



**Kenai Planning and Zoning Commission
Meeting**

June 10, 2020 – 7:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

www.kenai.city

Agenda

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Agenda Approval
4. Consent Agenda
5. *Excused Absences

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a Commission Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. APPROVAL OF MINUTES

1. *May 27, 2020

C. SCHEDULED PUBLIC COMMENT

Public comment limited to ten (10) minutes per speaker)

D. UNSCHEDULED PUBLIC COMMENT

Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated

E. CONSIDERATION OF PLATS

1. **Resolution PZ2020-15** - Preliminary Subdivision Plat of Holland Spur Highway Subdivision 2020 Addition, submitted by Segesser Surveys, 30485 Rosland St., Soldotna, AK 99669, on behalf of Glen Martin, P.O. Box 1389, Soldotna, AK 99669.
2. **Resolution PZ2020-16** - Preliminary Subdivision Plat of McLennan Estates Addition No. 1, submitted by Segesser Surveys, 30485 Rosland St., Soldotna, AK 99669, on behalf of Cheney and Maryann McLennan, 701 Davidson Dr., Kenai, AK 99611.

F. PUBLIC HEARINGS

1. **Resolution PZ2020-13** - Application for the Rezoning of two parcels adjacent to the Kenai Spur Highway and described as Tracts 1 and 2, Holland Spur Highway Subdivision, and located at 7344 and 7450 Kenai Spur Highway, from Rural Residential (RR) to General

Commercial (CG). The application was submitted by the majority property owner, Glen Martin, P.O. Box 1389, Soldotna, AK 99669.

G. UNFINISHED BUSINESS

H. NEW BUSINESS

- 1. Resolution PZ2020-17** - Request to Rename Pelchy Drive to Pelch Drive. The request was submitted by the adjacent property owner, Michael J. Pelch, Jr. 3230 Harlow Rd., Eugene, OR 97401.
- 2. Action/Approval** - Authorizing the City Planner to Send a Letter to the Kenai Peninsula Borough Supporting a One-Year Time Extension to Finalize the Plat of Kee's Tern Subdivision
- 3. Action/Approval** - Application for Ten-Year Lease Renewal of City-Owned Land Within the Airport Reserve described as Lot 1A, Block 1, General Aviation Apron Subdivision No. 6 and located at 330 Main Street Loop. The application was submitted by Kenai Aviation Services, Inc. d/b/a Aviation Services, 1755 Lincoln Hill Rd. Martinsville, IN 46151.

I. PENDING ITEMS

J. REPORTS

- 1.** City Council
- 2.** Kenai Peninsula Borough
- 3.** City Administration

K. ADDITIONAL PUBLIC COMMENT

Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated

L. INFORMATIONAL ITEMS

- 1.** Information on Variances and Variance Standards

M. NEXT MEETING ATTENDANCE NOTIFICATION

- 1.** June 24, 2020 - Regular Meeting

N. COMMISSION COMMENTS AND QUESTIONS

O. ADJOURNMENT

The agenda and supporting documents are posted on the City's website at www.kenai.city. For additional information, please contact the Planning and Zoning Department at 907-283-8237.

Virtual Participation (join Zoom meeting): <https://us02web.zoom.us/j/84974323132>

Meeting ID: 849 7432 3132
Password: 357836

OR Telephonic Participation:
+1 253 215 8782 or +1 301 715 8592
Meeting ID: 849 7432 3132
Password: 357836

File Attachments for Item:

*May 27, 2020

**KENAI PLANNING & ZONING COMMISSION
REGULAR MEETING
MAY 27, 2020 – 7:00 P.M.
KENAI CITY HALL
210 FIDALGO AVENUE, KENAI, ALASKA
CHAIR JEFF TWAIT, PRESIDING**

MINUTES

A. CALL TO ORDER

Commission Chair J. Twait called the meeting to order at 7:10 p.m.

1. Pledge of Allegiance

Commission Chair J. Twait led those assembled in the Pledge of the Allegiance.

2. Roll Call

Commissioners present: J. Twait, D. Fikes, V. Askin, T. McIntyre, G. Greenberg, J. Halstead

Commissioners absent: R. Springer

Staff/Council Liaison present: City Planner E. Appleby, Deputy Clerk J. LaPlante, Council Liaison H. Knackstedt

A quorum was present.

3. Agenda Approval

MOTION:

Commissioner Halstead **MOVED** to approve the agenda and Commissioner Askin **SECONDED** the motion. There were no objections; **SO ORDERED**.

4. Consent Agenda

MOTION:

Commissioner Askin **MOVED** to approve the consent agenda and Commissioner Halstead **SECONDED** the motion. There were no objections; **SO ORDERED**.

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a Commission Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda as part of the General Orders.

5. *Excused absences – R. Springer

B. APPROVAL OF MINUTES

1. *May 13, 2020

The minutes were approved by the Consent Agenda.

C. SCHEDULED PUBLIC COMMENT – None.

D. UNSCHEDULED PUBLIC COMMENT – None.

E. CONSIDERATION OF PLATS

1. **Resolution PZ2020-10** - Preliminary Subdivision Plat of Baron Park 2020 Replat, submitted by Segesser Surveys, 30485 Rosland St., Soldotna AK 99669, on behalf of City of Kenai, 210 Fidalgo Ave., Kenai, AK 99611

MOTION:

Commissioner Halstead **MOVED** to approve Resolution PZ2020-10 and Commissioner Askin **SECONDED** the motion.

The staff report was reviewed as provided in the packet and it was recommended the preliminary plat of Baron Park 2020 Replat be approved with the condition that further development of the property shall conform to all federal, State of Alaska, and local regulations.

Chair Twait opened the floor for public testimony; there being no one wishing to be heard, public comment was closed.

It was noted the progress had been successful; the location, creation and maintenance of the dog park was great.

It was clarified that the City of Kenai would ultimately be responsible for maintaining the dog park while a large volunteer community was assisting in the maintenance of it.

VOTE:

YEA: Greenberg, McIntyre, Halstead, Fikes, Askin, Twait

NAY:

MOTION PASSED UNANIMOUSLY.

2. **Resolution PZ2020-14** - Preliminary Subdivision Plat of Newton-Segura Subdivision, submitted by Segesser Surveys, 30485 Rosland St., Soldotna AK 99669, on behalf of Frank D. and Marilyn K. Newton, 260 Juliussen St., Kenai, AK 99611 and Peggy A. Segura, 270 Juliussen St., Kenai, AK 99611

MOTION:

Commissioner Fikes **MOVED** to approve Resolution PZ2020-14 and Commissioner Askin **SECONDED** the motion.

The City Planner provided the staff report noting the plat lots access was from Juliussen Street which was attached to Beaver Loop Road and it was paved and would later be maintained by the City of Kenai. It was recommended that the preliminary plat be approved with the following conditions:

- Further development of the property shall conform to all federal, State of Alaska, and local regulations; and
- Remove plat note 4 because the City will be taking over Beaver Loop Road and there will not be adjacent State maintained right-of-way; renumber remaining plat notes to continue sequentially to have notes 1 through 7.

VOTE:

YEA: Fikes, McIntyre, Askin, Greenberg, Twait, Halstead
NAY:

MOTION PASSED UNANIMOUSLY.

F. PUBLIC HEARINGS – None.

G. UNFINISHED BUSINESS – None.

H. NEW BUSINESS

1. **Discussion** - Kenai Municipal Code 14.20.180(c)(2) - Review Criteria for Variances

It was clarified that this discussion item was requested due to the variance permit granted at the last Commission meeting for the property of 2392 Redoubt Avenue in Kenai, regarding maximum lot coverage. The City Planner noted that the City Attorney could provide historical information regarding the property and it as determined that the special conditions or circumstances of that property were not actions caused by the applicant.

I. PENDING ITEMS – None.

J. REPORTS

1. **City Council** – Council Member Knackstedt reported on the actions from the May 20 City Council meeting.
2. **Borough Planning** – No report.
3. **Administration** – City Planner Appleby reported on the following:
 - The City of Kenai Incident Management Team was finalizing protocols for the change in upcoming Council and Commission meetings and the option for in-person/virtual hybrid meetings or stay with the full virtual meeting format;
 - City Hall has been opened for appointments only;
 - She attended a virtual meeting organized by the Borough to bring Regional Planners together; noting it was a nice opportunity for collaboration;

- Met with the Kenai Historical Society about security cameras at the historical cabins; a grant was received and it is hoped to have cameras installed before the end of the summer;
- The City is taking steps to clean up vacant lots covering a portion of the Black Gold Estates Subdivision off of Alpine Drive, including removal of trash and junk vehicles; and
- The Community Library was continuing curbside pickup of books with a limited opening on June 1.

K. ADDITIONAL PUBLIC COMMENT – None.

L. INFORMATIONAL ITEMS – None.

M. NEXT MEETING ATTENDANCE NOTIFICATION – June 10, 2020

N. COMMISSION COMMENTS & QUESTIONS

It was the consensus of the Commission that meeting in-person was preferred.

O. ADJOURNMENT

There being no further business before the Commission, the meeting was adjourned at 8:10 p.m.

Minutes prepared and submitted by:

Jacquelyn LaPlante
Deputy City Clerk

File Attachments for Item:

Resolution PZ2020-15 - Preliminary Subdivision Plat of Holland Spur Highway Subdivision 2020 Addition, submitted by Segesser Surveys, 30485 Rosland St., Soldotna, AK 99669, on behalf of Glen Martin, P.O. Box 1389, Soldotna, AK 99669.



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

STAFF REPORT

TO: Planning and Zoning Commission
FROM: Elizabeth Appleby, City Planner
DATE: June 5, 2020
SUBJECT: PZ2020-15 – Preliminary Plat - Holland Spur Highway Subdivision 2020 Addition

Applicant: Glen Martin
P.O. Box 1389
Soldotna, AK 99669

Submitted By: Segesser Surveys.
30485 Rosland St.
Soldotna, AK 99669

Requested Action: Preliminary Subdivision Plat – Holland Spur Highway Subdivision 2020 Addition

Legal Description: Tract 2, Holland Spur Highway Subdivision

Property Address: 7344 Kenai Spur Highway

KPB Parcel No: 04103056

Lot Size: 6.556 acres (approximately 285,754 square feet)

Existing Zoning: Rural Residential (RR)

Current Land Use: Vacant

Land Use Plan: Mixed Use

GENERAL INFORMATION

Segesser Surveys has submitted a preliminary plat on behalf of Glen Martin, the property owner. The plat affects the parcel described as Tract 2, Holland Spur Highway Subdivision. The preliminary plat shows that the owner is subdividing an approximately 6.566 acre parcel (Tract 2) into two smaller parcels to be described as Tract 2A and 2B, Holland Spur Highway Subdivision 2020 Addition. Tract 2A is approximately 3.082 acres (134,252 square feet), and Tract 2B is approximately 3.484 acres (151,763 square feet).

