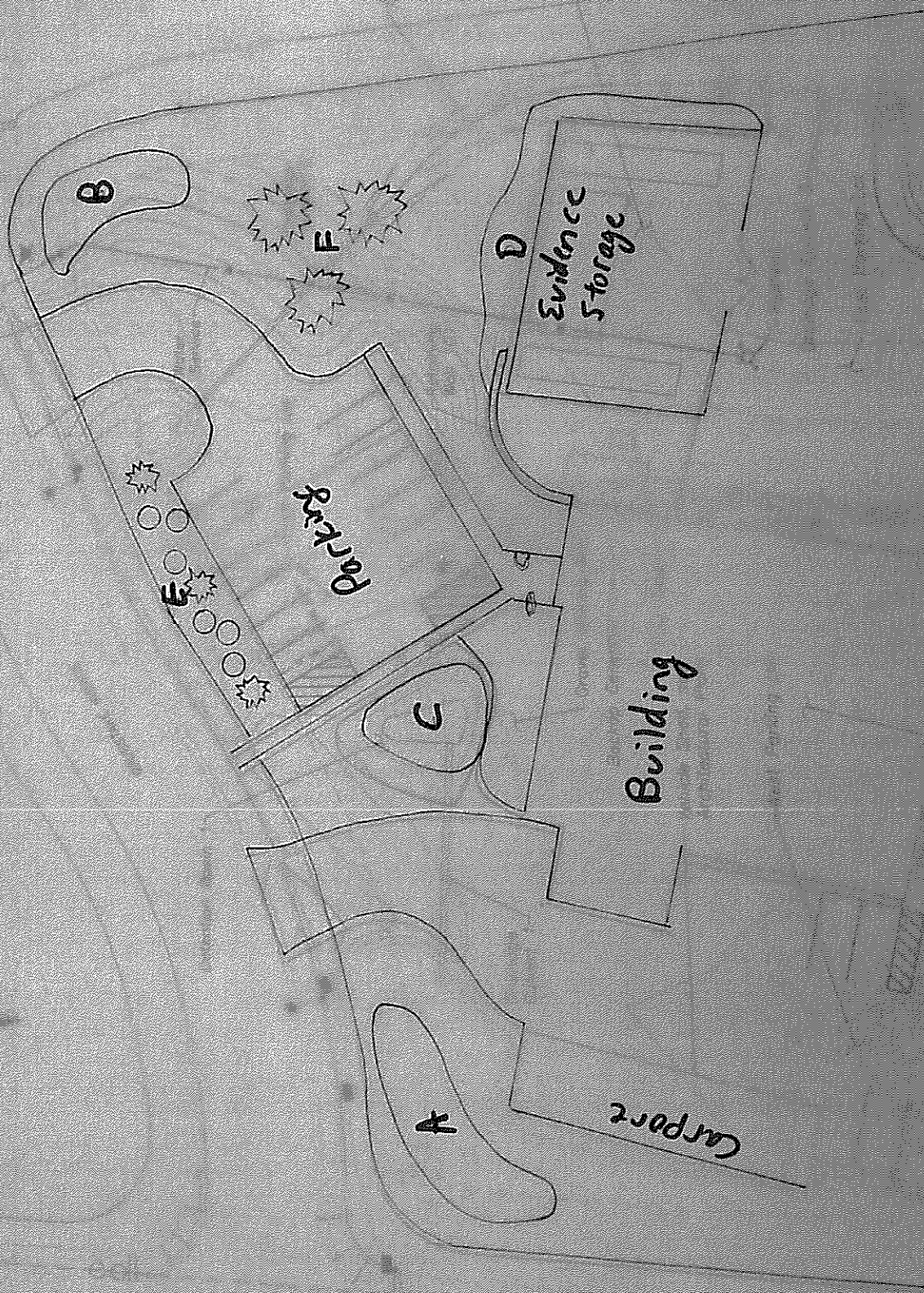
The public art selection committee is still selecting art for the Police Station. The design of the carport includes locks of area for art. In the CUP, if this art was not a site for public art, then it was to be screened. Since this area will contain public art, screening is not required.

Staff Comment: The landscaping plan as presented was colorful and thoughtful...well beyond any other plan staff has been presented. Please make any comments to the City Planner for his consideration.

Attachments

Landscaping plan and plants
Carport elevation drawing
Site Plan dated 4-25-19

Landscape plan

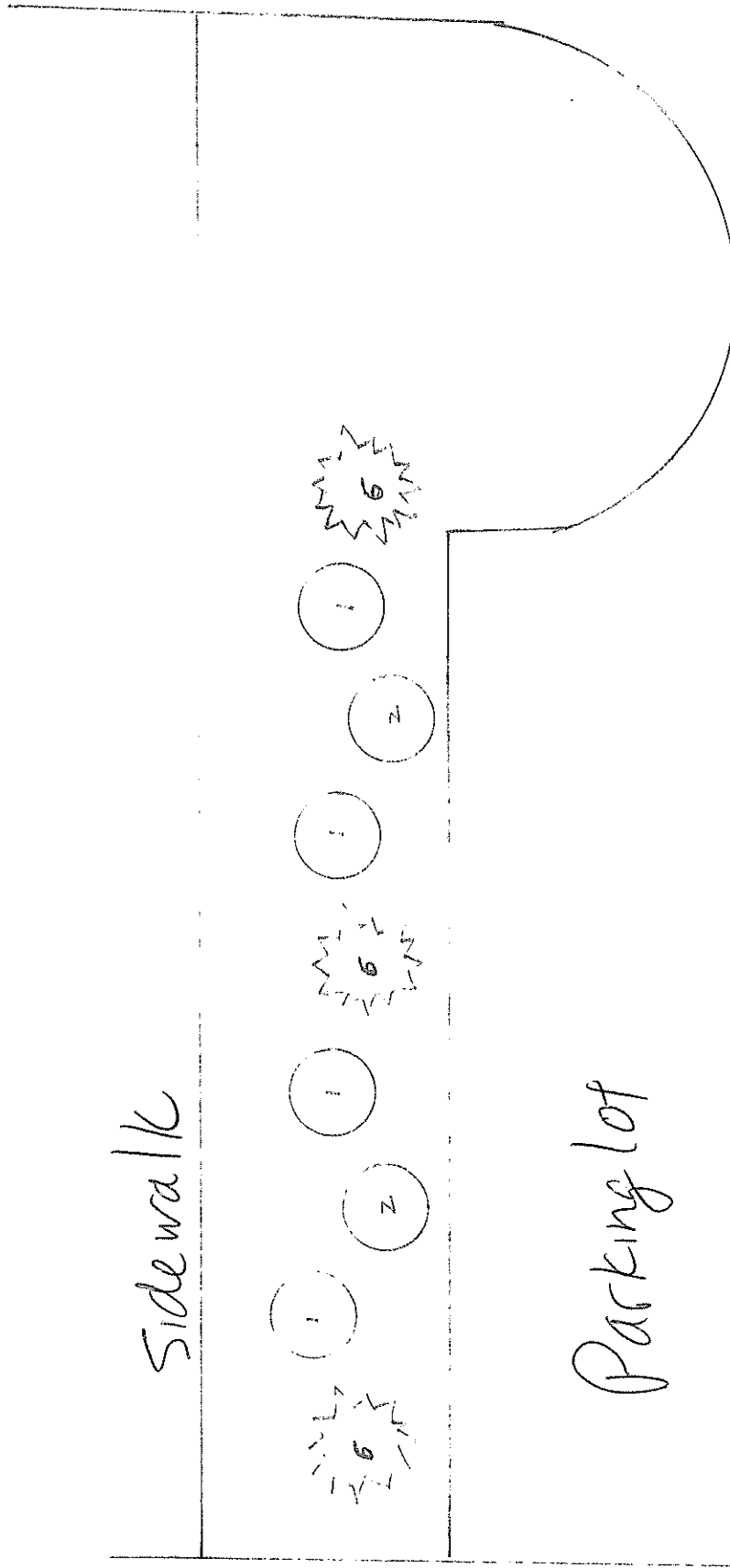


E

Street

Sidewalk

Parking lot



Project:	Homer Police Station Area E
Prepared For:	Pat McNary
Prepared By:	Brenda Adams
Date:	April, 2019
Scale:	1/8" = 1'

E



Philadelphus lewisii 'Blizzard'

**Beaver Creek Nursery**

[plant guide:](#) | [home](#) | [view plants by genus](#) | [view all plants](#) | [advanced plant finder](#) | [price list/contact](#) |



PHILADELPHUS x lewisii

Mockorange 'Blizzard'

Plant code: 3PHIB

Plant type: shrub

Size: 4-5'H x 4'W

Shape: upright rounded

Plant Zone: 3

Fall Color: green

Flower: single white clusters

Fruit: 1/3" capsule

Feature: long bloom season

Sun/Shade: full sun/partial sun

Description:

A Canadian introduction that was selected in Alberta for its extended blooming period (up to 4 weeks) and tremendous hardiness. Large fragrant flowers produced in great profusion. Will tolerate some light shade, but flowers best in full sun.

[Click on photo\(s\) to enlarge](#)

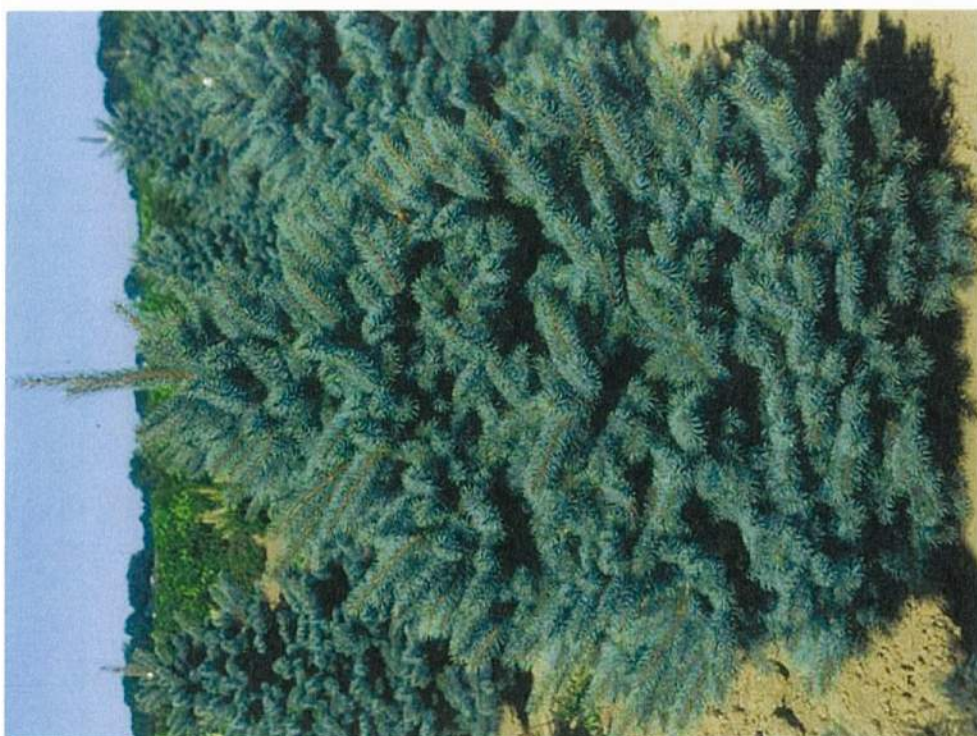


Copyright © 2006, Roy G. Klehm, Song Sparrow Perennial Farm. All rights reserved.

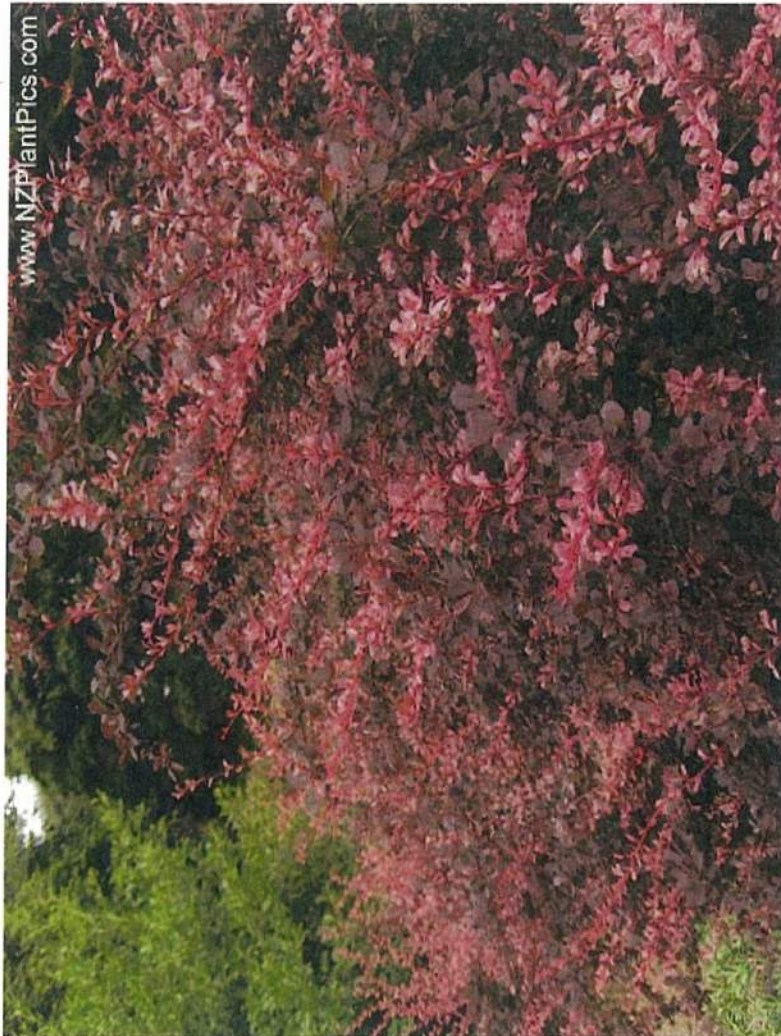
Bakeri Blue Spruce

Picea pungens glauca 'Bakeri'