Application, Public Notice, Public Comment

KMC 14.10.010 General under *Chapter 14.10 Subdivision Regulations* states preliminary plats or replats must first be submitted to the City for review prior to the submittal of the plat to the Kenai Peninsula Borough Planning Department. Kenai Municipal Code (*KMC*) *14.10.060* describes the process in more detail. The plat will be reviewed first by the City of Kenai Planning and Zoning Commission and then by the Kenai Peninsula Borough's Plat Committee and Planning Commission.

The property owners completed the City of Kenai preliminary plat submittal form. The City of Kenai follows *Kenai Peninsula Borough Code 20.25.070* and *20.25.080* for preliminary plat submittal requirements. City staff published notice of the consideration of the plat as part of the agenda for the City of Kenai Planning and Zoning Commission in the *Peninsula Clarion*. No public comments have been received as of June 5, 2020.

ANALYSIS

The proposed tracts are adjacent to the right-of-way for the Kenai Spur Highway, which is a paved road maintained by the State of Alaska, Department of Transportation. Plat note number seven (7) on the proposed plat provides that "no private access to State maintained rights-of-way permitted unless approved by the State of Alaska, Department of Transportation." It is the responsibility of the property owner to obtain the appropriate permit from the State of Alaska, Department of Transportation to access the tracts from the Kenai Spur Highway. The proposed plat does not dedicate any additional rights-of-way.

A gravel pad is shown on the plat that is not on the aerial imagery. The applicant acknowledged that a building may not be constructed over the new property line and must meet setback requirements in Kenai Municipal Zoning Code. The applicant has requested the City rezone this parcel (existing Tract 2 and proposed Tract 2A and 2B) from Rural Residential (RR) to General Commercial (CG). Plat note three (3) states development must meet requirements in Kenai Municipal Zoning Code.

City of Kenai water and sewer lines are not available to the proposed subdivision. The property owner must install private wells and septic systems approved by the Alaska Department of Environmental Conservation. An installation agreement is not required. Plat note number ten (10) on the proposed plat addresses wastewater disposal on the property. The note provides that the soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater systems serving single-family or duplex residences. Any other type of onsite wastewater treatment and disposal system must be designed by a professional



engineer, and the design must be approved by the Alaska Department of Environmental Conservation.

A fifteen-foot (15') easement for utilities is located along the property lines adjacent to the right-of-way for the Kenai Spur Highway. A section line easement is located along the eastern edge of Tract 2B and Plat note eight (8) references a Homer Electric Association easement.

Plat Note six (6) indicates that portions of this subdivision are within the Kenai Peninsula 50-foot Anadromous Stream Habitat Protection Area are subject to Chapter 21.18 Borough Code of Ordinances for restrictions that affect development of this subdivision. An anadromous stream passes through the eastern edge of Tract 2B and is identified in the Alaska Department of Fish & Game Anadromous Waters Catalog. Areas of inundation are shown for Tract 2B on the plat. Extraneous text should be deleted from this plat note that was inadvertently copied from plat note four (4). Staff recommends adding "as may be amended" to the Borough Code reference in plat note six (6) to match another recently approved plat within the City of Kenai referencing the same Borough Code.

The preliminary plat meets requirements of *KMC Subdivision design standards* and *KMC 14.10.080 Minimum improvements required under Chapter 14.10 Subdivision Regulations*. City staff recommends conditions of approval for the property to conform to all federal, State of Alaska, and local regulations and for plat note six (6) to be amended to delete extraneous text and to note the Borough Code referenced may be amended.

RECOMMENDATIONS

City staff recommends approval of the preliminary plat of Holland Spur Highway Subdivision 2020 Addition, subject to the following conditions:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
2. Plat note six (6) will be amended to read as follows:
6) Portions of this subdivision are within the Kenai Peninsula Borough 50-foot Anadromous Stream Habitat Protection Area. See Chapter 21.18 Kenai Peninsula Borough Code of Ordinance, as may be amended, for restrictions that affect development of this subdivision.

ATTACHMENTS

1. Resolution No. PZ2020-15
2. Application
3. Preliminary Plat
4. Aerial Map





**CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. 2020-15**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THAT HOLLAND SPUR HIGHWAY SUBDIVISION 2020 ADDITION ATTACHED HERETO BE APPROVED

WHEREAS, the City of Kenai received the plat from Segesser Surveys, Incorporated; and,

WHEREAS, the plat meets Municipal Code requirements of the Rural Residential Zone; and,

WHEREAS, street names are referenced correctly; and,

WHEREAS, the plat grants a fifteen-foot (15") utility easement adjacent to the right-of-way of the Kenai Spur Highway; and

WHEREAS, the plat will not change the existing access to the properties; and,

WHEREAS, an installation agreement is not required; and,

WHEREAS, the Planning and Zoning Commission finds:

1. Pursuant to Kenai Municipal Code 14.10.070 Subdivision design standards, the plat conforms to the minimum street widths, easements are sufficiently provided for utilities, the proposed lots would be arranged to provide satisfactory and desirable building sites, and the preliminary plat meets standards for water and wastewater.
2. Pursuant to Kenai Municipal Code 14.10.080 Minimum improvements required, there is adequate access and facilities available to the proposed parcel. An installation agreement is not required.
3. Pursuant to Kenai Municipal Code 14.24.010 Minimum lot area requirements, the proposed lots meets City standards for minimum lot sizes.
4. Pursuant to Kenai Municipal Code 14.24.020 General Requirements, the proposed lots meet City standards for minimum lot width, maximum lot coverage, maximum height, and setbacks.

NOW, THEREFORE, BE IT RECOMMENDED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That the preliminary plat of Holland Spur Highway Subdivision 2020 Addition be approved subject to the following conditions:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.

2. Plat note six (6) will be amended to read as follows:

6) Portions of this subdivision are within the Kenai Peninsula Borough 50-foot Anadromous Stream Habitat Protection Area. See Chapter 21.18 Kenai Peninsula Borough Code of Ordinance, as may be amended, for restrictions that affect development of this subdivision.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA, this 10th day of June, 2020.

JEFF TWAIT, CHAIRPERSON

ATTEST:

JAMIE HEINZ, CITY CLERK



Preliminary Plat Submittal Form

City of Kenai
Planning and Zoning Department
210 Fidalgo Avenue
Kenai, AK 99611
(907) 283-8200
planning@kenai.city
www.kenai.city/planning

APPLICANT (SURVEYOR)

Name:	Segesser Surveys Inc						
Mailing Address:	30485 Rosland St	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	907-262-3909						
Email:	seggy@ptialaska.net						

PROPERTY OWNER

Name:	Glen Martin						
Mailing Address:	P.O. Box 1389	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	907-252-5326						
Email:							

PROPERTY INFORMATION

Property Owner Name:	Glen Martin						
Current City Zoning:							
Use:	<input type="checkbox"/> Residential	<input type="checkbox"/> Recreational	<input checked="" type="checkbox"/> Commercial				
	<input type="checkbox"/> Other:						
Water:	<input checked="" type="checkbox"/> On Site	<input type="checkbox"/> City	<input type="checkbox"/> Community				
Sewer:	<input checked="" type="checkbox"/> On Site	<input type="checkbox"/> City	<input type="checkbox"/> Community				

PLAT INFORMATION

Preliminary Plat Name:							
Revised Preliminary Plat Name:							
Vacation of Public Right-of-Way:	<input type="checkbox"/> Yes			<input checked="" type="checkbox"/> No			
Street Name (if vacating ROW):							

Exceptions Required and Requested:

Comments:



REQUIRED ATTACHMENTS

<input checked="" type="checkbox"/> Certificate to Plat	<input checked="" type="checkbox"/> (1) 24" x 36" Plat	<input checked="" type="checkbox"/> (2) 11" x 17" Plats
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SIGNATURE

Signature:	<i>John Segesser</i>	Date:	5-20-20
Print Name:	JOHN SEGESSER	Title/Business:	PRESIDENT / SEGESSER SURVEYS

LEGEND:

- ⊗ 2 1/2" BRASS CAP GLO MON 1937 FOUND
- ⊙ 5/8" REBAR w/ALUM CAP #928-S 2010 FOUND
- 5/8" REBAR w/PLASTIC CAP 158859 SET
- () RECORD DATUM PLAT 2011-68 KR1

NOTES:

- 1) Basis of bearing taken from Basin View Subdivision Part Three, Plat 83-173, Kenai Recording District.
- 2) Further development of the property shall conform to all federal, State of Alaska, and local regulations.
- 3) Development must meet City of Kenai Chapter 14 Zoning Requirements.
- 4) This property is subject to a reservation of easement for highway purposes, and any assignments or uses thereof for recreational, utility or other purposes, as disclosed by Public Land Order No. 801, and amended by Public Land Orders Numbers 757 and 1013 and Department Order Number 2665, Amendment Number 1 and Amendment Number 2 thereto, filed in the Federal Register.
- 5) Information for the Kenai Spur Highway was taken from State of Alaska Department of Transportation and Public Facilities Right of Way Map for Project No. F-022-1(6) sheet 16 of 23.
- 6) Portions of this subdivision are within the Kenai Peninsula Borough 50-foot Anadromous Stream Habitat Protection Area. See Chapter 21.18 Borough Code of Ordinances for restrictions that affect development of this subdivision, 2665, Amendment Number 1 and Amendment Number 2 thereto, filed in the Federal Register.
- 7) No private access to State maintained ROWs permitted unless approved by the State of Alaska Department of Transportation.
- 8) An easement for electric lines or system and/or telephone lines granted to Homer Electric Association is recorded in Book 8 Page 182, Kenai Recording District.
- 9) Front 15 feet adjacent to rights-of-way 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.
- 10) **WASTEWATER DISPOSAL:** Soil conditions, water table levels, and soil slopes in this subdivision 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 professional engineer, registered to practice in Alaska, and the design must be approved by the Alaska Department of Environmental Conservation.

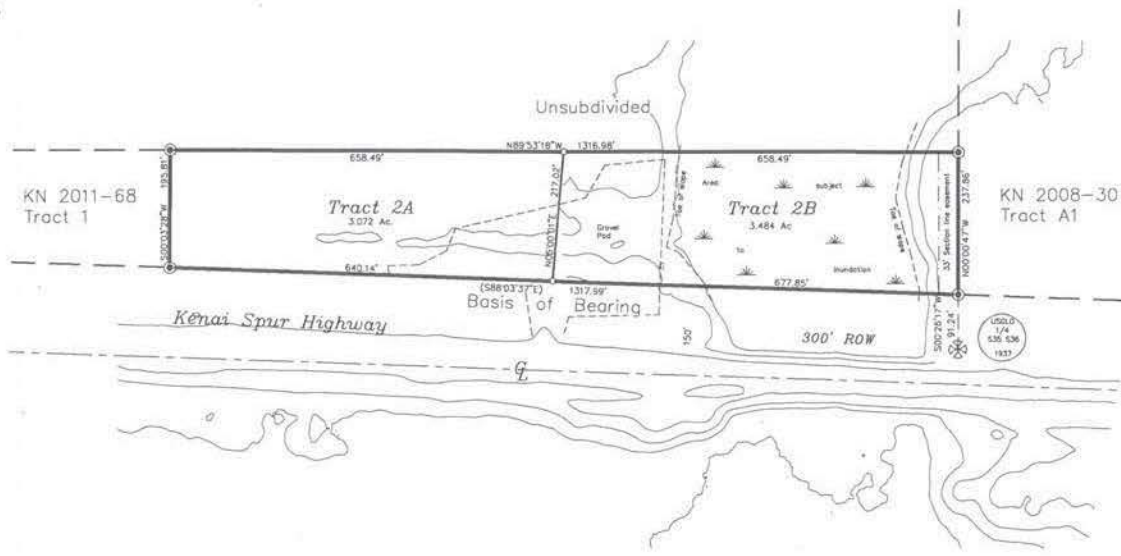
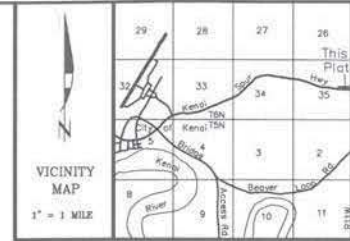
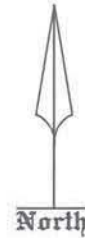
Engineer _____ License No. _____ Date _____



SURVEYOR'S CERTIFICATE

I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska, this plat represents a survey made by me or under my direct supervision, the monuments shown herein actually exist as described, and all dimensions and other details are correct.