(Picea Pungens 'Bakeri') is a very Blue Spruce, Its needles are larger than most and have a very blue color and a feathery appearance, not quite as silvery grey as other blue spruce...but really blue. It is an extremely slow growing, cone- shaped tree that grows only 2 to 3 inches per year. Its blue color makes it a very attractive addition to any landscape. It is primarily a specimen plant used to add color to the landscape. This is an excellent plant for adding structure, color and texture to your yard or garden. Care and hardiness are similar to Colorado Blue Spruce as this little tree is widely adaptable but prefers well drained soils. This blue spruce can eventually get to a height of 35 ft, and spread 15ft (but not likely in your lifetime unless purchased that way.) Plant in full sun. Zones 3-7 Mature Height: 35-40' Mature Spread: 15-20' Hardy To: 8,000' Exposure: Sun to Filtered Shade Water Requirement: Medium Flower Color/Season: N/Ais Dwarf Blue Spruce, is a compact, miniature Blue Spruce with very silvery blue needles. Very slow growing Baby Blue Eyes is a small, cone- shaped tree that grows very slowly (2 to 3 inches per year) Its blue color makes it a very attractive addition to any landscape. It is primarily a specimen plant used to add color to the landscape without taking up space. This is an excellent plant for adding structure, color and texture to your yard or garden. Care and hardiness are similar to Colorado Blue Spruce as this little tree is widely adaptable but prefers well drained soils. This dwarf form of blue spruce is very blue, pyramidal, and can eventually get to a height of 12 ft, and spread 6-7ft (but not likely in your lifetime unless purchased that way.) Plant in full sun. Zones 3-7



Picea pungens glauca 'Bakerii'



Berberis thunbergii 'Rose Glow'
Rose Glow Barberry

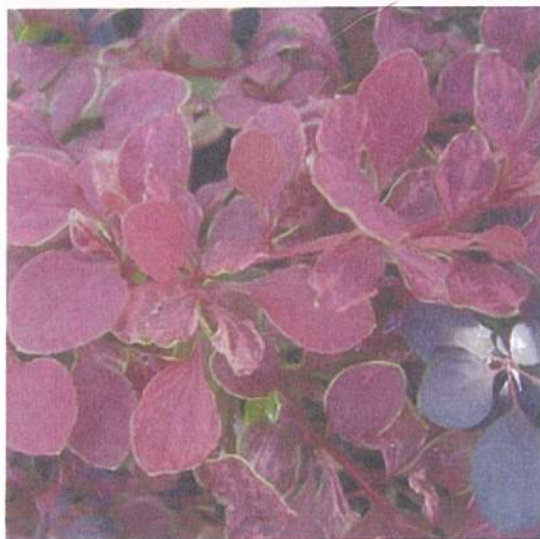


::Product Descriptions 2009 ::

Berberis thunbergii

'Rose Glow'

Rose Glow Japanese Barberry



Description

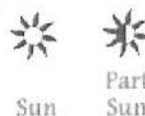
The Japanese Barberry is in a class of deciduous shrubs with thorns that can tolerate a little punishment from the environment or poor soil. *Berberis thunbergii* 'Rose Glow' is a shrub with graceful growth and dense foliage. Its leaves are a marbled bronzy red and pinkish white then deepening into a rose and bronze color. In the winter this shrub has bright red berries. Rose Glow Japanese Barberry grows to be 5 feet in height and 4 foot in width.

Hardiness: USDA Zones 4-8

Plant Use: Shrub

Exposure: Sun to Partial Sun

Water Requirements: Medium



Liner Sizes:

Container Sizes: #3 [Check Availability](#)

::Product Descriptions 2009 ::

[Company Information](#) | [Contact Us](#) | [Site Map](#) | [Home Page](#)

[Plant Descriptions](#) | [Plant Availabilities](#) | [New for 2009](#)

[Grasses, Groundcovers, Vines](#) | [Perennials](#) | [Shrubs](#) | [Trees](#)

[A-Z Botanical Name](#) | [A-Z Container Products](#) | [A-Z Liner Products](#)

©2009 Magnolia Gardens Nursery

All graphics and navigation elements are trademarks of Magnolia Gardens Nursery. All Rights Reserved

Magnolia Gardens Nursery sells to the WHOLESALE TRADE ONLY

All others are welcome to see a listing of retail nurseries that sell our products.

15 x 12

F

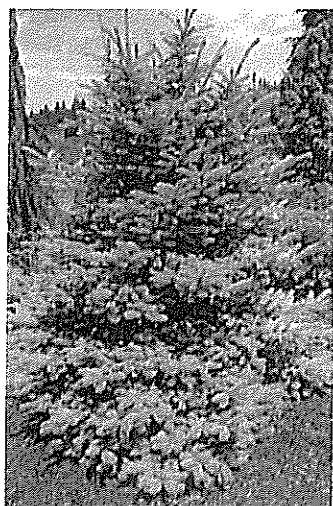


Picea pungens 'Baby Blue Eyes'



WSU Clark County Extension

PNW Plants Searchable, categorized images



Baby Blue Colorado Spruce



Scientific name: *Picea pungens* 'Baby Blue Eyes'

Taxonomy

Family: Pinaceae

Type: Coniferous trees

Native: NO

Plant Requirements

Zone: 2 to 8

Sun: Full sun

Moisture: Medium

Plant Characteristics

Height: 30 ft

Width: 15 ft

Additional Characteristics

Trees

- ☒ Small lot suitable
- ☐ Flowering tree
- ☐ Safe for beneath power lines

Fruit

- ☐ Showy
- ☐ Edible

Leaves

- ☐ Good Fall color
- ☐ Leaves fragrant
- ☐ Gold foliage
- ☒ Evergreen

Bark

- ☐ Showy

Wildlife value

- ☐ Attract hummingbirds
- ☐ Attract butterflies
- ☐ Attract birds

Poisonous

- ☐ Foliage
- ☐ Fruit

Description

In the nursery industry the spruce variant 'Baby Blue Eyes' is sold for its eye catching silvery blue foliage and smaller landscape size making it more desirable for confined spaces.

Morphology:

This cultivar of Colorado spruce is considerably slower growing than the native species, attaining a mature height of 30' and a width of 15'. It only grows at the rate of 2"-3" per year. It features stiff, 4-sided, prickly needles arranged radially on orange-brown shoots. The tree shape is defined as broadly pyramidal.

Adaptation:

This evergreen prefers a rich, well drained soil.

Pests:

White pine weevil can damage the leader growth on spruce. Spruce aphids can harm the interior needle growth.

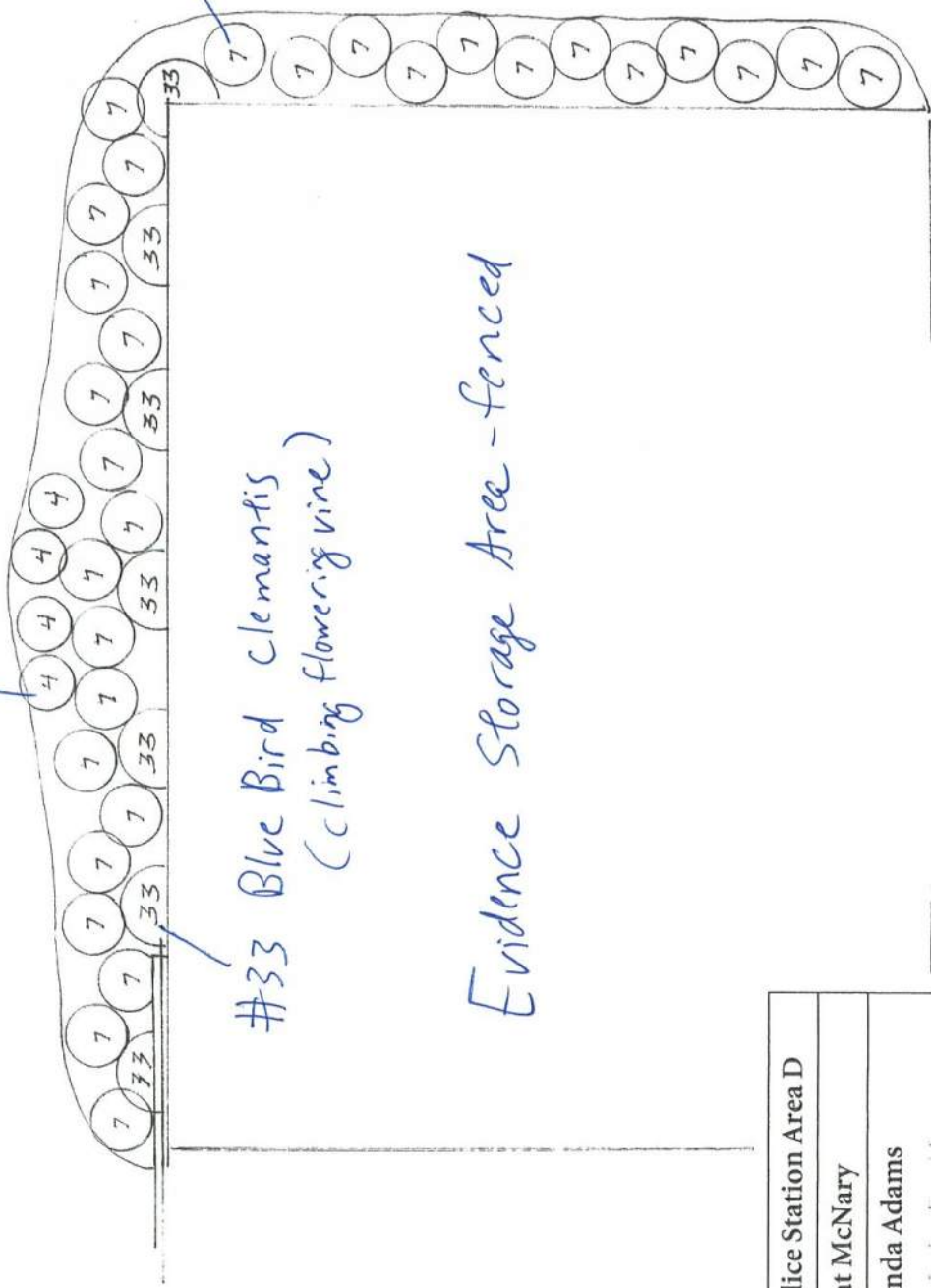
D

white spirea #4

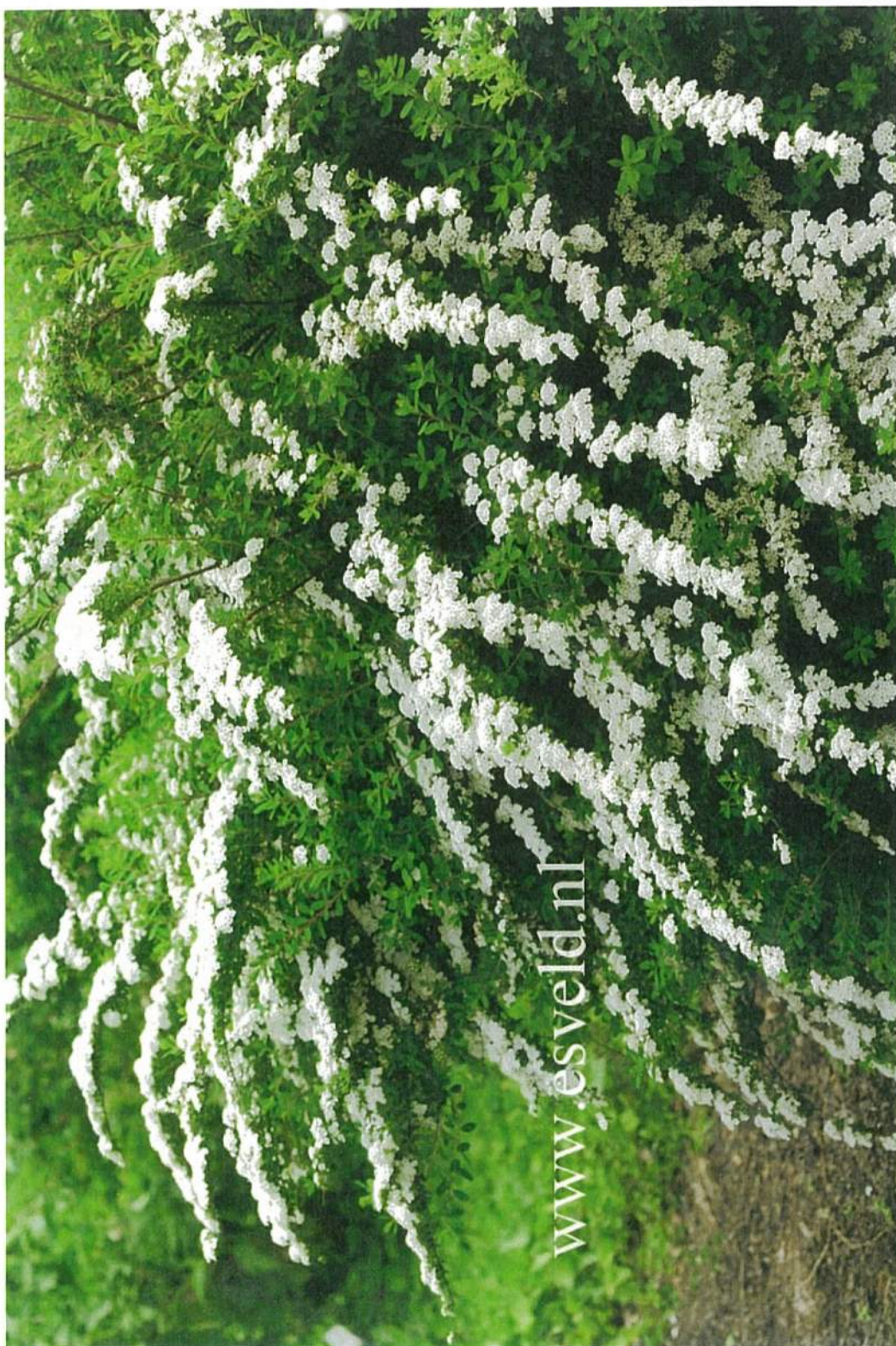
#7 tall grass bunches

#33 Blue Bird clematis
(climbing flowering vine)

Evidence Storage Area - fenced



Project:	Homer Police Station Area D
Prepared For:	Pat McNary
Prepared By:	Brenda Adams
Date:	April, 2019
Scale:	1/8" = 1'



Spirea nipponica 'Snowmound'

Snowmound Spirea

Spiraea nipponica 'Snowmound'



Easy to grow, compact shrub with graceful, spreading branches and spectacular clusters of white flowers in mid to late spring. Use in a border or accent. Cut flowers make beautiful arrangements. Deciduous.

Care Information

Follow a regular watering schedule during the first growing season to establish a deep, extensive root system. Feed with a general purpose fertilizer before new growth begins in spring. For a tidy, neat appearance, shear annually to shape. Pruning time: early spring.