Date: _____



CERTIFICATE of OWNERSHIP and DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY MY FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

GLEN F. MARTIN
P.O. BOX 1389
SOLDOTNA, ALASKA 99669

NOTARY'S ACKNOWLEDGEMENT

FOR _____
ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ 20____

NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES _____

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF _____
KENAI PENINSULA BOROUGH
AUTHORIZED OFFICIAL _____

KPB FILE No. _____

Holland Spur Highway Subdivision 2020 Addition

A resubdivision of Tract 2 Holland Spur Highway Subdivision Plat 2011-68, Kenai Recording District.
Located within the 51/2 51/2 SE1/4 NE1/4 Section 35, 16N, R11W, S.M. City of Kenai, Kenai Peninsula Borough, Alaska.
Containing 6.556 Ac.

Surveyor Segesser Surveys 30485 Rosland St. Soldotna, AK 99669 (907) 262-3909	Owner Glen Martin P.O. Box 1389 Soldotna, Alaska 99669
JOB NO. 20071	DRAWN: 5-27-20
SURVEYED: May, 2020	SCALE: 1"=100'
FIELD BOOK: 20-1	SHEET: 1 of 1



Aerial Map Preliminary Plat: Holland Spur Highway Subdivision 2020 Addition

Parcel 04103056
7344 Kenai Spur Highway
Tract 2, Holland Spur Highway Subdivision



04103056

KENAI SPUR HWY

LEGEND

 Parcels Amended by Preliminary Plat

0 20 40 Feet

Date: May 2020

Data Source: Kenai Peninsula Borough. Data is for graphic representation only. Imagery may not match true parcel boundaries.



File Attachments for Item:

2. Resolution PZ2020-16 - Preliminary Subdivision Plat of McLennan Estates Addition No. 1, submitted by Segesser Surveys, 30485 Rosland St., Soldotna, AK 99669, on behalf of Cheney and Maryann McLennan, 701 Davidson Dr., Kenai, AK 99611.

STAFF REPORT

TO: Planning and Zoning Commission
FROM: Elizabeth Appleby, City Planner
DATE: June 5, 2020
SUBJECT: PZ2020-16 – Preliminary Plat – McLennan Estates Addition No. 1

Applicant: Cheney and Maryann McLennan
701 Davidson St.
Kenai, AK 99611

Submitted By: Segesser Surveys.
30485 Rosaland St.
Soldotna, AK 99669

Requested Action: Preliminary Subdivision Plat – McLennan Estates Addition No. 1

Legal Description: Lots 1 and 2, McLennan Estates

Property Address: 701 Davidson Street and 601 Davidson Street

KPB Parcel No: 04519049 and 04519050

Lot Size: 2.65 acres (approximately 115,434 square feet) and
1.90 acres (approximately 82,764 square feet)

Existing Zoning: Suburban Residential (RS)

Current Land Use: Residences

Land Use Plan: Suburban Residential

GENERAL INFORMATION

Segesser Surveys submitted a preliminary plat on behalf of Cheney and Maryanne McLennan. The plat affects the parcels described as Lots 1 and 2, McLennan Estates. The preliminary plat shows that the owner is reconfiguring two lots (Lots 1 and 2) into three smaller lots (Lots 1A, 2A, and 3). Lot 1A comprises 2.537 acres (approximately 110,512 square feet); Lot 2A comprises

1.572 acres (approximately 68,476 square feet); and Lot 3 comprises 0.924 acres (approximately 40,249 square feet). There are residences located on the proposed Lots 2A and 3. Lot 2 formerly held both residences; the preliminary plat divides the two residences into separate parcels.

Application, Public Notice, Public Comment

KMC 14.10.010 General under *Chapter 14.10 Subdivision Regulations* states preliminary plats or replats must first be submitted to the City for review prior to the submittal of the plat to the Kenai Peninsula Borough Planning Department. Kenai Municipal Code (*KMC*) *14.10.060* describes the process in more detail. The plat will be reviewed first by the City of Kenai Planning and Zoning Commission and then by the Kenai Peninsula Borough's Plat Committee and Planning Commission.

The property owners completed the City of Kenai preliminary plat submittal form. The City of Kenai follows *Kenai Peninsula Borough Code 20.25.070* and *20.25.080* for preliminary plat submittal requirements. City staff published notice of the consideration of the plat as part of the agenda for the City of Kenai Planning and Zoning Commission in the *Peninsula Clarion*. No public comments have been received as of June 5, 2020.

ANALYSIS

Access to the proposed lots is via Davidson Drive which is a gravel road that is maintained by the City of Kenai. The proposed plat does not dedicate any additional rights-of-way.

The property owner is connected to City of Kenai water and sewer services. The connection for the services is located in the residence on the proposed Lot 2A and a line runs from this residence to the residence on the proposed Lot 3. The connection to the residence on the proposed Lot 3 would cross the property line between the two lots and is not allowed by Municipal Code. The property owner must install a separate water and sewer connection to the residence located on the proposed Lot 3. Proposed Lot 3 would likely be able to meet Alaska Department of Environmental Conservation requirements for a well and septic system and the residence on proposed Lot 2A would remain on City water and sewer. The parcels are not required to be connected to City water and sewer. An installation agreement will be required for the capping of the water, sewer and electrical lines to the proposed Lot 3. The plat will not be recorded until the property owner and the City have an installation agreement in place. The applicant is aware of and amenable to these requirements and has started consultation with the City Planner, Building Inspector, and Public Works Director for an installation agreement. City staff recommends a condition of approval of the plat be the requirement for the installation agreement.

Plat note number ten (10) addresses wastewater disposal on the property. The note provides that the soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater systems serving single-family or duplex residences. Any other type of onsite wastewater treatment and disposal system must be designed by a professional engineer, and the design must be approved by the Alaska Department of Environmental Conservation. A fifteen-foot (15') easement for utilities is located along the property lines adjacent to the right-of-way for Davidson Drive and the Kenai Spur Highway.

The preliminary plat meets requirements of *KMC Subdivision design standards* and *KMC 14.10.080 Minimum improvements required* under *Chapter 14.10 Subdivision Regulations*. City



staff recommends a condition of approval for the property to conform to all federal, State of Alaska, and local regulations and for an installation agreement to be finalized prior to the recording of the plat.

RECOMMENDATIONS

City staff recommends approval of the preliminary plat of McLennan Estates Addition No. 1, subject to the following conditions:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
2. Prior to the plat being recorded, the property owner must enter into an installation agreement with the City of Kenai to meet requirements for the water, sewer, and electrical lines serving the proposed Lot 3.
3. Denote the width of Davidson Drive on the face of the plat.

ATTACHMENTS

1. Resolution No. PZ2020-16
2. Application
3. Preliminary Plat
4. Aerial Map





**CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. 2020-16**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THAT MCLENNAN ESTATES ADDITION NO. 1 ATTACHED HERETO BE APPROVED

WHEREAS, the City of Kenai received the plat from Segesser Surveys, Incorporated; and,

WHEREAS, the plat meets Municipal Code requirements of the Suburban Residential Zone; and,

WHEREAS, street names are referenced correctly; and,

WHEREAS, the plat grants a fifteen-foot (15") utility easement adjacent to the rights-of-way of Davidson Drive and the Kenai Spur Highway; and

WHEREAS, the plat will not change the existing access to the properties; and,

WHEREAS, Davidson Drive is a gravel and City-maintained road providing access to the property; and,

WHEREAS, an installation agreement will be required; and,

WHEREAS, the Planning and Zoning Commission finds:

1. Pursuant to Kenai Municipal Code 14.10.070 Subdivision design standards, the plat conforms to the minimum street widths, an easement is sufficiently provided for utilities, the proposed lot would be arranged to provide satisfactory and desirable building sites, and the preliminary plat meets standards for water and wastewater.
2. Pursuant to Kenai Municipal Code 14.10.080 Minimum improvements required, an installation agreement is required to cap the water, sewer, and electrical lines that would illegally cross the property line to connect from proposed Lot 2A to serve the residence on the proposed Lot 3 if the connections were left in place.
3. Pursuant to Kenai Municipal Code 14.24.010 Minimum lot area requirements, the proposed lots meets City standards for minimum lot sizes.
4. Pursuant to Kenai Municipal Code 14.24.020 General Requirements, the proposed lots meet City standards for minimum lot width, maximum lot coverage, maximum height, and setbacks.

NOW, THEREFORE, BE IT RECOMMENDED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That the preliminary plat of McLennan Estates Addition No. 1 be approved subject to the following condition:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
2. Prior to the plat being recorded, the property owner must enter into an installation agreement with the City of Kenai to meet requirements for the water, sewer, and electrical lines serving the proposed Lot 3.
3. Denote the width of Davidson Drive on the face of the plat.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA, this 10th day of June, 2020.

JEFF TWAIT, CHAIRPERSON

ATTEST:

JAMIE HEINZ, CITY CLERK



Preliminary Plat Submittal Form

City of Kenai
Planning and Zoning Department
210 Fidalgo Avenue
Kenai, AK 99611
(907) 283-8200
planning@kenai.city
www.kenai.city/planning

APPLICANT (SURVEYOR)

Name:	Segesser Surveys Inc						
Mailing Address:	30485 Rosland St	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	907-262-3909, 907-252-3421						
Email:	seggy@ptialaska.net						

PROPERTY OWNER

Name:	Cheney and Maryann McLennan						
Mailing Address:	701 Davidson Dr.	City:	Kenai	State:	AK	Zip Code:	99611
Phone Number(s):							
Email:							

PROPERTY INFORMATION

Property Owner Name:	Cheney and Maryann McLennan						
Current City Zoning:	<i>Suburban Residential</i>						
Use:	<input checked="" type="checkbox"/> Residential	<input type="checkbox"/> Recreational	<input checked="" type="checkbox"/> Commercial				
	<input type="checkbox"/> Other:						
Water:	<input checked="" type="checkbox"/> On Site	<input type="checkbox"/> City	<input type="checkbox"/> Community				
Sewer:	<input checked="" type="checkbox"/> On Site	<input type="checkbox"/> City	<input type="checkbox"/> Community				

PLAT INFORMATION

Preliminary Plat Name:							
Revised Preliminary Plat Name:							
Vacation of Public Right-of-Way:				<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
Street Name (if vacating ROW):							

Exceptions Required and Requested:

Comments:

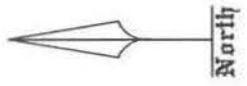
RECEIVED
CITY OF KENAI
DATE 5-22-2020
PLANNING DEPARTMENT

REQUIRED ATTACHMENTS

<input checked="" type="checkbox"/> Certificate to Plat	<input checked="" type="checkbox"/> (1) 24" x 36" Plat	<input checked="" type="checkbox"/> (2) 11" x 17" Plats
---	--	---

SIGNATURE

Signature:		Date:	5-22-20
Print Name:	JOHN SEGESSER	Title/Business:	PRESIDENT/SEGESSER SURVEYS



CERTIFICATE OF OWNERSHIP and DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY OF PARADISE AND BY MY FREE CONSENT DEEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

BY: **STACEY MCELANNAN**
 701 DAVIDSON DR.
 KENAI, ALASKA 99811

NOTARY'S ACKNOWLEDGEMENT

FOR _____
 ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ 20____

NOTARY PUBLIC FOR ALASKA
 MY COMMISSION EXPIRES _____

NOTARY'S ACKNOWLEDGEMENT

FOR _____
 ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ 20____

NOTARY PUBLIC FOR ALASKA
 MY COMMISSION EXPIRES _____

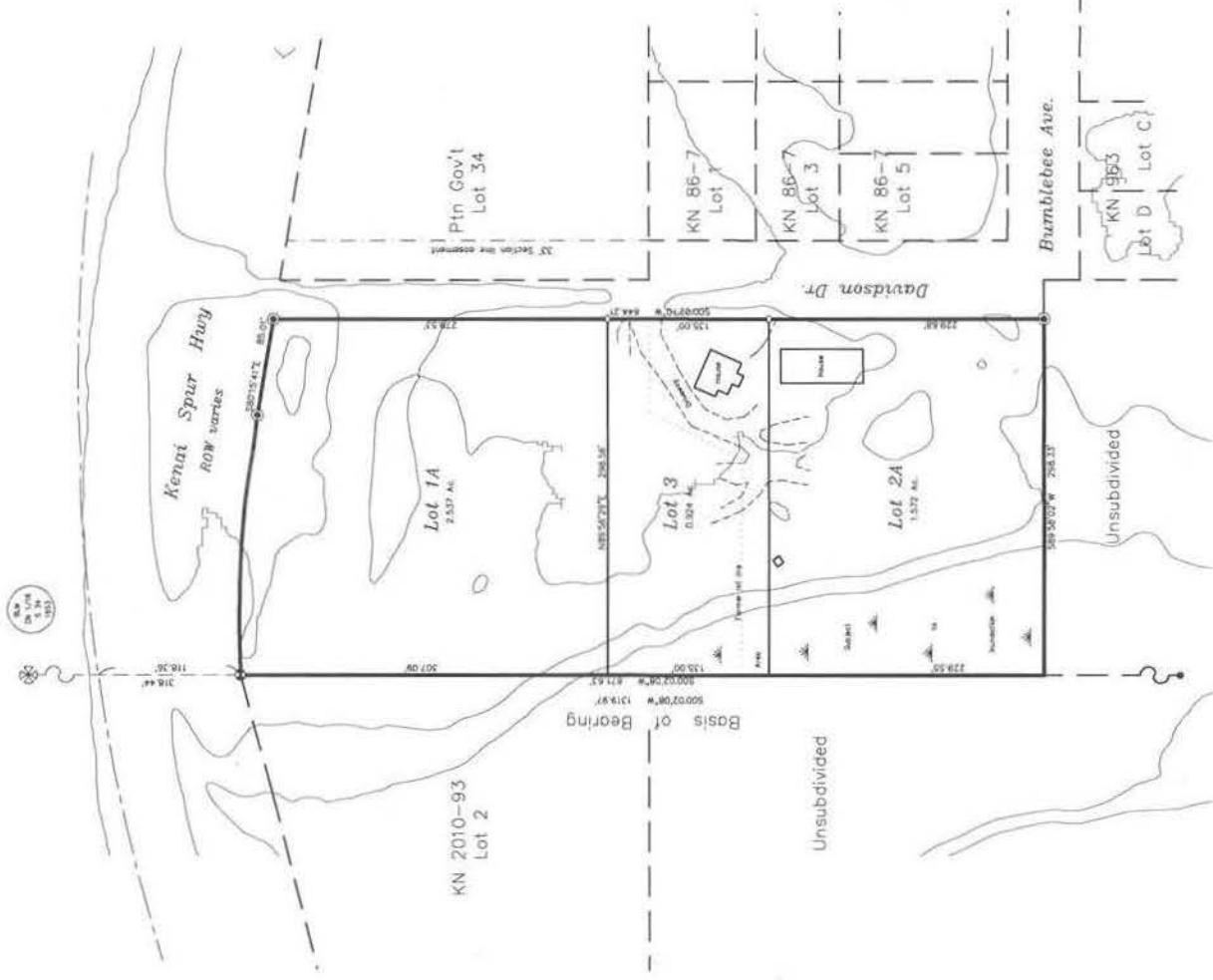
PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF _____
 KENAI PENINSULA BOROUGH
 AUTHORIZED OFFICIAL _____

KPB FILE NO. _____

McLennan Estates
 Addition No. 1
 A re-subdivision of Lots 1 and 2, McLennan Estates, Plat 2012-76, Kenai Recording District.
 Located within Section 158 (A, 500' x 500') of 107(A) Section 34 T1N, R1W, S1W, City of Kenai, Kenai Peninsula Borough, Alaska
 Containing 5.034 AC.

Owner	Cheney and Maryann McLennan 701 Davidson Dr. Kenai, Alaska 99811
Surveyor	Segesser Surveys 3080 Roland St. Sitka, Alaska 99869 (907) 942-3909
JOB NO.	20254
DRAWN	3-27-2025
SCALE	1"=50'
SHEET	1 of 1



LEGEND:

- ⊗ 3 1/4" BRASS CAP MONUMENT BLM 1953 FOUND
- ⊙ 5/8" REBAR w/ALUM. CAP FOUND
- ⊙ 5/8" REBAR w/PLASTIC CAP FOUND
- 5/8" REBAR w/PLASTIC CAP FOUND
- 5/8" REBAR w/PLASTIC CAP 120055 SET
- () RECORD DATUM PLAT 2011-41 KNO

NOTES:

- 1) Basis of bearing taken from Block Vee Subdivision Part Three, Plat 85-173, Kenai Recording District.
- 2) Further development of the property shall conform to all Federal, State of Alaska, and local regulations.
- 3) Development must meet City of Kenai Chapter 19 Zoning Requirements by the State of Alaska Department of Transportation.
- 4) No private access to State maintained ROW's permitted unless approved by the State of Alaska Department of Transportation.
- 5) This property is subject to a determination of easement by utility agencies, easements, or easements of public land under the 107, and 108, and 109, and 110, and 111, and 112, and 113, and 114, and 115, and 116, and 117, and 118, and 119, and 120, and 121, and 122, and 123, and 124, and 125, and 126, and 127, and 128, and 129, and 130, and 131, and 132, and 133, and 134, and 135, and 136, and 137, and 138, and 139, and 140, and 141, and 142, and 143, and 144, and 145, and 146, and 147, and 148, and 149, and 150, and 151, and 152, and 153, and 154, and 155, and 156, and 157, and 158, and 159, and 160, and 161, and 162, and 163, and 164, and 165, and 166, and 167, and 168, and 169, and 170, and 171, and 172, and 173, and 174, and 175, and 176, and 177, and 178, and 179, and 180, and 181, and 182, and 183, and 184, and 185, and 186, and 187, and 188, and 189, and 190, and 191, and 192, and 193, and 194, and 195, and 196, and 197, and 198, and 199, and 200, and 201, and 202, and 203, 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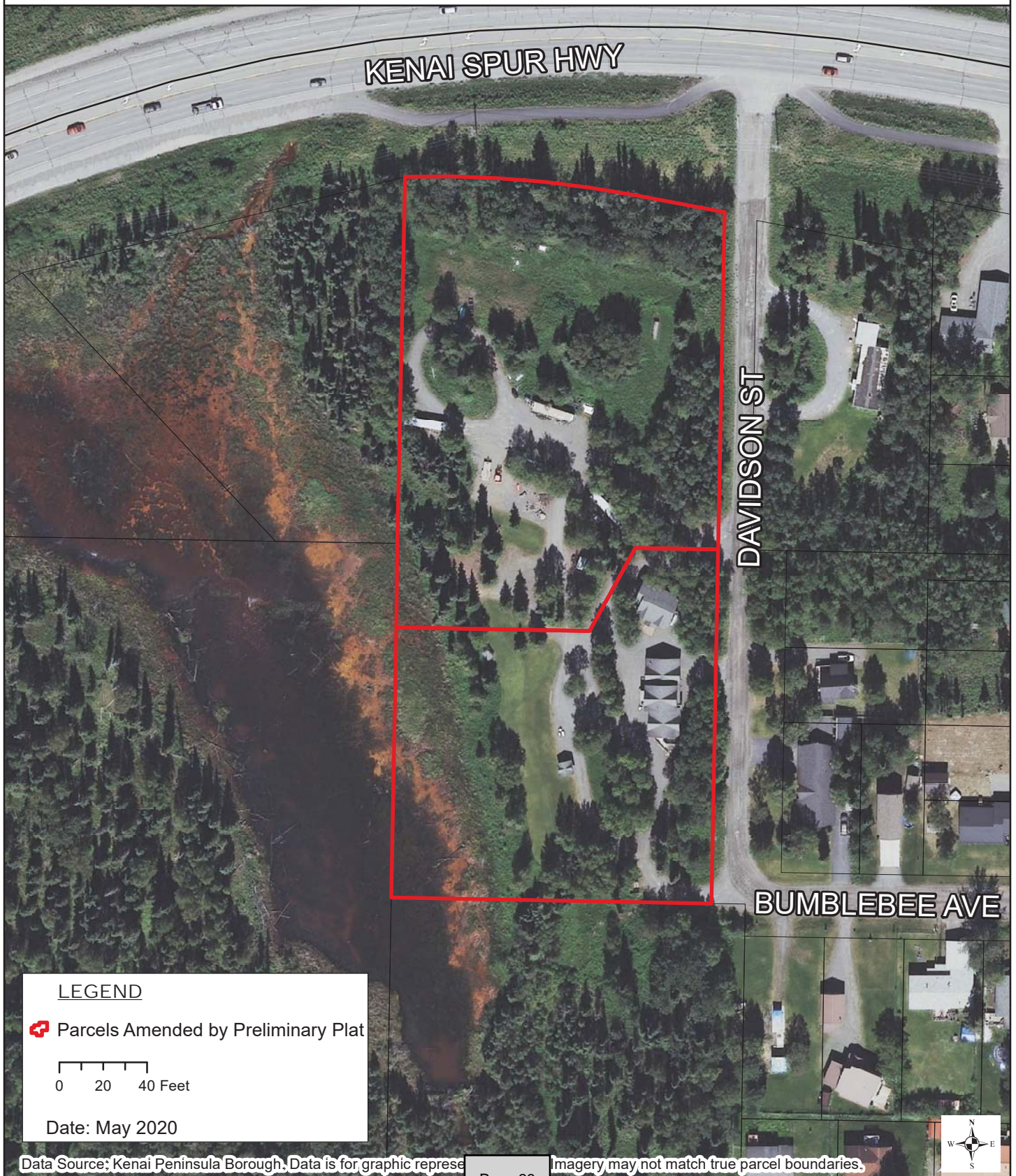
SURVEYOR'S CERTIFICATE

I hereby certify that I am properly registered and licensed to practice surveying in the State of Alaska. This plat represents a survey made by me or under my direct supervision, and the same is true, correct, and conforms to all dimensions and other details are correct.