Design Ideas

This shrub makes a lovely casual hedge or accent plant in the border where its arching stems, covered in white flowers, can be admired. Its unpruned form is most attractive; entire stems can be thinned out if need be.

Botanical Pronunciation:	spy-REE-a nip-PON-i-ka
Key feature:	Spring Flowering
Plant type:	Shrub
Garden style:	Cottage
Deciduous/evergreen:	Deciduous
Cold hardiness zones:	4 - 8
Light needs:	Partial to full sun
Sunset climate zones:	1 - 11, 14 - 21
Water Needs:	Needs regular watering - weekly, or more often in extreme heat.
Average landscape size:	Moderate grower, rounded form to 3 to 5 ft. tall and wide.
Growth rate:	Moderate
Growth habit:	Compact, Spreading
Flower attributes:	Flowers for Cutting, Showy Flowers
Special features:	Attracts Butterflies
Landscape uses:	Border, Woodland Garden
Flower color:	White
Blooms:	Spring
Foliage color:	Green
Item no.:	7130

This page located at <http://www.monrovia.com/plant-catalog/plants/2112/snowmound-spiraea.php>



Clematis 'Blue Bird'

Clematis *macropetala* Blue Bird Clematis

- A small-flowered variety, 2"-3" in diameter
- Pale purple-blue, semi-double flowers are broadly bell-shaped and nodding
- Blooms from April-June with some repeat blooming through summer
- Prefers a sheltered site and can easily tolerate partial shade
- Good in containers, for growing over low walls and fences, or as a groundcover

A member of:

Group 1—Early flowering cultivars

These varieties flower in the spring, only on growth produced the previous season. They generally do not need to be pruned at all, but if you feel it is necessary to keep them in bounds, trim them back immediately after they are finished blooming (within one month). Old, woody plants can be pruned very hard at this same time, cutting them back to 1-2 feet. This will remove the old, non-flowering growth. It may take a season or two for it to start flowering again.



Homeowner Growing & Maintenance Tips:

Clematis can be grown in full sun or light shade, but its base and roots must be completely shaded. You may need to plant a small shrub or large perennial directly in front of its rootball to keep it cool and shaded. A thick layer of mulch will also help to keep the soil moist. This vine prefers to be grown in moist, well-drained, slightly alkaline soil. Adding lime to the soil will help to provide these conditions. When planting clematis, it is important to plant it 3" deeper than it was in the original pot. Bury the first set of entire leaves to encourage the production of strong shoots from below soil level and to discourage clematis wilt.

Height

8-12 Feet

USDA Hardiness Zone

4-8

Good Companions

Blue-Eyed Grass (*Sisyrinchium bermudianum*), **Grass-Ornamental** (*Helictotrichon sempervirens*), **Iris-Dwarf** (*Iris*), **Lavender** (*Lavandula angustifolia*), **Lenten Rose** (*Helleborus x hybridus*), **Peony-Japanese** (*Paeonia*), **Poppy-Oriental** (*Papaver orientale*), **Salvia-Perennial** (*Salvia nemorosa*), **Snakeroot-Black** (*Cimicifuga*), **Spurge-Cushion** (*Euphorbia polychroma*)

Characteristics & Attributes

Attributes

- Border
- Container
- Ground cover
- Climbing
- Cut flower or foliage
- Specimen

Critter Resistance

- Deer resistant
- Rabbit Resistant

Exposure

- Full sun
- Part shade

Growth Rate in the Garden

- Medium

Nature Attraction

- Attracts hummingbirds

Soil Moisture Needs

- Average water needs



Calamagrostis acutiflora 'Karl Foerster'



Calamagrostis x acutiflora 'Karl Foerster' - Feather Reed Grass

(sometimes misspelled as C. 'Karl Forester')

This reed grass is a vertical masterpiece and provides wonderful contrast amongst low shrubs and perennials. Often used in naturalized areas, its ultimate size is directly related to the amount of moisture. Even though Calamagrostis can grow in fresh-water bogs, it also does well in drier areas.

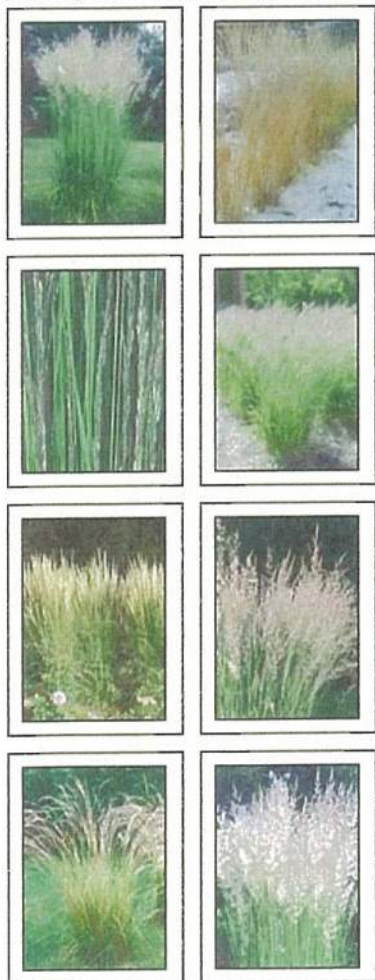
One of the first grasses to start growing in the spring, C. 'Karl Foerster' is an early bloomer, which is an asset in areas with a short growing season. The blossoms change color through the season and remain on the plant until winter snow brings them down. Pick the flowers at different stages of development and create a colorful arrangement. Combine in a vase with rose stems laden with rosehips and place outside your front door.

The seeds are sterile, which means the plant won't self-seed.

Sways gracefully in the lightest breeze. A row or a mass planting of Karl is spectacular on a windy day!

Who would have thought that a grass could win Perennial Plant of the Year, but in 2001 'Karl Foerster' took the honour.

Calamagrostis x acutiflora 'Karl Foerster'



Says C.B. in Anchorage, Alaska: "Karl Foerster thrives here in Anchorage, reaching 7' in my Zone 3/4 garden. It is planted in full sun and in part shade and seems to do equally well in both."

Description: cool season; clump forming

Foliage is green; medium blade width; 90-120 cm (36-48") tall

Flowers in June through July; 150-200 cm (60-80") tall; flowers often remain erect despite heavy snowfall

Ideal conditions: full sun; moist to wet fertile soil; tolerates a wide range of soil types including dry sandy soil; thrives in clay soil

Coldest Zone: 3 - 9 (find your zone; further info on plant hardiness); grows happily in Saskatoon and Regina, Saskatchewan, Zone 2 or 3

Suggested uses: specimen, in a border, as a hedge or screen, as a backdrop for roses and other perennials, in arrangements

Partner with: Veronicastrum, Aster, Rudbeckia, tall Sedums, Eupatorium, Monarda, Boltonia, Heliopsis 'Summer Sun'

Season of interest: June to winter

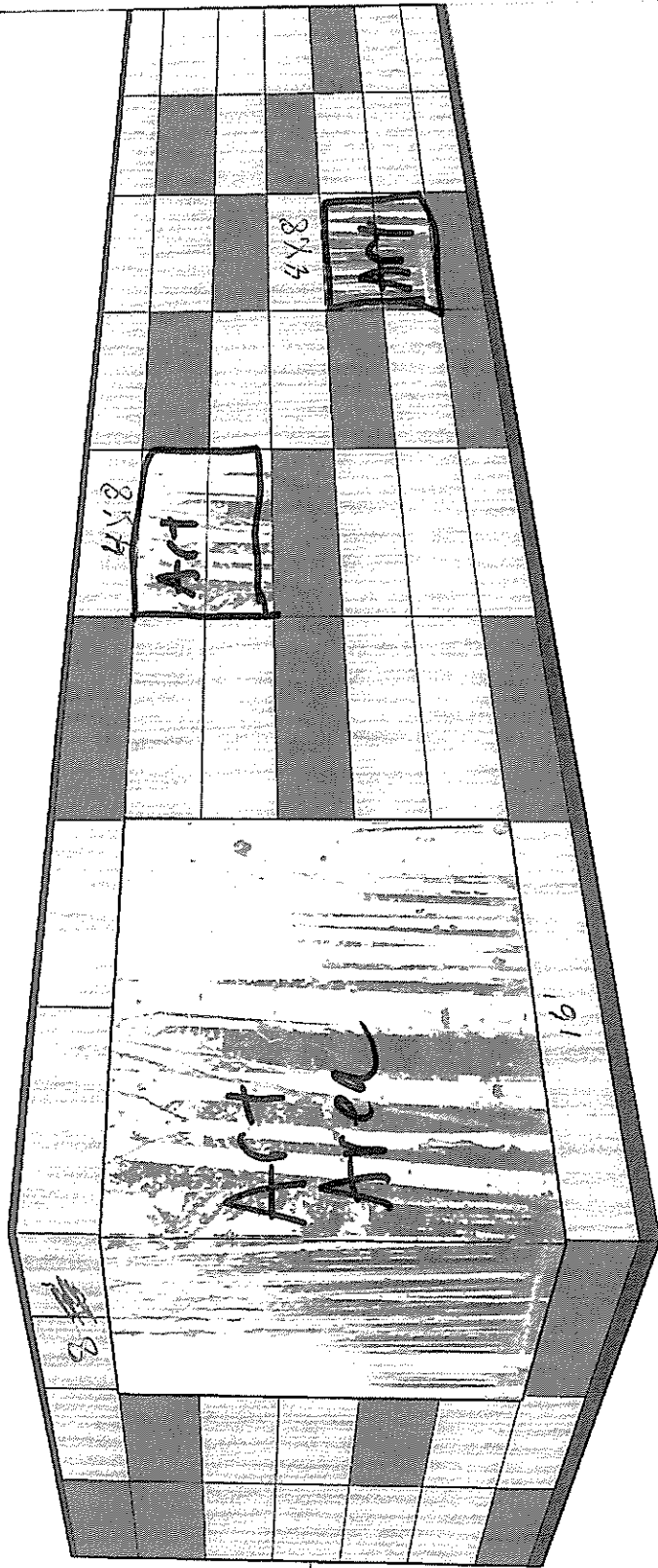
When to plant or divide: early to late spring and early fall

When to cut down: in early spring, just before the new growth starts

Drought tolerance rating: 2 (water to root depth once every 2 weeks); further info

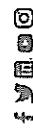
Recommended spacing between plants: 45-100cm (18-40") why such a difference?

Pronunciation: Calamagrostis (kal-ah-mah-GROS-tis) acutiflora (ah-KYOO-tih-flor-ah)



Giovanna Gambardella AIA, NCARB
Principal

Direct: 907 343-5282
giovanna.gambardella@stantec.com
Stantec Architecture
725 East Firwood Lane, Suite 200
Anchorage AK 99503-2245



The content of this email is the confidential property of Stantec and should not be copied, modified, retransmitted, or used for any purpose except with Stantec's written authorization. If you are not the intended recipient, please delete all copies and notify us immediately. Please consider the environment before printing this email.

Carport



City of Homer

www.cityofhomer-ak.gov

Office of the City Manager - 139 -

491 East Pioneer Avenue
Homer, Alaska 99603

citymanager@cityofhomer-ak.gov
(p) 907-235-8121 x2222
(f) 907-235-3148

Memorandum

TO: Mayor Castner and Homer City Council
FROM: Katie Koester, City Manager
DATE: April 17, 2019
SUBJECT: April 22nd City Manager Report

Presentation on Tsunami Maps May 8th

Dr. Elena Suleimani with the Geophysical Institute at the University of Alaska Fairbanks will be in Homer to brief emergency responders and public officials on tsunami threats in our area and the newly released tsunami maps Wednesday, May 8th at 9:00AM in Council Chambers?. This will be an update to the presentation she gave a little over a year ago before the maps were finalized. It is a fascinating opportunity to learn more about potential tsunami behavior in Kachemak Bay and I encourage councilmembers to attend if possible. It provides valuable context to the work the City is doing in emergency preparedness and response.

Installation of Sharps Containers in City Restrooms

The City was recently approached with a request to install more sharps containers in public restrooms by the Syringe Exchange. Prior to the City receiving this request, Building Maintenance had already ordered and installed sharps containers in the library restrooms and airport restrooms, an effort that was initiated after the library requested the containers be installed since library staff are handed needles from the public. City staff have begun organizing discussions with the Syringe Exchange to see how the City can protect the public and City staff from encountering needles. For example, Building Maintenance supervisor Mike Riley shared that two custodians had been poked by needles at the library before the containers were installed. Parks Maintenance staff also encounter needles but on a more regular basis while cleaning restrooms and City parks. Having sharps containers in public restrooms provides an opportunity for the safe disposal of needles but there are risks associated with the containers, mainly vandalism of the boxes.

Homer Steps It Up Challenge: May 1st – 28th

Don't forget to enroll in the Homer Steps It Up Challenge. This community-wide challenge is a friendly way to encourage an active lifestyle. Councilmembers and their families are encouraged to participate. To enroll in the challenge, visit <https://homerstepsup2019.challengerunner.com> and select the City of Homer team! You can use any pedometer and enter your data on the challenge website or sync *ChallengeRunner* with many wearable activity trackers, Apple Health, Samsung Health & the Moves App. To see if your device is supported, log into *ChallengeRunner* and click on your "Profile", then select your device or app from the Fitness Tracker list and follow the directions.

Other important things for everyone to know: the challenge runs from May 1st - 28th

*Teams are competing for two trophies this year! The small team trophy (5-24 people) and the large trophy (25 or more). We also have a Facebook page for the challenge:

- 140 -

<https://www.facebook.com/homerstepsup/>

Update on Online Sales Tax

I participated in a conference call with Alaska Municipal League (AML), city managers and finance directors from across the state on experiences with Amazon. Right now, Amazon is voluntarily remitting sales tax in some communities, though it appears only on direct sales from Amazon (and not third party vendors). AML is working towards establishing a statewide single point of contact for online vendors to collect and distribute online sales tax. As part of this effort, municipalities have to adopt common definitions, a single third party administrator, and agree how to make collection, remittance, and audit a “one stop shop.” On June 6th in Anchorage, AML will host a full day meeting on how to tackle establishing shared definitions. I am looking for Council direction for my level of participation in these conversations, given the City of Homer adopts the definitions in the Kenai Peninsula Borough code by reference.

A follow up meeting to the June 6th meeting will be scheduled to discuss what a governing body might look like for a single state wide administration at the summer meeting in August. After that is decided on, AML will work with Larry Persily, who has been retained to provide guidance on this issue, to solicit a vendor for the single point of collection model.

Changing of the Guard at Homer Public Library May 1st

I would like to welcome David Berry to the City of Homer team as the new Library Director. His first day on the job is Monday, April 22nd in order to have some overlap training with current Library Director Dixon before taking over May 1st. Mr. Berry holds a Master of Library and Information Studies degree from the University of British Columbia and was the former director of the Taft College Library in Taft, California. He brings a passion for small community libraries, an understanding of the role technology in library services, and a deep appreciation of our wonderful town. Please extend a warm welcome when you see him and let him know what the Homer Public Library Means to you. Library Director Dixon will be retiring at the end of the month. She has spent eight years serving the patrons of the Homer Public Library with a quiet dignity, grace and commitment to excellence. I would like to thank her for her exemplary service and wish her well on her next adventure. Hopefully it involves writing more children’s books, they are a favorite of many including mine!

Meeting with Division of Community and Regional Affairs (DCRA)

The State of Alaska assigns local government specialists by region to act as contacts for communities, incorporated or not, to help navigate Title 29 and provide basic services. City Clerk Jacobsen and I met with our Local Government Specialist Joe Samaniego and his colleague Jed Cox on Tuesday, April 17. In addition to providing advice on *Title 29 - Municipal Government*, he gave us some great ideas for connecting with state resources on disaster preparedness, erosion mitigation, and Census 2020. We will be sure to follow up with Mr. Samaniego on these topics. DCRA produces a number of useful materials that members may want to familiarize themselves with including a Primer for City Councilmembers and various handbooks that can be found online at: <https://www.commerce.alaska.gov/web/dcra/LocalGovernmentAssistance.aspx>

No paper packets

With the implementation of the Municode Meetings Agenda Management Program one of the City Clerk’s goals is to get Mayor and Council off the paper and on their iPads for meeting packets. There are features of the program that allow Mayor and Council to securely log in to view their public packet and their private confidential packet, when provided. There is also a feature for voting on the iPad where the Mayor will call

for the vote, Councilmembers will simply select yes or no on their iPad, and the count will be stated - 141 - record and recorded in the minutes. iPad voting will eliminate the need for the rotating roll call votes or asking for unanimous consent. With respect to paper packets, the City Clerk's office staff spends several hours printing, binding, and distributing City Council packets twice a month, many of which end up in the recycle box after the meeting. While there will always be a paper packet available at City Hall and at the Library for public use, eliminating paper packets will increase efficiencies, save paper, and most importantly, save money. The City Clerk's goal is to print the last paper packet on for the June 24th City Council meeting, and be paperless at the July 22nd meeting. Please note the Clerk's Office will address any necessary accommodations as needed.

Enc:

Homer Steps it Up Challenge Flyer

KPB Sales Tax Code, definitions section

FAQ from AML on online sales tax

New Library Director Selected Press Release

City of Homer Treasurer's Report (will be included in future quarterly reports)

HOMER

steps up!

2019

Free Community Walking Challenge

May 1 - 28, 2019

Contact us today if your business, organization,
or group is interested in having a team!

Individuals can participate, too!

wellness@sphosp.org or [\(907\) 235-0970](tel:(907)235-0970)

if you are an Individual Stepper, or your team is already registered:
enroll at homerstepsup2019.challengerunner.com

100 million steps in May - together!

5.18.900. - Definitions.

- 145 -

When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter, have the following meanings:

- A. "Buyer" includes persons who are purchasers of personal property, rental space, or services.
- B. "Long-term vehicle lease" means a lease of a motor vehicle, as defined below, for a period of 24 months or longer. As used herein a "motor vehicle" is a motor vehicle, as defined in AS 28.40.100(12), that is either required to be registered under AS 28.10.011, or is exempted from registration under AS 28.10.011(6) and (11). However, "motor vehicle" does not include either an "off-highway vehicle" as defined in 13 AAC 40.010(30) or a "snowmobile" as defined in 13 AAC 40.010(49).
- C. "Mayor" or "borough mayor" means the mayor of the Kenai Peninsula Borough or his designee.
- D. "Nonprofit organization" means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual.
- E. "Office location" means the place in the borough where the seller does business, as determined by the borough.
- F. "Person" includes individuals and every person recognized in law and every group of persons who act as a unit.
- G. "Quarter" means trimonthly period established by the finance director.
- H. "Sale" or "retail sale" includes:
 - 1. Every sale or exchange of services;
 - 2. Every rental or lease of personal property;
 - 3. Every sale of the use or play of a vending machine;
 - 4. Installment, credit, and conditional sales;
 - 5. Every sale of use or title in tangible personal property, regardless of quantity or price, whether sold by vending machine or otherwise;
 - 6. Every rental or lease of real property other than a rental or other agreement for occupancy of residential real property pending the closing of a transaction which does not exceed 90 days in length for a buyer of that property.
 - 7. Gaming sales authorized by AS 5.15.
- I. "Sales price" means consideration paid by the buyer whether money, credit, rights, or other property, expressed in terms of money equal to the fair market value of the consideration and including delivery or installation costs, taxes, or any other expenses

whatsoever, measured by the gross sales price of the seller.

- 146 -

- J. "Seller" includes persons who are vendors of property, persons furnishing services, the lessors of rental space or goods, and all persons making sales, including space or goods, and all persons making sales, including consignees and persons who conduct sales where items will be sold for a commission or fee. Notwithstanding any other provisions of this chapter, "seller" includes all persons engaging in sales of fireworks regardless of the length of time, duration, or volume of such sales in any calendar year.
- K. "Services" includes all services of every manner and description, which are performed or furnished for compensation, including but not limited to:
 - 1. Professional services;
 - 2. Services in which a product or sale or property may be involved, including personal property made to order;
 - 3. Utilities and utility services not constituting a sale of personal property, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
 - 4. The sale of transportation services;
 - 5. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;
 - 6. Any other services, including advertising, maintenance, recreation, amusement, and craftsman services;
- L. "Time of sale" for installment sales is the time at which the initial payment is made.
- M. "Temporary lodging" is defined as a service to provide any lodging of less than one month.
- N. "Vending machines" means any good or service-dispensing machine or amusement device of any kind.
- O. "Newspaper" means a publication of general circulation bearing a title, issued regularly at stated intervals at a minimum of at least two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of the publication, where such newspapers are distributed regularly to a paid subscription list.
- P. "Periodical" means any bound publication other than a newspaper that appears at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear

a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and sufficiently similar in style and form to make it evident that it is one of a series.

- 147 -

- Q. "Recreational sales" means sales where the seller provides recreational services and rentals, except automobile rentals, to the buyer, either separately or in a combination, at an aggregate price, including, but not limited to guiding, charters, sightseeing tours, outfitting or equipment rentals, instructional classes or lessons, and beauty or spa services.
- R. "Unit" means a room or single unit that is customarily advertised and rented at a flat rate regardless of the number of occupants.
- S. Occasional or intermittent in nature, under KPB 5.18.200(A)(20) means the sales of goods do not occur for more than 14 days in a calendar year.
- T. "Common carrier" means an individual or a company, which is in the regular business of transporting freight for hire. This is distinguished from a private carrier which transports its own goods and equipment, and makes deliveries of goods sold to its customers.

(Ord. No. 2017-26, § 2, 10-10-17; Ord. No. 2016-45, § 1, 1-17-17; Ord. No. 2016-40, § 2, 1-3-17; Ord. No. 2016-31, § 17, 9-6-16; Ord. No. 2006-41, § 1, 1-2-07; Ord. No. 2005-09, § 3, 6-7-05; Ord. No. 2002-39, § 15, 12-10-02; Ord. No. 94-59, § 2, 1994; Ord. No. 94-27, § 22, 1994; Ord. No. 90-59, §§ 5, 6, 1990; Ord. No. 90-48, § 1(part), 1990; Ord. No. 89-31, § 1, 1989; Ord. No. 88-40, §§ 7, 8, 9, 19, 1988; Ord. No. 87-10, § 6, 1987; Ord. No. 84-74, § 1(part), 1985)

Online Sales Tax FAQ From AML April 12, 2019

How did the June 2018 U.S. Supreme Court decision change the sales tax world?

The U.S. Supreme Court on June 21, 2018, upheld the state of South Dakota's right to require online sellers to collect and remit sales tax on orders delivered into the state. The 5-4 decision effectively overturned a Supreme Court decision from 1992 that went against the state of North Dakota. The 2018 case is South Dakota vs. Wayfair (a nationwide online retailer of furniture and home goods).

What were the issues in the court case?

In its ruling, the Supreme Court noted that the South Dakota Legislature had determined "that the inability to collect sales tax from remote sellers was 'seriously eroding the sales tax base' ... causing revenue losses and imminent harm."

The court explained, "The central dispute is whether South Dakota may require remote sellers to collect and remit the tax without some additional connection to the state," such as an office or warehouse or employees. And although the 1992 decision against North Dakota commented that requiring remote sellers to collect and remit sales tax "might unduly burden interstate commerce" without such a physical or legal connection, called nexus, the court's 2018 decision found otherwise. "The administrative costs of compliance, especially in the modern economy with its Internet technology, are largely unrelated to whether a company happens to have a physical presence in a state," the Supreme Court said in its 2018 decision.

Allowing online sellers to avoid collecting sales taxes "has come to serve as a judicially created tax shelter for businesses that decide to limit their physical presence and still sell their goods and services to a state's consumers," the court added.

In its order, the Supreme Court said it overruled the 1992 decision because it was "unsound and incorrect."

Does the court decision require online sellers to collect sales tax?

No, it does not require online merchants of goods and services to do anything unless a state's sales and use tax is written to apply to online orders (remote merchants). If a state chooses not to extend its sales and use tax to online orders, the Supreme Court decision does not require merchants to voluntarily collect and remit the tax. The decision is up to each state.

Does the court decision apply to municipalities?

No, not exactly, not directly. The word "municipality" appears nowhere in the Supreme Court decision. The case, the briefings, the discussion and the order focused solely on state sales and use tax. But, the same reasoning, the same legal questions likely would apply to municipal sales taxes: Are they discriminatory against interstate commerce, do they pose an undue burden on interstate commerce, are they administered fairly to all parties. As Alaska is the only state that allows municipal sales taxes without an overriding set of rules in a state sales tax, Alaska is unique. But we're used to that.

What are the challenges for Alaska municipalities?

Without a clearly defined set of legal standards in the court decision for municipalities, Alaska cities and boroughs have to make their best legally educated guess at what set of tax definitions, rules, exemptions and administrative procedures would be needed to replicate and adhere to the intent of the court opinion allowing taxation of online sales. Such as, no undue burden on interstate commerce, no retroactive taxation, and a system that standardizes tax rules to reduce administrative and compliance costs for remote merchants. There is no checklist of what will work or what is not allowed — Alaska municipalities will have to set their own trail.

What's the path forward for Alaska municipalities that want to collect taxes on online sales?

A coordinated approach is best. In fact, it's probably the only way to succeed. It's hard to imagine that a large, nationwide online merchant, a small remote seller — or a court, in the event of a legal challenge — would accept dozens of municipal codes, each with its own unique set of definitions, administrative rules, limits and exemptions as an acceptable system that standardizes taxes to reduce administrative and compliance costs.

By working together, Alaska cities and boroughs stand the best chance of crafting a workable sales and use tax structure that serves local needs while establishing a legally secure path to collecting municipal taxes from online sales.

What is the Alaska Municipal League doing to help?

The Alaska Municipal League established a working group in 2018 to explore the best answers for bringing Alaska cities and boroughs into the world of collecting tax revenue from online sales. AML is looking into the legal issues, software and administrative costs, including the option of contracting with a third-party vendor with experience in state sales taxes to handle the collection and distribution of tax remittances from online merchants. AML plans to provide frequent updates on its progress to its members, with reports at the board meeting in Anchorage in May, the summer meeting in Soldotna in August, and a final review at the general membership meeting in Anchorage in November.

The idea is that AML would establish a cooperative effort — entirely optional for each Alaska municipality — to participate in a centralized online sales tax collection, administration and enforcement program. Municipalities that join and agree to adopt the required changes to their sales tax codes would benefit from the collective strength of presenting a unified approach to online merchants nationwide. Cities or boroughs that choose not to join still could try on their own to adopt and enforce sales taxes on online merchants.

State law allows Alaska municipalities to sign intergovernmental cooperating agreements — similar to mutual-aid pacts between fire departments. AML's legal review concluded that a cooperative tax administration and collection agreement essentially would be the same and would not require any state legislation.

Is there any guarantee that municipalities can force online sellers to collect the tax?

There is no guarantee that every online merchant will willingly collect and remit sales taxes to a centralized administration for Alaska municipalities. But the odds of success are much better than 100+ different sales tax administrations statewide.

The deciding factor may be how “homogenized” Alaska’s cities and boroughs are willing to make their tax codes. The more the codes are the same, the better the argument that the municipalities are adhering to the standards the Supreme Court cited in its Wayfair decision.

“Nobody can give you an absolute legal answer” as to how far municipalities can stray from the intent and spirit of the Wayfair decision and still win if taken to court, the vice president and tax counsel for the National Retail Foundation told AML. Her advice: Go with the Streamlined Sales Tax Project’s definitions

What is the Streamlined Sales Tax Project?

The Streamlined Sales Tax Project began in March 2000 with the goal “to find solutions for the complexity in state sales tax systems.” It was, in great part, that complexity that led to the 1992 Supreme Court decision against North Dakota’s efforts to require tax collections by remote merchants.

The result is the Streamlined Sales and Use Tax Agreement, which targets simplifying and modernizing sales and use tax administration to substantially reduce the burden of tax compliance. The agreement focuses on state-level administration of sales and use taxes; uniformity in each state’s state and local tax bases; uniformity of major tax base definitions; central electronic registration for merchants; simplification of state and local tax rates; uniform sourcing rules for all taxable transactions (defining the point of the taxable transaction); and simplified administration of exemptions, tax returns and payments.

As of March 2019, 24 states had adopted the agreement. No federal law requires states to sign on for the Streamlined Sales Tax Project, but doing so makes it easier for states to capture maximum revenues from remote merchants.

The more that Alaska municipalities can follow the Streamlined Sales and Use Tax Agreement, the better the odds of success in achieving full compliance from online merchants.

Can complexity lead to legal objections?