Aerial Map Preliminary Plat: McLennan Estates Addition No. 1

Parcels 04519049 and 04519050
701 and 601 Davidson Street
Lots 1 and 2, McLennan Estates



LEGEND

Parcels Amended by Preliminary Plat

0 20 40 Feet

Date: May 2020

File Attachments for Item:

Resolution PZ2020-13 - Application for the Rezoning of two parcels adjacent to the Kenai Spur Highway and described as Tracts 1 and 2, Holland Spur Highway Subdivision, and located at 7344 and 7450 Kenai Spur Highway, from Rural Residential (RR) to General Commercial (CG). The application was submitted by the majority property owner, Glen Martin, P.O. Box 1389, Soldotna, AK 99669.



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

STAFF REPORT

TO: Planning and Zoning Commission
FROM: Elizabeth Appleby, City Planner
DATE: June 5, 2020
SUBJECT: PZ2020-13 – Rezone – Rural Residential to General Commercial

Applicant: Glen Martin
P.O. Box 1389
Soldotna, AK 99669

Legal Description: Tract 1, Holland Spur Highway Subdivision
Tract 2, Holland Spur Highway Subdivision

Property Address: 7344 Kenai Spur Highway
7450 Kenai Spur Highway

KPB Parcel No: 04103056
04103055

Lot Size: 6.56 acres (approximately 285,754 square feet)
5.28 acres (approximately 229,997 square feet)

Existing Zoning: Rural Residential

Current Land Use: Vacant

Land Use Plan: Suburban Residential

GENERAL INFORMATION

A completed application was submitted to the City requesting that adjacent parcels Tracts 1 and 2, Holland Spur Highway Subdivision located at 7344 and 7450 Kenai Spur Highway (parcel numbers 04103056 and 04103055) be rezoned from Rural Residential (RR) to General Commercial (CG). Kenai Municipal Code (KMC) 14.20.270, Amendment procedures, describes initiation of zoning code and official map amendments. Zoning code amendments may be initiated by a submission of a petition by a majority of the property owners in the area for consideration if the area to be rezoned contains a minimum of one acre unless the amendment enlarges an adjacent district boundary. Glen Martin is the owner of the adjacent parcels that are approximately 11.84 acres in size. The requested rezone meets the criteria for an amendment.

Application, Public Notice, Public Comment

Pursuant to KMC 14.20.280-Public hearing and notifications, describes processes for public hearings. City staff published notice of the public hearing as part of the agenda for the City of Kenai Planning and Zoning Commission meeting in the *Peninsula Clarion*, sent notification to real property owners within three-hundred-feet (300') of the affected parcels, and notification was posted on the property. No public comments have been received as of June 5, 2020.

ANALYSIS

These parcels front the Kenai Spur Highway for approximately 2,640 feet. The Kenai Spur Highway Road is a major collector street maintained by the State of Alaska. These parcels are vacant and surrounded mostly by vacant land. There is a gravel pad covering the middle of the two parcels. Parcels adjacent to these two parcels are either within the CG Zone or the RR Zone: Across the street on the Kenai Spur Highway from Tract 1 (parcel 04103055) is a City of Kenai wellhead that was damaged in the 2018 earthquake and is slated to be relocated. The wellhead is on parcels within the RR Zone. A City owned parcel borders the east of Tract 2 (parcel 04103056) and is within the RR Zone. The parcel bordering the north of these two is within the RR Zone and is owned by the Alaska Mental Health Trust Authority. The fronting parcel along the Kenai Spur Highway across from Tract 2 (parcel 04103056) and half of Tract 1 (parcel 04103055) is within the CG Zone. The parcel bordering the west of Tract 1 (parcel 04103055) is also within the CG Zone and is owned by the Alaska Mental Health Trust Authority.

The RR Zone is intended to provide for low density residential development in outlying and rural areas in a form which creates a stable and attractive residential environment. The CG Zone is intended to provide for areas where a broad range of retail, wholesale, and service establishments is desirable. Uses are regulated to concentrate commercial development to the greatest extent possible and new residential uses and other noncommercial uses are not permitted in this zone as principal uses.

The CG Zone is more consistent with the layout of the parcel. The applicant has indicated plans for commercial development. Commercial uses could take advantage of the frontage on the Kenai Spur Highway. A neighborhood is not adjacent to these parcels and a rezone would not impact residential housing or the quality of neighborhoods within the City. An anadromous stream is on the eastern part of Tract 2 (parcel 04103056) and the Kenai Peninsula Borough 50-Foot Habitat Ordinance prohibiting development within 50-feet of anadromous streams would apply and protect the creek.

The 2016 Imagine Kenai 2030 City of Kenai Comprehensive Plan states, "original community has expanded with commercial development along the Kenai Spur Highway." This change is zoning reflect the change in the City layout over time and supports Goal 3 – Land Use: Develop land use strategies to implement a forward-looking approach to community growth and development. The 2016 Imagine Kenai 2030 City of Kenai Comprehensive Plan also notes that, "commercial land uses dominate the corridor along the Kenai Spur Highway" and a rezone for these two rectangular parcels with long frontages on the Kenai Spur Highway is consistent with the Comprehensive Plan.



RECOMMENDATIONS

The rezone request for Tracts 1 and 2, Holland Spur Highway Subdivision located at 7344 and 7450 Kenai Spur Highway from the Rural Residential Zone to the General Commercial Zone is suitable for an approval recommendation by the Planning and Zoning Commission to the Kenai City Council.

ATTACHMENTS

- A. Resolution No. PZ2020-13
- B. Application
- C. Map





**CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. 2020-13**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THE COUNCIL OF THE CITY OF KENAI APPROVE THE REZONE REQUEST OF TRACTS 1 AND 2, HOLLAND SPUR HIGHWAY SUBDIVISION FROM RURAL RESIDENTIAL TO GENERAL COMMERCIAL

WHEREAS, the City of Kenai received a rezone application from the majority property owner in accordance with Kenai Municipal Code 14.20.270, Amendment procedures; and,

WHEREAS, the RR Zone is intended to provide for low density residential development in outlying and rural areas in a form which creates a stable and attractive residential environment; and,

WHEREAS, the CG Zone is intended to provide for areas where a broad range of retail, wholesale, and service establishments is desirable and uses are regulated to concentrate commercial development to the greatest extent possible; and,

WHEREAS, the rezone request is for an area over ten acres in size; and,

WHEREAS, the area to be rezoned fronts the Kenai Spur Highway, a major collector street maintained by the State of Alaska; and,

WHEREAS, other parcels in the CG Zone border and are across the street from these two parcels; and,

WHEREAS, the CG Zone is consistent with commercial development along the Kenai Spur Highway and will not impact residential housing or the quality of neighborhoods within the City; and,

WHEREAS, the rezone is consistent with Goal 3 – Land Use: Develop land use strategies to implement a forward-looking approach to community growth and development of the 2016 Imagine Kenai 2030 City of Kenai Comprehensive Plan.

NOW, THEREFORE, BE IT RECOMMENDED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That the Kenai City Council approve of the rezone request of Tracts 1 and 2, Holland Spur Highway Subdivision from Rural Residential to General Commercial.

Section 2. That a copy of Resolution PZ2020-13 be forwarded to the Kenai City Council.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA, this 10th day of June, 2020.

JEFF TWAIT, CHAIRPERSON

ATTEST:

JAMIE HEINZ, CITY CLERK



Rezoning Application

City of Kenai
 Planning and Zoning Department
 210 Fidalgo Avenue
 Kenai, AK 99511
 (907) 283-8200
 planning@kenai.city
 www.kenai.city/planning

PETITIONER

Name:	Glen Martin						
Mailing Address:	POB 1389	City:	Soldotna	State:	AK	Zip Code:	99669
Phone Number(s):	907-252-5326						
Email:	akgold16@gmail.com						

PROPERTY INFORMATION

Kenai Peninsula Borough Parcel # (s):	04103056, 04103055						
Physical Address:	7344 and 7450 Kenai Spur Hwy - 6.56 acres + 5.28 acres = 11.84 total acres						
Legal Description:	T6N R11W SEC35 SEWARD MERIDIAN KN 2011068 HOLLAND SPUR HIGHWAY SUB TRACTS 1&2						

ZONING INFORMATION

Present Zone:	RR
Proposed Zone:	CG

Intended Use and/or Reason for Rezoning (attach additional sheets if necessary):
 I would like to make this highway strip available for restaurants, clinics, gas stations, retail shops, etc. It abuts CG lands, and most of the Spur Highway between Swires Road and Beaver Loop Road has already been rezoned CG. This will help make the zoning consistant in this area.