Yes, but it is unknown how much complexity would break the legal back of taxing online sales. In his dissenting opinion in the Wayfair case, Chief Justice John Roberts pointed to the complexity of sales tax laws nationwide. “Correctly calculating and remitting sales taxes on all e-commerce sales will likely prove baffling for many retailers. Over 10,000 jurisdictions levy sales taxes, each with different tax rates, different rules governing tax-exempt goods and services, (and) different product category definitions.” He noted that New Jersey collects sales tax on yarn purchased for art projects but not on yarn made into sweaters. “Texas taxes sales of plain deodorant at 6.25 percent but imposes no tax on deodorant with antiperspirant.” Illinois categorizes Twix bars as food and Snickers candy, and taxes them differently, the chief justice noted, only because Twix includes flour.

Why are Amazon and some merchants already collecting sales tax for Alaska municipalities?

Amazon has started collecting sales tax in several Alaska jurisdictions, though it appears that in most (many?) cases it is collecting tax only on Amazon's own goods and not on sales of third-party merchandise. A coordinated, AML-led approach could remedy this shortcoming by directing municipalities to change their codes to encompass all goods sold online, whether direct by the merchant or fulfillment by a third-party seller. A coordinated effort also would clarify which business is responsible for collecting and remitting the tax: The website that takes the order or the business that fills the order?

As of March 2019, Amazon had yet to register with all Alaska municipalities, and for most municipalities the online merchant's first sales tax returns are not due until a month after the end of the first quarter. After Amazon and other vendors file their first returns, Alaska municipalities will have a better sense of any enforcement issues.

There have been reports that Amazon is misapplying local taxes on some sales that should be tax-exempt. As it is now, each municipality has to contact Amazon individually — or any other online vendor — to educate the merchant on the details of their specific municipal tax code. A single online sales tax administrator for Alaska municipalities would improve the situation.

As to Amazon specifically, in a few cases the online retailer is collecting sales tax for deliveries in Alaska because it has a legal connection — a nexus — in that city or borough, such as an Amazon subsidiary or affiliate that does business in the municipality. But in most cases in Alaska, Amazon is collecting sales tax voluntarily. Unless a municipal code is written as a sales and use tax, or otherwise specifically addresses online sales, merchants such as Amazon are not legally obligated to collect the city or borough sales tax.

What's a 'use tax,' and does it apply to Alaska municipalities?

A "use tax," as part of a "sales and use tax," makes it clear under the law that the tax applies to goods regardless whether they were sold over the counter in the jurisdiction or delivered into the jurisdiction for use. The Streamlined Sales Tax Project model code recommends participating states adopt a sales and use tax. Some Alaska municipalities already have it in code, but most do not. It is unknown at this time if the AML online sales tax project will adopt sales and use tax as its recommended language for municipalities.

How can online merchants determine which municipality gets the taxes?

One significant problem that Alaska municipalities must overcome is to construct a user-friendly online mapping system so that merchants can accurately determine the correct tax jurisdiction. Such as, a buyer may have a Soldotna ZIP code and mailing address but does not live within the city of Soldotna and believes they should not be liable for Soldotna city sales taxes. The same can be said for Interior residents with a North Pole mailing address. (ZIP+4, unfortunately, does not always match municipal boundaries in Alaska, and therefore cannot be used for determining the tax jurisdictions.) Other states and third-party contractors provide

online mapping tools for sellers, and third-party vendors could help Alaska develop one that covers the entire state. In addition to creating the “tax look-up map” (as it is called in the state of Washington), Alaska municipalities would have to establish a system for keeping the map current with new subdivisions, new addresses for businesses and residences, annexations and such.

Can online vendors handle additional, specific sales taxes?

Yes, such as on alcohol or tobacco taxes, in addition to general sales taxes. Other states levy additional taxes on certain items, such as alcohol, and nothing in the Streamlined Sales Tax Project argues against such additional sales or excise taxes. The third-party vendors that offer administration software for states can accommodate such taxes.

What are some of the tax code decisions that Alaska municipalities will have to make?

Taxation limits

- Several Alaska municipalities have in place a limit on the amount of a single transaction subject to sales tax. For example, in Juneau the sales tax stops charging after a single transaction (an invoice, not a single item) reaches \$12,000 (though there is no limit to taxation of jewelry). In the Kenai Peninsula Borough, the cap is \$500. It is unknown at this time if Alaska municipalities can maintain their disparate application of such “tax caps” and still have a reasonable chance of surviving a legal challenge should an online merchant want to contest the “undue burden” of navigating different tax limitations.

Point of taxation

- Alaska municipalities most certainly will need to define and adopt a common definition for the point of the taxation transaction, especially since this could affect the rate charged and where the tax is remitted. Such as, if a buyer receives the order at a post office in one city but takes it to their residence in another city, where did the taxable transaction occur, and which city gets the money? Where the item was delivered or where it was used? The same difficulty would apply to the online seller as it tries to determine the tax rate — it needs to know which address to check on the tax look-up map, the point of delivery or the residence of the buyer? This definition will need to be consistent for all Alaska municipalities that choose to participate in the AML effort.

Definitions

- Definitions should be consistent among participating municipalities for any tax-exemptions, such as food (taxed or not taxed, or divided between prepared and unprepared, and how to define those terms), sale-for-resale, purchases by senior citizens, manufacturing components, construction materials that will be incorporated into real property in the municipality, farming supplies, funeral supplies, medical equipment, over-the-counter drugs and medical items, sales to and/or by nonprofits,

sales by government agencies. The definitions will require a lot of work between municipalities.

Collection thresholds

- South Dakota sets a significantly higher minimum threshold for annual sales into the state by a remote merchant than for local businesses before the out-of-state business has to collect and remit sales taxes. Whatever Alaska municipalities decide needs to be consistent for all municipalities in the AML program. Otherwise, remote merchants could get caught up in a maze of different registration and reporting standards.
- For example, municipalities may want to exempt small-scale sellers from registering, collecting and remitting, such as businesses with less than \$2,500 a year of sales into the jurisdiction. An example would be an online jewelry maker in New York that might sell \$300 of goods into any one Alaska city in a year. How much do Alaska municipalities want to exempt occasional sellers from collecting sales tax? And should it be the same threshold for remote sellers as in-town businesses?

Examples of taxable decision items

- Do municipalities want to collect sales tax on motor vehicles, boats and airplanes imported into the municipality?
- How will municipalities treat commissions that are retained by online sellers? Is the tax applied to the total price of the goods, or only on the net received by the seller after the commission is deducted?
- Are delivery charges taxable if they are listed separately from the purchase price?
- Are software downloads taxable, such as music and apps and streaming services?
- Are Amazon Prime membership dues taxable?
- Are online subscriptions taxable, such as news sites?

Administrative issues

- How will municipalities handle refunds of sales taxes paid in error by the seller or collected in error by an online seller? Who will issue the refund: The seller or the municipality?
- Will municipalities allow a discount or “commission” of tax collections, intended to partially compensate the merchant for its costs of bookkeeping as the municipality’s tax collector? Should this discount, or retention, be the same for online and local vendors? Many Alaska cities and boroughs allow their local merchants to hold back a small percentage as compensation for their work as a tax collector.
- Can the AML project accommodate seasonal adjustments to a municipality’s tax rates, or special “tax holidays” as municipalities sometimes offer for back-to-school shopping or other annual categories?
- Are intrastate online sales treated differently than interstate sales?



NEWS RELEASE:

New Homer Public Library Director Hired

For immediate release April 19, 2019.

The City of Homer is pleased to announce that David Berry will be Homer Public Library's new director, replacing retiring director Ann Dixon as of May 1.

Mr. Berry holds a Master of Library and Information Studies degree from the University of British Columbia. In addition to student positions in Virginia, he served as a Librarian 1 at the Kern County Library in Bakersfield, CA and as the Director of Taft College Library in Taft, CA. His most recent accomplishment is an upcoming degree in Art with a minor in Spanish from the University of Alaska Anchorage, where he has also been employed for the past three years. He was a member of the U.S. Coast Guard Auxiliary for seven years, holds a black belt in tae kwon do, and not surprisingly, loves to read.

The son of a diplomat, Mr. Berry has lived in numerous places around the world but considers Virginia to be where he grew up. He came to Alaska because he always wanted to live in the North. Homer's vibrant arts and literary scene, opportunities for outdoor recreation, and the combination of administrative duties with front-line librarianship required by the Homer Library job attracted him to the position. His well-rounded background and collaborative, community-centered approach to librarianship align positively with Homer Library's mission and institutional culture.

After almost 8 years as Homer Public Library director, Ms. Dixon's last day on the job will be April 30. Mr. Berry will begin work on April 22. "I'm pleased we'll have time to work together for a smooth transition," says Director Dixon. "There are lots of details involved in running a library. I've been writing notes for months but personal communication will be super helpful."

"Under Ann's leadership and commitment to excellence, the Homer Public Library has grown into the vibrant community center it is today. I wish her the best on her next adventure and thank her for eight years of service to the people of Homer," says City Manager Katie Koester.

Mr. Berry was chosen from a field of applicants by a hiring committee that included Director Dixon, City administrative personnel and representatives from the Library Advisory Board and the Friends of the Homer Library. Of the initial dozen applicants, three candidates were selected for video conference interviews. Mr. Berry was offered the position after a face-to-face interview in Homer with the full committee, followed by several hours of informal conversations with library staff and additional members of the Friends' and LAB boards. Mr. Berry commented, "It speaks well of Homer that so many people have an interest in meeting a potential library director, and I enjoyed meeting them all."



City of Homer

www.cityofhomer-ak.gov

Administ - 156 -

491 East Pioneer Avenue
Homer, Alaska 99603

(p) 907-235-8121 x2222

(f) 907-235-3148

“David will be a great fit for Homer as he has a clearly demonstrated passion for libraries, learning and community that will help the library continue to thrive and respond creatively to the needs of our community,” says City Manager, Katie Koester.

The public is invited to stop by the Library conference room on April 30 from noon to 2:00 pm to wish outgoing Director Dixon well and welcome incoming Director Berry.

Contact:

Ann Dixon

907-435-3151

adixon@ci.homer.ak.us

CITY OF HOMER

Treasurer's Report

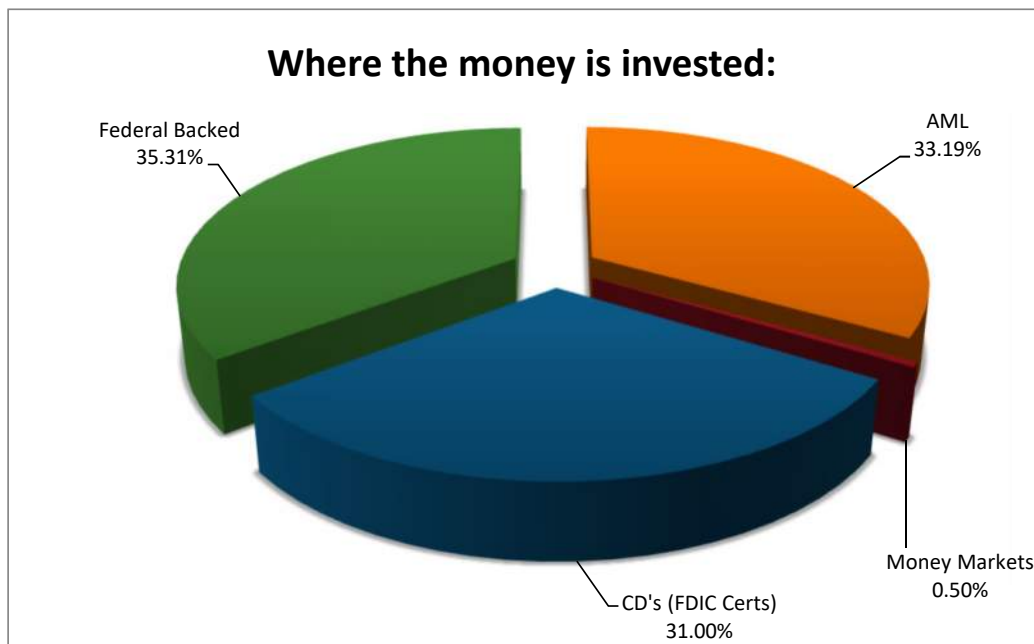
- 157 -

As of:

March 31, 2019

INVESTMENT BY INSTITUTION:	\$ Invested	% Of \$ Invested
Alaska Municipal League	\$ 8,058,650	33%
Pro-Equities	\$ 16,219,160	67%
Total Cash and Investments	\$ 24,277,809	100%

MATURITY OF INVESTMENTS:		AMOUNT	% Of Investment by Maturity Date
1 to 30 Days	4/30/2019	\$ 8,179,161	35%
30 to 120 Days	7/29/2019	\$ 134,883	25%
120 to 180 Days	9/27/2019	\$ 246,617	7%
180 to 365 Days	3/30/2020	\$ 1,797,185	3%
Over 1 Year		\$ 13,919,964	29%
TOTAL		\$ 24,277,809	100%



These investments are made in accordance with the City of Homer's investment policy pursuant to Ordinance 93-14, Chapter 3.10. The balances reported are unaudited.



THE STATE
of **ALASKA**

GOVERNOR MICHAEL J. DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Survey Section

550 West 7th Avenue, Suite 650
Anchorage, Alaska 99501-3576
Main: 907.269.8523
TDD: 907.269.8411
Fax: 907.269.8916

April 16, 2019

City of Homer
Planning Department
491 East Pioneer Ave
Homer, AK 99603

RECEIVED

APR 19 2019

**CITY OF HOMER
PLANNING/ZONING**

Dear Sir or Madam:

Subject: EV-3-303 Preliminary Decision and Public Notice

The proposed action consists of vacating the 33-foot wide section-line easement (SLE) lying within Lot 6A-1, Virginia Lynn 2006 Replat (Plat 2006-20, Homer Recording District). This action lies in Section 16, T6S, R13W, SM.

Also enclosed is a copy of the Public Notice of Preliminary Decision which will be published on the State of Alaska Online Public Notices website, <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>.

Any comments concerning the proposed action must be submitted in writing to DNR -- DMLW by **5 PM on May 17, 2019**. Contact DNR with questions at 907-375-7733 or joseph.poydack@alaska.gov or Stan Brown 269-8521 or stanley.brown@alaska.gov by May 17th.

Sincerely,


Joe Poydack
DNR Adjudicator

Enc: Copy PD & Public Notice

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

Preliminary Decision

Petitioners: Virginia Tornes

Section Line Easement Vacation

EV-3-303

RECEIVED

APR 19 2019

CITY OF HOMER
PLANNING/ZONING

Petitioned Action:

The proposed action consists of vacating the 33-foot wide section-line easement (SLE) lying within Lot 6A-1, Virginia Lynn 2006 Replat (Plat 2006-20, Homer Recording District). This action lies in Section 16, T6S, R13W, SM, as depicted in Attachment A

The reasons cited by the applicant:

- Bring home into compliance with local zoning code, part of the home is located within the easement.

Legal Authority:

AS 19.10.010, AS 19.30.410, AS 38.05.035, AS 38.05.945, 11 AAC 51.025, 11 AAC 51.065 and 11 AAC 51.100

The Alaska Department of Transportation and Public Facilities (DOT/PF) and the Department of Natural Resources (DNR) have concurrent authority for approving the vacation of SLEs.

Administrative Record:

The DNR Survey Case File EV-3-303 constitutes the administrative record used for the basis of this decision.

Borough:

The proposed action is located within the Kenai Peninsula Borough (KPB).

State Easement Interest:

33-foot wide section-line easement exists within the subject property pursuant to Chapter 19, SLA 1923. (See Discussion 1).

Underlying Interest:

The petitioner owns the estate underlying the SLE proposed for vacation.

Alternate Route:

The proposed alternate access is via the constructed Mattox Road right-of-way. Access to adjacent parcels is via the existing dedicated rights-of-way. Public access to the adjoining and adjacent parcels is not negatively affected by this action.

Land Management Policies:

1) Pursuant to AS 19.30.410 the Department of Natural Resources, the Department of Transportation and Public Facilities, or another agency of the state may not vacate a right-of-way acquired by the state under former 43 U.S.C. 932 unless:

- a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses.

2) Pursuant to 11 AAC 51.065, before any vacation, modification, or relocation of a public easement, the petitioner must demonstrate to the satisfaction of the department that equal or better access is available. Equal or better access must be access that is:

- protected by an easement of record that is adequately wide for the purpose; if the easement of record is new, the petitioner must arrange for a note in the vacation document to be recorded that identifies the new easement as a replacement for the vacated easement; and,
- at least equally usable, considering length, type of terrain, and level of improvement, as the easement to be vacated; if development or improvement is needed to make the replacement easement at least equally usable, the petitioner must arrange for the development or improvement to be completed before the vacation takes effect.
- the department will determine if the vacation is in the State's best interest

Public Use Patterns:

The subject SLE is unconstructed. A field inspection was not conducted; however, the petitioner states "there is no current or historical use of anyone other than me". The petitioners home encroaches 15' more or less into the SLE.

Practicality of Use:

The 33' SLE proposed to be vacated is an isolated 55' +/- long portion of SLE lying between the Mattox Road ROW and SLEs that were previously vacated in 1985 by EV-2-298 and in 2008 by EV-3-018. The subject SLE only provides access to three parcels; one of which has only 7.84' of SLE access; and all of which are currently accessing their parcels via the Mattox Road or Aurora Street rights-of-way. Sufficient dedicated public access exists that provides access to all adjacent parcels.

Agency Review:

Initial Agency review of the proposed action began on January 29, 2019 and concluded February 28, 2019. Agencies notified included Department of Transportation/Public Facilities (DOT/PF) Central Region, Alaska Department of Fish and Game (ADFG), DNR Division of Mining, Land and Water – South Central Regional Office (SCRO), Alaska Mental Health Trust Land Office (MHTLO) and DNR Division of Parks and Outdoor Recreation (DPOR).

Agency Comments:

1. All agencies submitted comments of non-objection.
2. No other comments or objections on the proposed action were received.

Discussion:

1. Determination of the existence of the Section-Line Easements:

- a. The Rectangular Survey Plat for Township 6 South, Range 13 West, Seward Meridian, Alaska was approved on June 28, 1918 and accepted by the General Land Office on July 15, 1918.
- b. The lands underlying the SLE proposed to be vacated were conveyed into private ownership by Patent No. 1112758. The date of entry (application filed) according to the case file abstract for BLM case file AKA 8354 was February 25, 1935.
- c. BLM Historical Index:
 - i. Research verified that the subject lands were included in lands withdrawn for the Chugach National Forest by Proclamation No. 852 dated February 23, 1909. This National Forest withdrawal remained in effect until Proclamation No. 1519 dated April 16, 1919 eliminated certain lands from Chugach National Forest and restored said lands – including the subject lands – to entry. The subject lands were seemingly restored to homestead entry under applicable federal laws 84 days after the date Proclamation 1519 was signed (April 16 + 84 days = July 9, 1919); however,
 - ii. Research also verified that the subject lands were included in lands purportedly “reserved from sale or settlement for the support of common schools” by the Act of March 4, 1915 [i.e. Sections 16 & 36] - subject to being “surveyed under the direction of the Government of the United States”. The survey of the subject land was approved and accepted by the GLO in 1918 (refer to above item “a”). *However, this ACT contains language stating in part “...or where the same may have been sold or otherwise appropriated by or under the authority of any Act of Congress [i.e. the Chugach National Forest reservation], or are wanting or fractional in quantity, other lands may be designated and reserved on lieu thereof in the manner provided by the Act of Congress dated February twenty-eight, eighteen hundred and ninety-one...”* With that said, The Act of February 28, 1891 states in part “*Where any State is entitled to said sections sixteen and thirty-six, or where said sections are embraced within a military, Indian, or other reservation [i.e. the Chugach National Forest reservation], the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory to compensate deficiencies for school purposes...*” Since the subject lands were already withdrawn as part of the Chugach National Forest prior to said Act of March 4, 1915 (refer to above item “i”), the Territory would be allowed to select from other designated lands. Therefore; on July 9, 1919 (refer to above item “c(i)” said lands became open to entry.
- d. **For surveyed land owned by the Territory of Alaska at any time on or after April 6, 1923 through January 17, 1949, or for surveyed federal land that was**

unappropriated and unreserved at any time during that period, the width identified in Ch. 19, SLA 1923 for any section-line easement is 33 feet (11 AAC 51.025, editor's note #2).

2. The proposed alternate access is reasonably comparable and meets the requirements for vacation of the subject section-line easement pursuant to AS 19.30.410 and 11 AAC 51.065. The proposed alternate route is adequately wide to satisfy all present and reasonable foreseeable uses. Continued access to adjacent lands is ensured by the dedicated and constructed ROWs and the remaining unconstructed SLEs in the vicinity.
3. Pursuant to 11 AAC 51.065(e)(1), the department will give consideration to the recommendations of the KPB Platting Board regarding this action when a copy of the Approved Minutes are received at DNR.

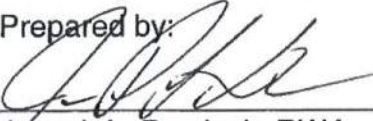
Approval of the proposed action is contingent upon the following conditions:

1. Pursuant to AS 38.05.945, a Public Notice must be completed. The Department of Natural Resources may modify the decision after analyzing public comments. The advertising cost for Public Notice is at the expense of the applicant.
2. Comply with KPB's conditions of approval unless waived by the Director, DMLW.
3. A final plat (owner signed / surveyor sealed Mylar) must be submitted to DNR within two years from the date of approval of the Final Decision unless extended by DMLW, Survey Section.
4. Submittal of a Certificate to Plat, current within 90-days, with the final plat.

Recommendation:

Based on our findings, the applicant meets DNR's requirements to vacate the subject section-line easement. The proposed vacation may be in the state's best interest. Therefore, the Division of Mining, Land and Water, Survey Section recommends approval of this action and may proceed with adjudication and public notice in accordance with AS 38.05.945.

Prepared by:

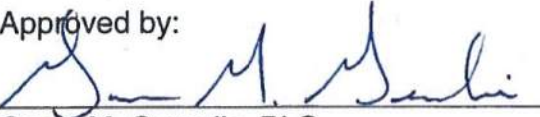


Joseph L. Poydack, RWA
Adjudicator

Date

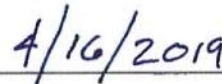


Approved by:



Gwen M. Gervelis, PLS
Chief, Survey Section

Date



PUBLIC NOTICE:

**Notice of Preliminary Decision
Section Line Easement Vacation
EV-3-303**

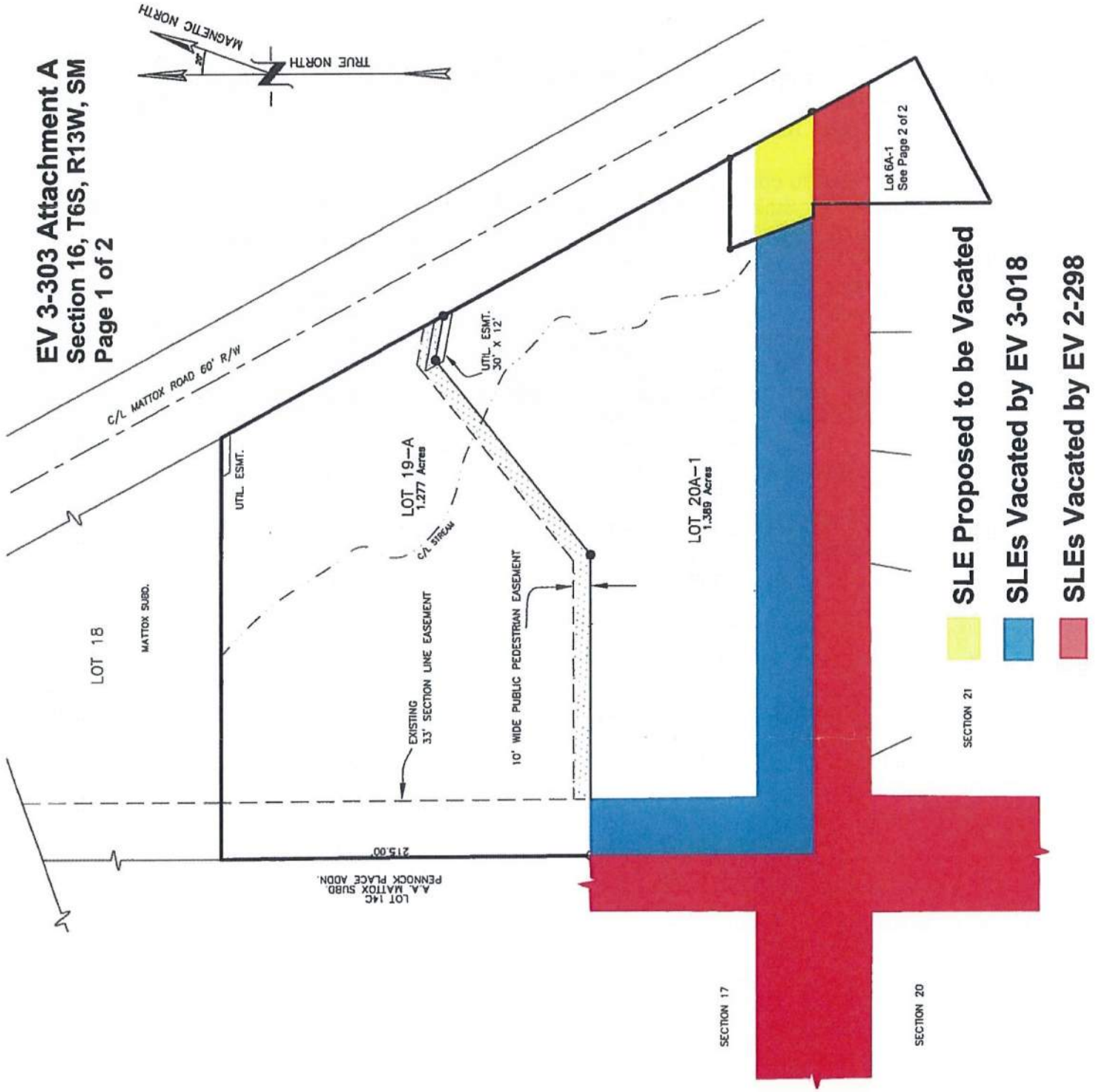
Per AS 19.30.410 & 11 AAC 51.065, the Department of Natural Resources, Division of Mining, Land and Water has made a Preliminary Decision (PD) giving contingent approval to a petition vacating the 33-foot wide section-line easement (SLE) lying within Lot 6A-1, Virginia Lynn 2006 Replat (Plat 2006-20, Homer Recording District). This action lies in Section 16, T6S, R13W, SM.

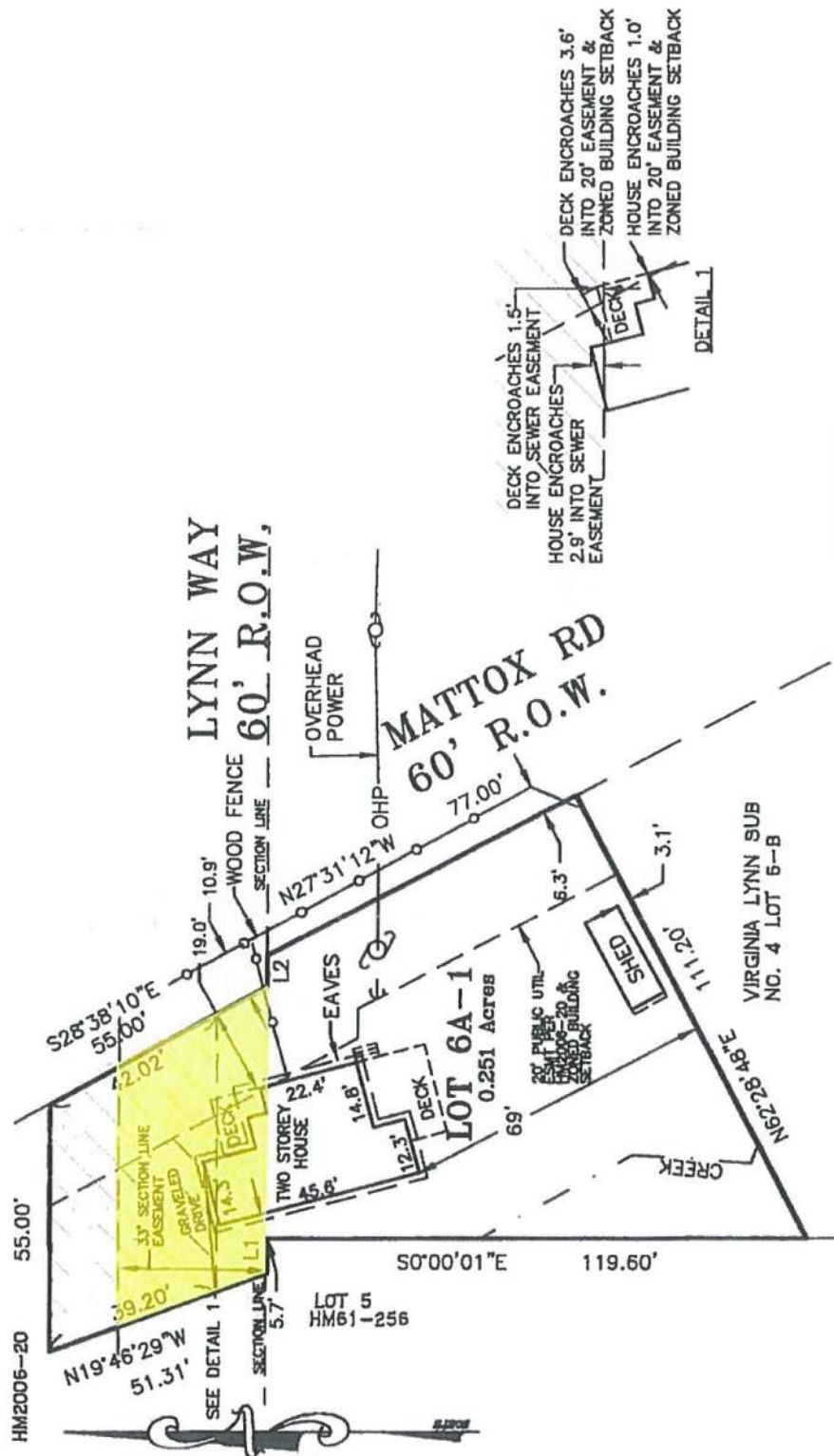
The public is invited to comment on the PD. Copies are available from DMLW, 550 W. 7th Avenue, Suite 650, Anchorage, AK 99501-3576 or <https://aws.state.ak.us/OnlinePublicNotices/Login.aspx>. All comments must be received in writing at DMLW by 5:00 p.m. on May 17, 2019. **To be eligible to appeal, one must respond in writing during the comment period.** If public comment analysis indicates the need for significant changes to the PD, additional public notice will be given. If no significant change is required, the PD, including any minor changes, will be issued as a Final Decision (FD). To obtain PD/FD copy, reference case number EV-3-303; include date, your email and mailing address and telephone number. If you have any questions, contact DNR, Joseph L. Poydack, 375-7733 or joseph.poydack@alaska.gov.