AMENDMENT PROCEDURE REQUIREMENTS

The area proposed to be rezoned contains a minimum of 1 acre (excluding street or alley rights-of-way), unless the amendment enlarges an adjacent zoning district boundary.	<input checked="" type="checkbox"/> YES
This proposed amendment to the zoning ordinance is not substantially the same as any other unapproved proposed amendment submitted within the previous 9 months.	<input checked="" type="checkbox"/> YES
I understand a public hearing is required as outlined in the Kenai Zoning Code, a \$250 fee is required (\$265 total after tax), and that this application will be reviewed following Kenai City Code 14.20.270, available at kenai.municipal.codes/KMC/14.20.270.	<input checked="" type="checkbox"/> YES
I have included a map of the proposed rezone area and applicable signatures.	<input checked="" type="checkbox"/> YES

The proposed Zoning Code and Official Zoning Map Amendments is initiated by (check one):

- Kenai City Council
- Kenai Planning & Zoning Commission
- Petition of majority of the property owners in the area to be rezoned
- Petition bearing the signatures of 50 registered voters within the City of Kenai
- Petition as provided by the Home Rule Charter of the City of Kenai

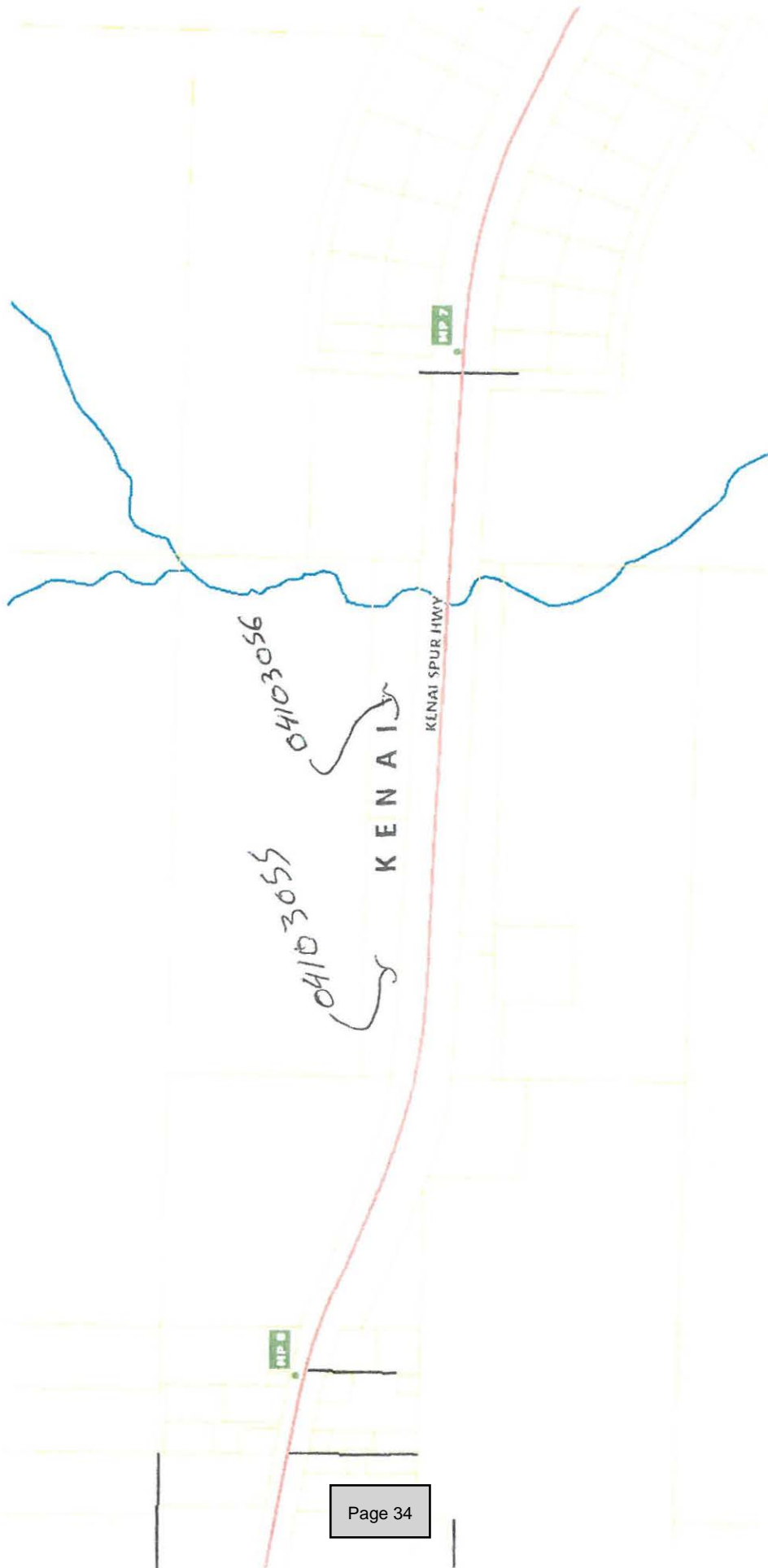
PETITIONER'S SIGNATURE

Signature:			
Printed Name:	Glen F. Martin	Date:	5/15/2020

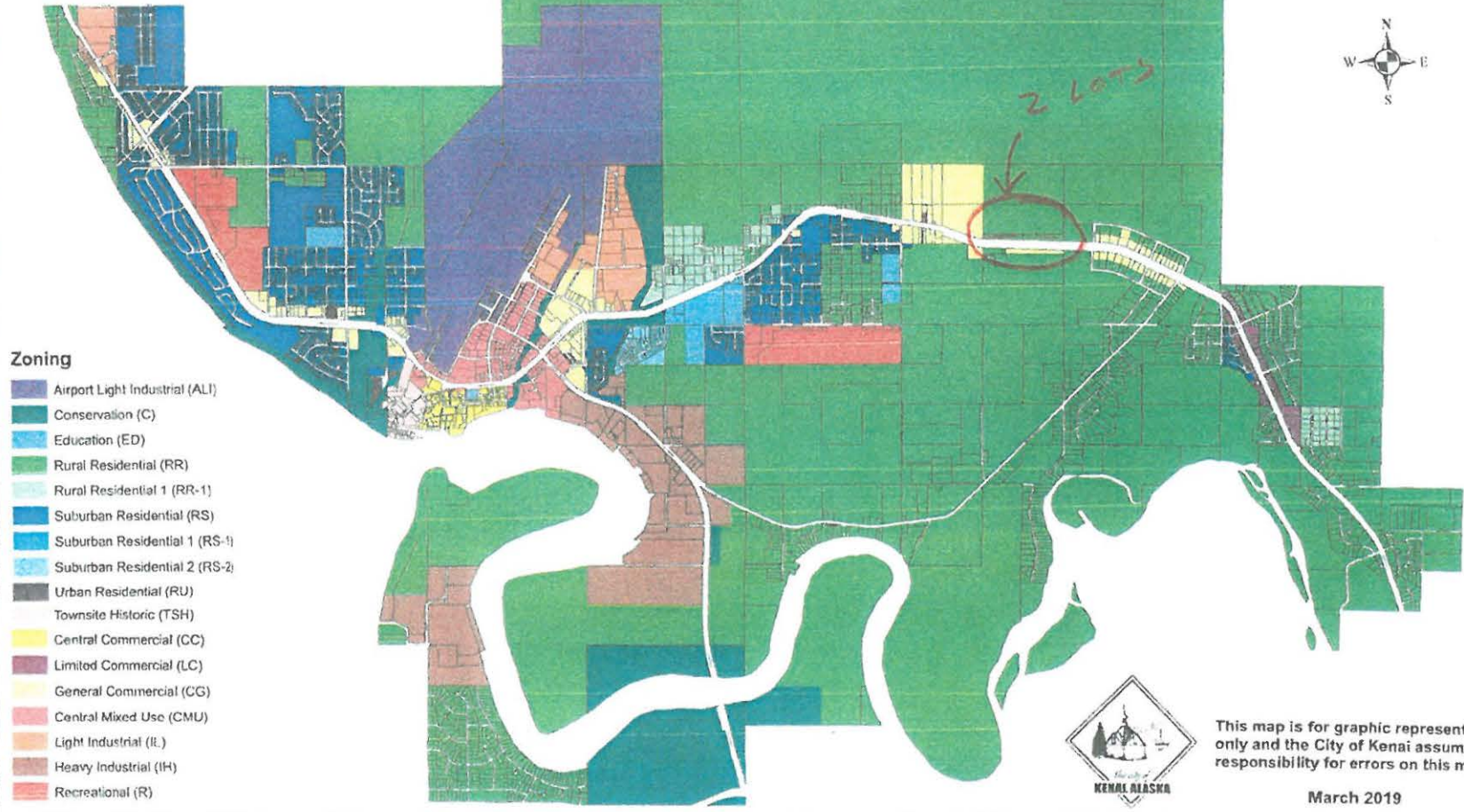
For City Use Only

Date Application Fee Received:

PZ Resolution Number: PZ2020-13



City of Kenai Zoning Map



This map is for graphic representation only and the City of Kenai assumes no responsibility for errors on this map.

March 2019



**Rezone Request of
Parcels:
04103055, 04103056**

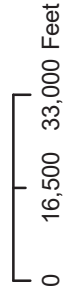
**7450 and 7344 Kenai Spur Hwy
Tracts 1 and 2,
Holland Spur Hwy Subdivision**



LEGEND

Zoning

-  Rural Residential
-  General Commercial (CG)



The information depicted here on is for graphic representation only of the best available sources. The City of Kenai assumes no responsibility for errors on this map.

Date: 5/15/2020



MINCHUMINA AVE
RAVEN ST
TUSTUMENA ST

City-Owned
Parcel

KENAI SPUR HWY

City Wellhead #1
(to be relocated)

File Attachments for Item:

Resolution PZ2020-13 - Request to Rename Pelchy Drive to Pelch Drive. The request was submitted by the adjacent property owner, Michael J. Pelch, Jr. 3230 Harlow Rd., Eugene, OR 97401.

STAFF REPORT

TO: Planning and Zoning Commission
FROM: Elizabeth Appleby, City Planner
DATE: June 5, 2020
SUBJECT: PZ2020-17 – Pelch Drive Rename Recommendation

Requested By: Michael J. Pelch, Jr.
3230 Harlow Rd.
Eugene, OR 97401

Requested Action: Rename Pelchy Drive to Pelch Drive

Michael J. Pelch owns parcels 04949051 and 04949052 described as Lots 2 and 3, Michael J. Pelch Homestead Jr. Addition No. 3 that border Pelchy Drive. Mr. Pelch has requested Pelchy Drive be renamed to Pelch Drive. Pelchy Drive is accessed from Beaver Loop Road. The plat for Michael J. Pelch Homestead Jr. Addition No. 3 was recorded on November 13, 2019 under plat no. 2019-48. This plat dedicated the right-of-way for Pelchy Drive. There is some evidence in City records that earlier versions of the plat had the street name as Pelch Drive before the final plat had the name as Pelchy Drive. Mr. Pelch noted that there is not yet a street sign up on this road.

Kenai Municipal Code 14.5.140, Renaming streets states that City Council may by resolution change or rename a street upon recommendation of the Planning and Zoning Commission and after consultation with the Kenai Peninsula Borough. In email correspondence, the Kenai Peninsula Borough stated they have no objection to changing this street name from Pelchy to Pelch as long as the street suffix of Drive was retained to be consistent with Borough Code for street names. The Borough did not identify an issue with the street name change for 911 navigation.

City staff recommends the Commission approve of the name change from Pelchy Drive to Pelch Drive. Resolution PZ2020-17 and a map are attached to this staff report.



**CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. 2020-17**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THE COUNCIL OF THE CITY OF KENAI RENAME PELCHY DRIVE TO PELCH DRIVE

CURRENT OFFICIAL NAME: Pelchy Drive

RECOMMENDED OFFICIAL NAME: Pelch Drive

WHEREAS, Kenai Municipal Code 14.15.140 authorizes the Council of the City of Kenai to name and rename streets within City limits upon recommendation from the Planning and Zoning Commission and after consultation with the Kenai Peninsula Borough or any other affected municipality; and,

WHEREAS, the Kenai Peninsula Borough has no objection to changing the street name to Pelch Drive; and,

WHEREAS, adjacent property owners have no objection to changing the street name to Pelch Drive and were the ones to request the change; and,

WHEREAS, the name change would not impact 911 navigation.