DMLW reserves the right to waive technical defects in this publication.

Those with audio impairments may call Anchorage DNR Public Information Center, 10-5, M-F, TDD#269-8411.

EV 3-303 Attachment A
Section 16, T6S, R13W, SM
Page 1 of 2





SLE Proposed to be Vacated

Sewer Easement, Managed by City of Homer



Planning Department

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

Charlie Pierce
Borough Mayor

April 11, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF DECISION

MEETING OF APRIL 8, 2019

RE: Vacate the 30' wide public access easement adjoining the north boundary of Tract A, A. A. Mattox 1958 Addition, Plat HM 3746, as granted on the public access easement recorded at Serial Number 2018-003011-0, Homer Recording District. The public access easement being vacated is unconstructed and located within the NW1/4 SE1/4 SE1/4 of Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2019-026V.

By unanimous consent, the Kenai Peninsula Borough Planning Commission granted approval of the proposed 30-foot wide public access easement vacation during their regularly scheduled meeting of April 11, 2019 based on the following findings of fact.

Findings:

1. The proposed vacation is within the City of Homer.
2. Development within the property must comply with the requirements of the zoning district.
3. The subject property is in the Urban Residential Zoning District.
4. Homer Advisory Planning Commission recommended approval of the proposed vacation on February 20, 2019.
5. The proposed vacation will be finalized, if it is approved, by recording the plat A A Mattox Subdivision 2019 Addition.
6. A A Mattox Subdivision 2019 Addition replats Tract A and Lot 8, A A Mattox Subdivision 1958 Addition, into one lot.
7. Replatting A A Mattox Subdivision 2019 Addition replats Tract A and Lot 8, A A Mattox Subdivision 1958 Addition into one lot eliminates the need for the public access easement across the entire boundary because the lot fronts Nelson Avenue at its northeastern corner.
8. The proposed replat will front on a 30 foot wide right of way.
9. A A Mattox Subdivision 2019 Addition grants a 10-foot pedestrian easement along its entire northern boundary.
10. The 10-foot pedestrian easement within A A Mattox Subdivision 2019 Addition matches the 10-foot pedestrian easement within the subdivision to the north (HM 2018-40).
11. The pedestrian easement within HM 2018-40 and A A Mattox Subdivision 2019 Addition provides continuous public access off Nelson Avenue to the school parcel to the southwest per KPB 20.30.180.
12. The preliminary plat that will finalize the vacation, if it is approved, is scheduled for KPB Plat Committee review on April 22, 2019.
13. Sufficient rights-of-way exist to serve surrounding properties.
14. No surrounding properties will be denied access.

Subject to:

1. Consent by Homer City Council.
2. Grant utility easements requested by the utility providers.
3. Submittal of a final plat in accordance with Chapter 20 of the KPB Code within a timeframe such that the plat can be recorded within one year of vacation consent.

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 proposed vacation has been forwarded to the Homer City Council. The City Council has 30 days from April 8, 2019 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 Commission will stand.

Please contact the Homer City Office to verify the date the subject vacation will be reviewed by the Council.

This notice and unapproved minutes of the subject portion of the meeting were sent April 11, 2019 to:

Echo Trading Company LLC
PO Box 3368
Homer, AK 99603

Seabright Survey and Design
1044 East Road, Suite A
Homer, AK 99603

Homer Advisory Planning Commission
491 East Pioneer Avenue
Homer, AK 99603

Homer City Council
491 East Pioneer Avenue
Homer, AK 99603

James & Brenda Dolma
4276 Shirley Ct.
Homer, AK 99603

PUBLIC HEARINGS**AGENDA ITEM F. PUBLIC HEARINGS**

1. Vacate the 30' wide public access easement adjoining the north boundary of Tract A, A. A. Mattox 1958 Addition, Plat HM 3746, as granted on the public access easement recorded at Serial Number 2018-003011-0, Homer Recording District. The public access easement being vacated is unconstructed and located within the NW1/4 SE1/4 SE1/4 of Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2019-026V.

Staff Report given by Scott Huff

PC Meeting: 4/8/19

Purpose as stated in petition: The easement is no longer necessary because Lot 8 and Tract A are being replatted into one lot.

Petitioner: Echo Trading Company LLC of Homer, AK.

Notification: Public notice appeared in the March 28, 2019 issue of the Homer News as a separate ad. The public hearing notice was published in the April 4th issue of the Homer News as part of the Commission's tentative agenda.

Fourteen certified mailings were sent to owners of property within 300 feet of the proposed vacation. Ten receipts have been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 34 owners within 600 feet of the proposed vacation.

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

Nine public hearing notices were emailed or made available to KPB staff/Departments via a shared database.

Notices were mailed to the Homer Post Office and Homer 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:

ENSTAR: No comments, recommendations, or objections.

KPB Addressing: No addresses were assigned to the parent lots. Existing street names are correct.

KPB Planner: The proposed vacation is within the City of Homer. A review is not required.

KPB Roads Department: Outside KPB Roads Department Jurisdiction.

River Center: The proposed vacation is not affected by the Habitat Protection District.

State Parks: No comments.

Staff Discussion: The preliminary plat that will finalize the vacation if it is approved is scheduled for Plat Committee review on April 22, 2019.

The preliminary plat proposes to grant a 10-foot pedestrian easement along the northern boundary of Lot 8-A. The pedestrian easement within the subject preliminary plat will connect and match the 10-foot

pedestrian easement to the north within HM 2018-40, which accesses the school parcel to the southwest, per KPB 20.30.180.

Eliminating the entire 30-foot wide public access easement will remove possibility of the public driving ATVs, snowmachines, and other motorized vehicles within the easement.

The owner is put on notice that a cul-de-sac may be required during the replatting action as Nelson Avenue will be a closed ended right of way. The applicant can request an exception to KPB 20.30.100 during the platting process.

Findings:

1. The proposed vacation is within the City of Homer.
2. Development within the property must comply with the requirements of the zoning district.
3. The subject property is in the Urban Residential Zoning District.
4. Homer Advisory Planning Commission recommended approval of the proposed vacation on February 20, 2019.
5. The proposed vacation will be finalized, if it is approved, by recording the plat A A Mattox Subdivision 2019 Addition.
6. A A Mattox Subdivision 2019 Addition replats Tract A and Lot 8, A A Mattox Subdivision 1958 Addition, into one lot.
7. Replatting A A Mattox Subdivision 2019 Addition replats Tract A and Lot 8, A A Mattox Subdivision 1958 Addition into one lot eliminates the need for the public access easement across the entire boundary because the lot fronts Nelson Avenue at its northeastern corner.
8. The proposed replat will front on a 30 foot wide right of way.
9. A A Mattox Subdivision 2019 Addition grants a 10-foot pedestrian easement along its entire northern boundary.
10. The 10-foot pedestrian easement within A A Mattox Subdivision 2019 Addition matches the 10-foot pedestrian easement within the subdivision to the north (HM 2018-40).
11. The pedestrian easement within HM 2018-40 and A A Mattox Subdivision 2019 Addition provides continuous public access off Nelson Avenue to the school parcel to the southwest per KPB 20.30.180.
12. The preliminary plat that will finalize the vacation, if it is approved, is scheduled for KPB Plat Committee review on April 22, 2019.
13. Sufficient rights-of-way exist to serve surrounding properties.
14. No surrounding properties will be denied access.

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

1. Consent by Homer City Council.
2. Grant utility easements requested by the utility providers.
3. Submittal of a final plat in accordance with Chapter 20 of the KPB Code within a timeframe such that the plat can be recorded within one year of vacation consent.

KPB 20.70.110:

A vacation of a city street, public right-of-way, public area, or public easement located within an incorporated city may not be approved without the consent of the city council.

The Homer City Council shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the city shall be considered to have given consent to the 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.

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT

Mr. Huff added that there was a letter included in the desk packet. The letter is comments from a nearby landowner that is concerned with drainage in the area and the vacating of this easement. The landowner replied that the easement remains how it was and that no trees have been cut down or removed within the easement. The purpose of this easement was that the plat to the north was being completed and Lot 8 was a land locked parcel. This easement was granted from Nelson to Lot 8. Now the land owner owns both Lot 8 and Tract A. The owner wants to get rid of the easement and wants to combine the lots into one parcel.

Chairman Martin opened the meeting for public comment. Seeing and hearing no one wishing to speak, the public hearing was closed and discussion was opened among the commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Ecklund to approve the vacation of the 30' wide public access easement in the City of Homer adjoining the north boundary of Tract A, A.A. Mattox 1958 Addition, KPB File 2019-026V.

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



Planning Department

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

Charlie Pierce
Borough Mayor

April 11, 2019

NOTICE OF DECISION KENAI PENINSULA BOROUGH PLAT COMMITTEE MEETING OF APRIL 8, 2019

Re: Oscar Munson No. 25 Preliminary Plat

The Plat Committee reviewed and granted conditional approval of the subject preliminary plat during their regularly scheduled meeting of April 8, 2019 based on the findings that the preliminary plat meets the requirements of the Kenai Peninsula Borough Code 20.25; 20.30; 20.40 and 20.60.

AMENDMENT MOTION

An amendment motion to grant exception to KPB 20.30.120, street width requirements passed by unanimous consent based on the following findings of fact.

Findings

1. The proposed subdivision is within the City of Homer.
2. Development within the proposed subdivision is subject to the requirements of the zoning district.
3. The proposed subdivision is within the Rural Residential Zoning District.
4. Homer Advisory Planning Commission reviewed the proposed subdivision on February 20, 2019.
5. Homer Advisory Planning Commission did not discuss or recommend that the proposed plat provide a matching 30-foot right-of-way for the 30-foot unnamed right-of-way.
6. The proposed subdivision provides a flag for Lot 18-B so it fronts city maintained Ocean Drive Loop in addition to the existing 30-foot unnamed right-of-way.
7. The 30-foot unnamed right-of-way overlies a 33-foot section line easement.
8. The southern boundary of Lot 18-B is subject to a 33-foot section line easement.
9. A residential structure on Lot 18-B is within the 33-foot section line easement.
10. Dedication of a matching 30-foot right-of-way within the proposed plat would create a second encroachment involving the residential structure on Lot 18-B.
11. Per KPB 20.25.070.N., the proposed plat cannot be finalized until after the encroachment into the section line easement has been resolved.
12. The structure on Lot 18-B within the proposed plat and Lot 22, HM 57-3415, have been issued Ocean Drive Loop addresses.

This notice and unapproved minutes of the subject portion of the meeting were sent April 11, 2019 to:

City of: City of Homer
491 East Pioneer Avenue
Homer, AK 99603-7624

Advisory Planning Commission/Community Council:

Homer Advisory Planning Commission
491 East Pioneer Avenue
Homer, AK 99603

Survey Firm: Geovera, LLC
PO Box 3235
Homer, AK 99603

Subdivider/Petitioner: Raven Trust
PO Box 894
Homer, AK 99603-0894

Bell-Kelsey Revocable Trust
PO Box 894
Homer, AK 99603-0894

KPB File Number: 2019-025

AGENDA ITEM E. SUBDIVISION PLAT PUBLIC HEARINGS

2. Oscar Munson No. 25
KPB File No. 2019-025; Geovera, LLC/Bell-Kelsey Joint Revocable Trust, Raven Trust

Staff Report given by Scott Huff

Plat Committee Meeting: 4/8/19

Location: off Ocean Drive Loop, City of Homer
Proposed Use: Residential
Water/Sewer: City
Zoning: Rural Residential
Assessing Use: Residential
Parent Parcel Number(s): 177-140-18, 177-173-25

Supporting Information:

The proposed subdivision reconfigures the interior common line between a portion of Government Lot and a lot created by a plat. Lot 18-A-1 contains approximately 2 acres; Lot 18-B contains 3.7 acres. The subdivision is served by city water and sewer. Both lots front city maintained Ocean Drive Loop. Lot 18-B also fronts a 30-foot wide unnamed right-of-way.

Homer Advisory Planning Commission approved the proposed plat on February 20, 2019 subject to:

1. Add a plat note about the flood plain: "Kachemak Bay and Beluga Slough are subject to a 1-percent-annual-chance floodplain as identified by the FEMA Flood Insurance Study dated October 20, 2016, 02122CV001B. Property owner should contact the City of Homer prior to any development activity."
KPB Platting Staff Comments: The requested plat note is on the plat submitted for KPB review.
2. Add a plat note concerning the home located in the section line easement. Sample language could include the following statement: Acceptance of this plat does not signify acceptance of any nonconforming structures. The Borough can provide guidance on the wording.
KPB Platting Staff Comments: Per KPB 20.25.070.N, the encroachment in the section line easement must be resolved before the plat is recorded. Based on previous discussions with DNR staff, the only way to resolve an encroachment in a section line easement is to vacate the easement. Staff cautions the owners that processing section line easement vacation plats with DNR typically takes about two years, and the vacation petition fee was increased last year.

Per the preliminary Certificate to Plat, beneficial interest holders do not affect the proposed plat. Notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states the property is affected by beneficial interest holders.

Staff recommends that notes be placed on the final plat indicating any exceptions granted by the Plat Committee with the meeting date.

Exception Requested: KPB 20.30.120 – Street width requirements

Staff Discussion: The parent plat (HM 57-3415) provided the existing 30-foot unnamed right-of-way adjoining the southeastern portion of Lot 18-B. Imagery dated 2016 indicates the right-of-way is not constructed.

Findings

1. The proposed subdivision is within the City of Homer.
2. Development within the proposed subdivision is subject to the requirements of the zoning district.
3. The proposed subdivision is within the Rural Residential Zoning District.
4. Homer Advisory Planning Commission reviewed the proposed subdivision on February 20,

- 2019.
5. Homer Advisory Planning Commission did not discuss or recommend that the proposed plat provide a matching 30-foot right-of-way for the 30-foot unnamed right-of-way.
 6. The proposed subdivision provides a flag for Lot 18-B so it fronts city maintained Ocean Drive Loop in addition to the existing 30-foot unnamed right-of-way.
 7. The 30-foot unnamed right-of-way overlies a 33-foot section line easement.
 8. The southern boundary of Lot 18-B is subject to a 33-foot section line easement.
 9. A residential structure on Lot 18-B is within the 33-foot section line easement.
 10. Dedication of a matching 30-foot right-of-way within the proposed plat would create a second encroachment involving the residential structure on Lot 18-B.
 11. Per KPB 20.25.070.N., the proposed plat cannot be finalized until after the encroachment into the section line easement has been resolved.
 12. The structure on Lot 18-B within the proposed plat and Lot 22, HM 57-3415, have been issued Ocean Drive Loop addresses.

Staff reviewed the exception request and recommends granting approval. Staff recommends the Committee select the findings they determine are applicable, make additional findings if needed, tie the findings to the following standards, and vote on the exception in a separate motion.

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

The commission (committee) shall make findings of fact meeting the following standards before granting any exception:

1. That special circumstances or conditions affecting the property have been shown by application;
Findings 1-12 appear to support this standard.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;
Findings 1-12 appear to support this standard.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.
Findings 1-12 appear to support this standard.

KPB 20.25.070 - Form and contents required.

Platting staff comments: Additional information is provided for the following portions of 20.25.070 or additional information, revision or corrections are required

- A. Within the Title Block
 1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion;
 2. Legal description, location, date, and total area in acres of the proposed subdivision; and
 3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor;
*Platting Staff Comments: **Staff recommends:***
 - a. *Add wording to the legal description so it is clear only a portion of Government Lot 1 is being replatted.*
 - b. *Include all owners and their addresses per the final Certificate to Plat in the title*

block

The proposed subdivision's name is acceptable. The subdivision name could be revised to personalize it or add the current year (Bell Kelsey Raven Replat or 2019 Addition). This is only a suggestion.

- F. The names and widths of public streets and alleys and easements, existing and proposed, within the subdivision;
*Platting Staff Comments: **Staff recommends:***
1. *Per HM 2006-66 existing overhead power lines are subject to a 15-foot utility easement. If former Lot 18-A has overhead power lines, show and label the line, note the easement, and cite the source.*
 2. *Show and label the easement for a waterline that affects Lot 18-A. Include the recording information.*
 3. *Note the blanket easement that affects Lot 18-A per Bk. 49, Pg 283 HRD, if it affects the subdivision.*
- G. Status of adjacent lands, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;
*Platting Staff Comments: **Staff recommends:***
1. *Show and label Tract C, HM 57-3415.*
 2. *Label the remainder of Government Lot 1 to the west and north.*
- I. Approximate locations of areas subject to tidal inundation and the mean high water line;
*Platting Staff Comments: **Staff recommend** to show the tidal inundation and the mean high water line within the western portion of Gvt. Lot 1, where Beluga Slough crosses the parcel, if the parcel is affected by tidal inundation.*
- N. Apparent encroachments, with a statement indicating how the encroachments will be resolved prior to final plat approval; and
*Platting Staff Comments: Per the Homer City staff report, a house is in the 33-foot section line easement. The residence is visible on imagery dated 2012-2013. **Staff recommends** compliance with KPB 20.25.070.N. From KPB aerial imagery, it appears that a structure is located within Ocean Drive Loop Right of way. **Staff recommends** the surveyor verify the location of improvements. If the improvements are located within the dedicated right of way, **Staff recommends** the encroachment be remedied to comply with KPB 20.25.00.N*

KPB 20.25.080. Petition required. A petition shall be submitted with each subdivision, abbreviated subdivision and plat waiver subdivision and shall include:

Platting staff comments: Additional information is provided for the following portions of 20.25.080 or additional information, revision or corrections are required:

- D. Name, address and signature of the subdivider for the purpose of processing the plat. This may be the state, the borough, a public utility, or the owners of a majority of the land within the subdivision. The entity submitting the petition may designate on the petition a surveyor or other agent to act on their behalf for submittals and presentations. All official contact by the commission and staff concerning the plat shall be with the entity signing the petition and their designee;

Platting Staff Comments: Ownership of the portion of Government Lot 1 changed since the petition was originally submitted. Owners of a majority of land within the subdivision signed the petition so the preliminary plat was scheduled for review by the Committee. All owners per the final Certificate to Plat will be required to sign the mylar per KPB 20.60.190.

KPB Department/Agency Review Comments

- KPB Addressing/Street Name Review:
 - o 592 and 598 Ocean Drive Loop - will be updated by the City of Homer
 - o Existing street names are correct.

- KPB Planner: Subject plat is located within the City of Homer, a review is not required.
- KPB Roads Department: Right of way is out of KPB jurisdiction. No comments
- State Department of Fish & Game: Not available when the staff report was prepared.
- State Parks: Not available when the staff report was prepared.

KPB 20.25.110 – Approval – Scope – Expiration restriction

- A. Approval of the preliminary plat shall not constitute approval of the final plat, but means only that the basic lot and street design is acceptable. The subdivider is on notice that it is the subdivider's responsibility to provide all the information required in this ordinance and to submit a correct final plat within two years of the date of the planning commission's conditional approval of the preliminary plat.

Upon application by the subdivider prior to the two-year deadline for final plat submittal, a time extension for two years beyond the initial two-year period for submittal of the final plat may be granted by the planning director. A third and final two-year extension may be granted by the planning director when requested by the subdivider prior to expiration of the previous approval, allowing for a total approval time of six years.

When the preliminary plat is located within city limits, submittal of documentation from the city advisory planning commission indicating concurrence with the time extension request must accompany a time extension request.

When a preliminary plat that has been granted a time extension is finalized, the final plat must comply with the current code. Expiration of time extensions will require the submission of, and action on, a new preliminary plat.

Platting Staff Comments: Since finalization of the proposed subdivision will be dependent on recordation of a Section Line Easement Vacation Plat, staff included information about preliminary plat approval periods. As long as preliminary approval does not expire, the owner can request two 2-year time extensions for the proposed subdivision, for a total plat approval time of 6 years. Unless problems are encountered, the Section Line Easement Vacation Plat should be able to be finalized within 2-3 years.

KPB 20.30 Design Requirements

Platting staff comments: Additional information is provided for the following portions of 20.30 or additional information, revision or corrections are required

20.30.030. Proposed street layout-Requirements.

- C. Preliminary plats fronting state maintained roads will be submitted by the planning department to the State of Alaska Department of Transportation and Public Facilities (DOT) for its review and comments.

State Department of Transportation Comments: Not on the State road system, no other comment.

20.30.060. Easements-Requirements.

- B. Upon submittal of a preliminary plat, the planning department shall provide a copy to public utility companies for their comments-and recommended design of utility easements. If the property is subject to existing natural gas or petroleum pipeline easements, a copy shall also be furnished to the appropriate company for comment.

- C. The subdivider bears the responsibility for coordination with the utility companies during the design and development phases. When a subdivider and the utility company cannot agree on easements, the final plat will be taken to the planning commission for determination of easements.

*Platting Staff Comments: The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. ENSTAR and HEA replied with a review of no comment/no objection. **Staff recommends** compliance with 20.30.060.*

20.30.180. Pedestrian ways required when. Pedestrian ways not less than 8 feet wide shall be required in blocks longer than 600 feet where reasonably deemed necessary to provide circulation or access to schools, playgrounds, shopping centers, transportation or other community facilities.

Platting Staff Comments: The section line easement (66 feet total width) can serve as a pedestrian way to the slough.

20.30.280. Floodplain requirements.

Platting Staff Comments: The City of Homer administers the floodplain program by HCC 21.41 Flood Prone Areas. The floodplain note per the city's request is on the plat submitted for KPB review.

20.30.290. Anadromous habitat protection district.

Platting Staff Comments: Per KPB GIS mapping, the subdivision is not affected by the Anadromous Habitat Protection District. If the River Center review states the plat is affected by 20.30.290, staff recommends compliance with River Center recommendations per KPB Code.

Per KPB GIS mapping, Beluga Slough, which flows through a portion of the subdivision's northern boundary, is anadromous.

KPB 20.60 – Final Plat

Platting staff comments: Additional information is provided for the following portions of 20.60 or additional information, revision or corrections are required:

20.60.020. Filing-Form and number of copies required. The subdivider shall file a standard number of prints as determined by the planning director. All prints shall be folded as required by KPB 20.25.030 except those to be recorded with the district recorder.

*Platting Staff Comments: **Staff recommends** one full-sized paper copy of the plat be submitted for final review prior to submittal of the mylar. Electronic submittals are not acceptable for final reviews.*

20.60.030. Certificate of borough finance department required.

Platting Staff Comments: All taxes and special assessments levied on the property within the subdivision shall be paid prior to recordation of the final plat. If approval is sought between January 1 and the tax due date, there shall be on deposit with the borough finance department an amount sufficient to pay the entire estimated real property tax for the current year. Additionally, the entire balance, or estimated balance of all special assessments or pending special assessments, as provided in KPB 5.35.070(8) and KPB 14.31.080(8), against the property owed to the borough must be paid in full prior to filing of the final plat. Prior to filing of the final plat, a certificate to this effect shall be provided by the borough finance director or [HIS] designee upon request by the planning director. Estimated tax payments shall be applied to the actual bill as of July 1 or such earlier date as the taxes due have been determined.

Per KPB GIS mapping, the proposed subdivision is not within a special assessment district.

Staff recommends compliance with 20.60.030.

20.60.080. Improvements-Installation agreement required. A final plat of a subdivision located within city limits shall not be recorded with the district recorder prior to compliance with any city ordinances concerning the installation of improvements. Evidence of compliance shall be provided by the subdivider in the form of a written statement from the appropriate city official that improvements required by city ordinance are or will be installed. Evidence of compliance shall be a part of the final plat submission and the time for action required by KPB 20.60.210 shall not commence until evidence of compliance is submitted.

*Platting Staff Comments: **Staff recommends** compliance with KPB 20.60.080.*

20.60.110. Dimensional data required.

B. The natural meanders of ordinary high water (or mean high water line as applicable) is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.

*Platting Staff Comments: **Staff recommends** compliance with 20.60.110.*

20.60.120. Accuracy of measurements. All linear measurements shall be shown to the nearest 1/10 foot, and angular measurements shall be at least to the nearest minute. All lot areas shall be shown to the nearest 10 square feet or to the nearest 1/1,000 of total acres. Meander lines, dry land areas and submerged land areas shall be shown in addition to total area when applicable. All boundary closures shall be to a minimum accuracy of 1:5,000. Boundary and lot closure computations must be submitted with the final plat.

*Platting Staff Comments: KPB GIS will verify closure complies with 20.60.120. **Staff recommends** boundary and lot closure computations be provided with the paper final plat.*

20.60.130. Boundary of subdivision. The boundary of the subdivision shall be designated by a wider border and shall not interfere with the legibility of figures or other data.

*Platting Staff Comments: **Staff recommends** the current meander line for former Lot 18-A be shown as the boundary of that portion of the subdivision.*

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.

*Platting Staff Comments: **Staff recommends** a plat note be provided for the blanket easement granted to Homer Electric Association, which affects Lot 18-A-1.*

20.60.170. Other data required by law.

B. Private covenants and restrictions of record in effect at the time the final plat is approved shall be referenced on the plat.

*Platting Staff Comments: **Staff recommends** a plat note be provided for the private restrictive covenants that affect former Lot 18-A including the recording information.*

The borough will not enforce private covenants, easements, or deed restrictions per KPB 21.44.080.

20.60.190. Certificates, statements, and signatures required.

*Platting Staff Comments: **Staff recommends:***

- 1. Ensure all owners per the final Certificate to Plat are included in the Certificate of Ownership.*
- 2. Match the names of the owners to the final Certificate to Plat, such as Bell Kelsey Revocable Trust.*
- 3. Revise the Certificate of Ownership so the trustees sign the mylar on behalf of their trust.*
- 4. Revise the description of Government Lot 1 to match the final Certificate to Plat, or note it is a portion of Government Lot 1.*
- 5. Ensure the Notary Acknowledgements reflect the owners per the final Certificate to Plat.*

20.60.200. Survey and monumentation.

*Platting Staff Comments: Provide witness corner survey markers for the side lot lines that intersect meander lines. Provide the size and type of the GLO primary survey marker. **Staff recommends** compliance with 20.60.200.*

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

- **GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO ANY ABOVE RECOMMENDATIONS, AND**
- **COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND**
- **COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL**

PLAT.**NOTE: 20.25.120. - REVIEW AND APPEAL.**

A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 10 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

END OF STAFF REPORT

Chairman Carluccio opened the meeting for public comment. Seeing and hearing no one wishing to comment public comment was closed and Chairman Carluccio opened discussion among the committee.

MAIN MOTION: Commissioner Ecklund moved, seconded by Commissioner Brantley to approve the Oscar Munson No. 25 preliminary plat subject to staff recommendations and borough code.

AMENDMENT MOTION: Commissioner Ecklund moved, seconded by Commissioner Brantley to approve the exception requested, KPB 20.30.120 – street width requirements, citing staff report findings 1 through 12 supporting the three standards.

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

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