NOW, THEREFORE, BE IT RECOMMENDED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That the official name for Pelchy Drive be changed to Pelch Drive.

Section 2. That a copy of Resolution PZ2020-17 be forwarded to the Kenai City Council.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA, this 10th day of June, 2020.

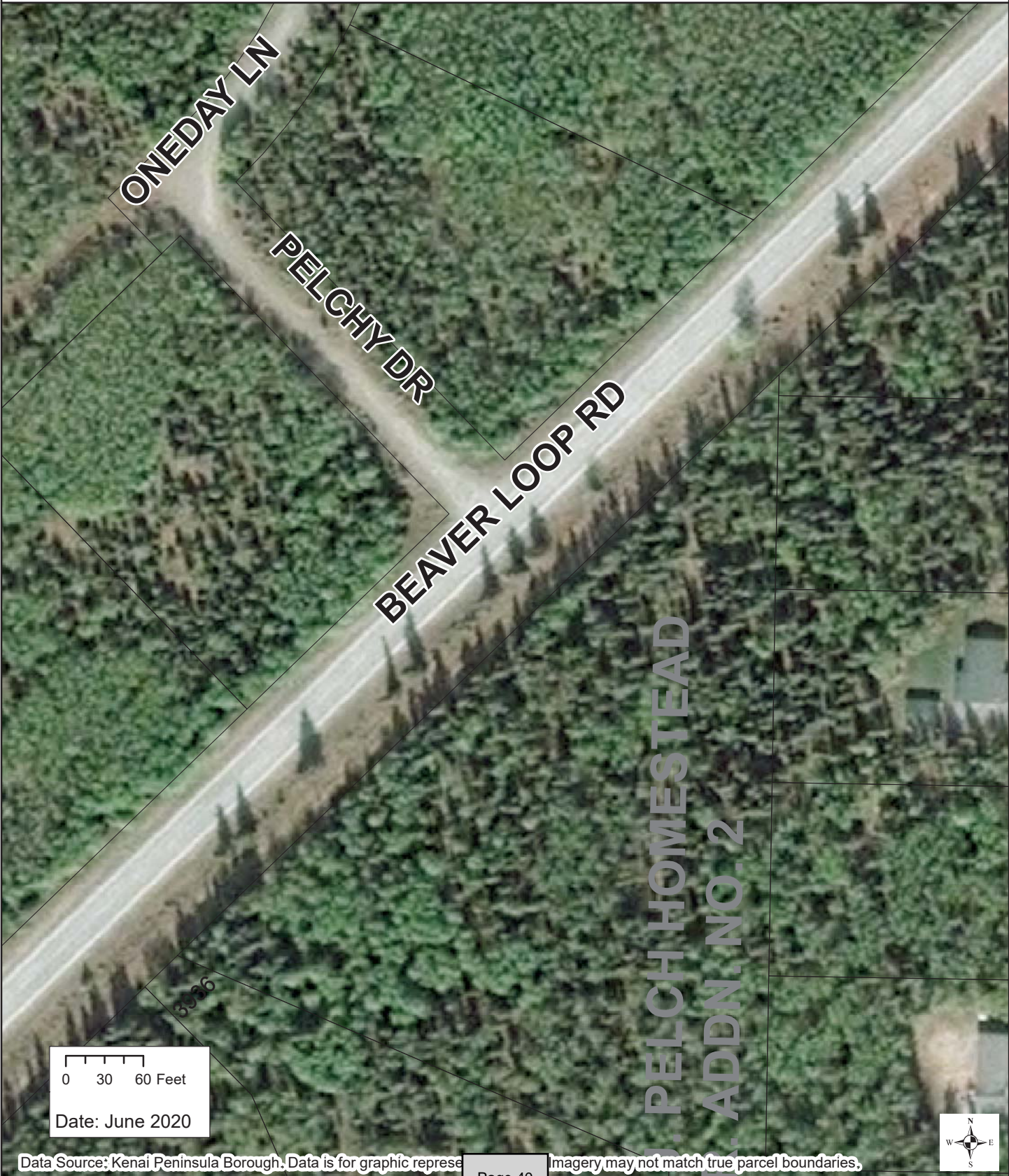
JEFF TWAIT, CHAIRPERSON

ATTEST:

JAMIE HEINZ, CMC, CITY CLERK



RENAME
Current: Pelchy Drive
Proposed: Pelch Drive



File Attachments for Item:

2. Action/Approval - Authorizing the City Planner to Send a Letter to the Kenai Peninsula Borough Supporting a One-Year Time Extension to Finalize the Plat of Kee's Tern Subdivision

MEMORANDUM

TO: Planning and Zoning Commission
FROM: Elizabeth Appleby, City Planner
DATE: June 4, 2020
SUBJECT: Plat for Kee's Tern Subdivision – Time Extension

In a letter dated May 18, 2020, the Kenai Peninsula Borough notified the City of a request from the surveyor for a one-year time extension for the finalization of the plat of Kee's Tern Subdivision. The Kenai Peninsula Borough requires concurrence from the City of Kenai before granting the extension request.

The proposed subdivision received preliminary plat approval by the Kenai Peninsula Borough Planning Commission on February 11, 2013. The City of Kenai Planning and Zoning Commission recommended approval of the preliminary plat on December 11, 2013 (PZ13-41). Several time extensions and the recording of Phase 1 on May 12, 2015, under Plat Number 2015-25 have extended preliminary approval to July 15, 2020.

If the Planning and Zoning Commission approves, City staff would sign the attached letter of non-objection to the time extension. City staff have no issues with the time extension request and recommend approval. The same conditions from PZ13-41 would still apply to the approval of the plat with the time extension. A copy of PZ13-41, the plat, and the letter from the Kenai Peninsula Borough requesting the extension are attached for reference.

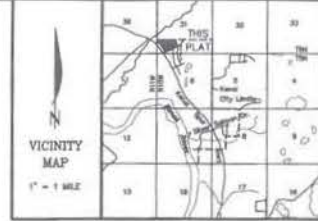
Thank you for your consideration.

LEGEND:

- ⊙ MONUMENT (found this survey)
- 1/2" REBAR (found this survey)
- 3/8" REBAR w/PLASTIC CAP (set this survey)
- () RECORD DATUM PLAT K-1634 K00

LINE	BEARING	LENGTH
L1	S80°02'21" W	103.31
L2	S00°02'30" W	100.00
L3	N19°02'00" W	78.25

CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	CHORD BEARING
C1	52°12'4"	25.00	18.71	12.47	18.42	S54°21'24" W
C2	132°1'21"	20.00	15.38	11.21	14.42	S64°12'00" W
C3	81°0'47"	30.00	19.44	10.51	17.34	S44°28'36" W
C4	82°00'18"	20.00	15.37	10.51	14.38	S64°12'00" W
C5	119°23'56"	20.00	15.39	10.51	14.38	S32°32'07" W
C6	84°34'11"	20.00	15.34	10.54	14.37	S57°00'53" W
C7	119°20'49"	20.00	15.39	10.51	14.38	S32°32'07" W
C8	60°28'54"	295.00	205.53	163.90	209.05	S56°34'01" W
C9	60°28'54"	315.00	211.01	163.38	211.58	S56°34'01" W
C10	60°28'54"	345.00	222.81	174.11	224.24	S56°34'01" W



CERTIFICATE of OWNERSHIP and DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY MY FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

Kathleen A. Martin
 KATHLEEN A. MARTIN
 REALTOR, REALTOR
 REALTOR, REALTOR

NOTARY'S ACKNOWLEDGMENT

FOR *Kathleen A. Martin*
 Subscribed and sworn before me this 24th day of March 2015

[Signature]
 Notary Public for Alaska
 MY COMMISSION EXPIRES 1-29-2016
 Notary Public for Alaska
 My Commission Expires 3-24-16

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF FEBRUARY 10, 2014.

KENAI PENINSULA BOROUGH
[Signature]
 AUTHORIZED OFFICIAL

KPB FILE NO. 2015-25

Kee's Tern Subdivision Phase 1

Located within Government Lot 4 and the SE 1/4 SW 1/4 Section 21, 19th T19N, 54E, City of Kenai, Kenai Recording District, Kenai Peninsula Borough, Alaska.

Containing 31,253 Ac.

SEGESSER SURVEYS
 30485 Rosland St.
 Soldotna, AK 99669

JOB NO. 12057	DRAWN 12-29-14
SURVEYED June, 2012	SCALE: 1"=100'
FIELD BOOK: 12-1	SHEET: 1 of 1

SURVEYOR'S CERTIFICATE

I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska, this plat represents a survey made by me or under my direct supervision, the measurements shown herein actually exist as described, and all dimensions and other details are correct.

Date: 3-23-15



WATERWATER SPECIAL: Soil conditions, water table levels, and soil maps in this subdivision 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 professional engineer, registered to practice in Alaska, and the design must be approved by the Alaska Department of Environmental Conservation.

Caryn M. Mott 7285 CE 5-4-15
 Caryn Mott License No. Date
 Mott-Corbett-Bryant P.O. Box 1041
 Kenai, Alaska 99611

- NOTES:**
- 1) Basis of bearing taken from Vertical Height Subdivision Part 2, Plat K-1727, Kenai Recording District.
 - 2) Access roadway easements shown herein are the centerlines of existing unimproved roadways.
 - 3) Tract A is a parcel whose use and access is limited solely to the benefit of the owners of Lots 1-8 Block 1, Lots 1-3 Block 2 and Tracts B, C and D of KEE'S Tern Subdivision and Emergency Services vehicles. Tract A is owned by KEE'S Tern Subdivision Home Owners Association. All lot owners are subject to a mandatory membership in a non-profit corporate Homeowners Association, and to the mandatory payment of assessment, insurance and dues. The location and dimension of Tract A are as shown on this plat.
 - 4) Lots 1-8 Block 1, Lots 1-3 Block 2 and Tracts B, C, and D are subject to certain conditions, covenants, and restrictions including prior review by an engineer of any site plan and construction, recorded with the District Recorder, Kenai Recording District, Third Judicial District, State of Alaska.
 - 5) A right-of-way easement in favor of Homer Electric Association is recorded in Book 274 Page 617, Kenai Recording District.
 - 6) A permanent roadway easement providing for access and related uses is reserved for the benefit of the owners of Lots 1-8 Block 1, Lots 1-3 Block 2, and Tracts B, C, and D, KEE'S Tern Subdivision over the land shown on Tract A in perpetuity, title to which shall be retained by a corporate Homeowners Association. Said roadway will be 20 feet wide and built to comply with Kenai Peninsula Borough 14.06.080(2) Category B Requirements. Tract A may also be used as a utility easement. Specific locations for each utility within KEE'S Tern Subdivision will be in accordance with KWC 16.27.010. Roadways constructed to Kenai Peninsula Borough Category B standards do not meet minimum standards required by City of Kenai and therefore if at any time the City takes over ownership and/or maintenance responsibilities of roadways within the subdivision, roadways will have to be improved to meet City of Kenai standards in effect at time of acceptance. The cost of roadway improvements to meet City of Kenai standards will be borne by property owners in the subdivision by assessment without further approval required.
 - 7) Enforcement of any private covenants, easements, or deed restrictions is the responsibility of the owners and the Homeowners Association.
 - 8) Exceptions to KPB 20.20.180, 3-1 depth to width ratio and KPB 20.20.200, Lots-Access to Streets for Tract A was approved by the Plat Committee at the meeting of February 10, 2014.
 - 9) Covenants, conditions and restrictions which affect this subdivision are recorded in Assessor number 2014-00871-0, Kenai Recording District.
 - 10) All waste disposal systems shall comply with existing laws at the time of construction.
 - 11) There is a 15 foot wide utility easement fronting Tract A and 20 feet wide within 5 feet of the side lot lines. 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.
 - 12) This plat is subject to the City of Kenai zoning code.
 - 13) Any person developing this property is responsible for obtaining all required local, state and federal permits, including a U.S. Army Corps of Engineers wetland determination, if applicable.



CITY OF KENAI
PLANNING AND ZONING COMMISSION
AMENDED RESOLUTION NO. PZ13-41
SUBDIVISION PLAT

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI RECOMMENDING THAT THE ATTACHED SUBDIVISION PLAT BE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

WHEREAS, the attached plat KEE'S TERN SUBDIVISION was referred to the City of Kenai Planning and Zoning Commission on December 11, 2013, and received from Segesser Surveys.

WHEREAS, the City of Kenai Planning and Zoning Commission finds:

1. Plat area is zoned RR – Rural Residential and therefore subject to said zone conditions.
2. Water and sewer: Not available.
3. Plat does not subdivide property within a public improvement district subject to special assessments. There is not a delinquency amount owed to the City of Kenai for the referenced property.
4. Installation agreement will be required if lots are sold prior to construction of all required improvements.
5. Status of surrounding land is shown.
6. Utility easements must be shown on the final plat.
7. Plat shall verify that no encroachments exist. If an encroachment exists; plat does not create nor increase the encroachment.
8. Receive approval from the Kenai Peninsula Borough on exception to requirements in KPB 20.20.200 referencing Street names.
9. CONTINGENCIES:
 - a. See Page 2.

NOW, THEREFORE, BE IT RESOLVED, THAT THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI RECOMMENDS THE KENAI PENINSULA BOROUGH PLANNING COMMISSION APPROVE KEE'S TERN SUBDIVISION SUBJECT TO ANY NEGATIVE FINDINGS AS STATED ABOVE.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA, December 11, 2013.

CHAIRPERSON: _____

ATTEST: _____

Recommend approval of the revised preliminary plat subject to the following:

1. Per KMC 14.10.080(b) if lots are desired to be sold prior to construction of all required improvements an installation agreement will be required.
2. Roads must be constructed to standards per plat notes prior to final plat unless and installation agreement is in place.
3. Road design must be stamped by an engineer licensed in the State of Alaska.
4. Signage including but not limited to stop signs, speed limit signs and street signs.
5. As-built drawings prepared by the design engineer responsible for observation must be submitted to the City in both paper and digital format (Adobe & AutoCAD).
6. Surveyor and property owner must work with the City of Kenai and the Kenai Peninsula Borough when designating street names to ensure names meet City and Borough regulations.
7. City must be notified if gates are intended to be placed on the road way and approve plan for gates that assure adequate emergency vehicle access.
8. Homeowners Association must be formed by developer and approved by the City of Kenai Planning & Zoning Commission prior to plat being finalized.
9. Receive approval from the Kenai Peninsula Borough on exception to requirements in KPB 20.20.180 and 20.20.200.
10. City requests opportunity to consider and comment on any new changes and/or additions added to plat.
11. The following plat notes must be sufficiently modified as follows:
 - a. Plat Note 2. States "Tract A is a parcel whose use and access is limited solely to the owners of ..." This entails that others; mail carriers, guests, utility companies, etc. (anyone who is not an owner or emergency service vehicle) cannot use and access. Should be revised to reflect that use is limited for benefit of lot owners as provided in Plat Note 5.
 - b. Plat Note 2 needs to be revised as to correct either punctuation or add words in the following "and to the mandatory payment of assessment, insurance dues."
 - c. Plat Note 3 should explain/clarify who responsible for the prior review of site plans and construction other than City code enforcement (building/zoning code).
 - d. Plat Note 5. Replace last sentence with "Roadways constructed to Kenai Peninsula Borough Category III standards do not meet minimum standards required by City of Kenai and therefore if at any future time the City takes over ownership and/or maintenance responsibilities of roadways within the subdivision roadways will have to be improved to meet City of Kenai Standards in effect at time of acceptance. The cost of roadway improvements to meet City of Kenai standards will be borne by property owners in the subdivision by assessment without further approval required.
12. Pursuant to KMC 14.10.090, recommend City Council approve exception to KMC 14.10.070(e)(3) and 24.020 which require all lots in this zoning district to have a minimum width of 90 feet and Tract A is only 60 feet

based on the following: allowing Tract A to have a width of 60 feet allows reasonable development of the subdivision given that Tract A is intended to be used for roadway purposes only and such an exception preserves public welfare and interests of the City and the general intent and spirit of the City's subdivision regulations.



Planning Department

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

Charlie Pierce
Borough Mayor

May 18, 2020

Elizabeth Appleby, City Planner
City of Kenai
210 Fidalgo Avenue
Kenai, Alaska 99611

RE: Kee's Turn Subdivision
Time Extension Request
KPB File 2013-023

The surveyor is requesting a one-year time extension for Kee's Turn Subdivision, located in the City of Kenai.

The proposed subdivision received preliminary plat approval by KPB Planning Commission on February 11, 2013. Several time extensions and the recording of Phases 1 have since extended preliminary approval to July 15, 2020.

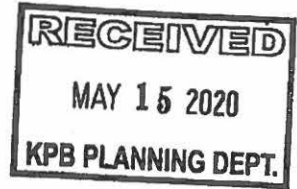
The time extension will be scheduled for a Planning Commission meeting after Kenai Planning and Zoning Commission review. If the Kenai Planning and Zoning Commission concurs with the time extension, staff will recommend extension of preliminary approval at the next Planning Commission meeting.

Thank You,

Peggy Clements
Platting Technician
pclements@kpb.us



Kenai Peninsula Borough Planning Department
144 North Binkley Street
Soldotna, Alaska 99669
Phone: (907) 714-2200
Fax: (907) 714-2378



TIME EXTENSION REQUEST FORM

Name of Subdivision: KEES TERN SUBD.

Location of Subdivision: CITY OF KENAI

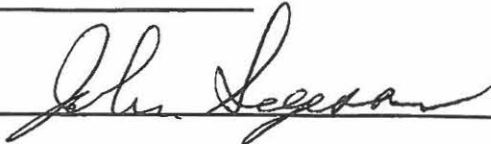
KPB Number: 2013-023

Date of Planning Commission Approval(s)

Reason for time extension request.

OWNER HAS NOT FINALIZE THE SUBDIVISION

Date: 5-13-2020

Signature of Surveyor/Property Owner: 

File Attachments for Item:

3. Action/Approval - Application for Ten-Year Lease Renewal of City-Owned Land Within the Airport Reserve described as Lot 1A, Block 1, General Aviation Apron Subdivision No. 6 and located at 330 Main Street Loop. The application was submitted by Kenai Aviation Services, Inc. d/b/a Aviation Services, 1755 Lincoln Hill Rd. Martinsville, IN 46151.

MEMORANDUM

TO: Planning and Zoning Commission
FROM: Elizabeth Appleby, City Planner
DATE: June 5, 2020
SUBJECT: Recommendation for Ten-Year Lease Renewal for Lot 1A, Bl. 1, GAA

Kenai Aviation Services, Inc. d/b/a Aviation Services (Applicant), submitted an application to the City requesting a 10-year renewal to their Lease of Airport Reserve Lands for the property described as Lot 1A, Block 1, General Aviation Apron (GAA) Subdivision No. 6 that is set to expire on June 30, 2020. The property is located at 330 Main Street Loop, Kenai, AK 99611, and the Kenai Peninsula Borough parcel number is 04324028. Pursuant to the term table in Kenai Municipal Code (KMC) 21.10.080(b) and a professional estimate of the value of existing improvements meeting requirements of a lease renewal of an expiring lease in KMC 21.10.070(d)(2), the applicant qualifies for a lease term of 10 years. Pursuant to Kenai Municipal Code 21.10.075 – Leasing and Acquisition of Airport Reserve Lands, Competing Applications, the City posted notice of the lease application and did not received a competing lease application for the parcel within 30 days.

The applicant currently subleases the parcel to United Parcel Service (UPS) and the applicant expects UPS to continue subleasing the parcel. The applicant has provided the City a copy of their sublease agreement with UPS. The uses allowed on the current lease would remain the same; the uses are the following: aircraft parking, aircraft sales & service, repair & maintenance, sale of petroleum products, aircraft parts, aircraft rental, charter flights, pilot training & air cargo service.

The applicant converted to the City's new standard lease form in 2019. Kenai Aviation Services, Inc. is current on rent payments and obligations to the City. The annual lease rate is set to be \$10,238.46 starting July 1, 2020 with approval of a lease renewal.

The parcel is within the Airport Light Industrial (ALI) Zone. The intent of the ALI Zone is to protect the viability of the Kenai Municipal Airport as a significant resource to the community by encouraging compatible land uses and reducing hazards that may endanger the lives and property of the public and aviation users. The proposed use by Kenai Aviation Services, Inc. is a permitted use in the ALI Zone and is a compatible land use. The sublease to UPS provides necessary shipping services to the City.

The proposed use by the applicant complies with the 2016 Imagine Kenai 2030 Comprehensive Plan. It supports Goal 5-Transportation, which has a vision for Kenai Municipal Airport as a

gateway to the Kenai Peninsula and West Cook Inlet. The proposed use also supports Goal 3-Economic Development to support the fiscal health of the City of Kenai.

Does the Planning and Zoning Commission recommend the City approve a 10-year lease renewal application from Kenai Aviation Services, Inc. d/b/a Aviation Services for Lot 1A, Block 1, GAA Subdivision No. 6 for the use of aircraft parking, aircraft sales & service, repair & maintenance, sale of petroleum products, aircraft parts, aircraft rental, charter flights, pilot training & air cargo service and the applicant's continuing sublease to UPS?

The Kenai City Council will be notified of the Planning and Zoning Commission's decision as part of their evaluation of the lease renewal application. The Planning and Zoning Commission makes their decision on lease applications based on the proposed development's compliance with City's Comprehensive Plan and the Zoning Code. The Airport Commission will also review the application and provide a recommendation to City Council.

Thank you for your consideration.

ATTACHMENTS

1. Aerial Map
2. Lease Renewal Application





Action-Approval - 10-Year Lease Extension
Parcel 04324028
330 Main Street Loop
Lot 1A, Block 1, GAA Apron No. 6





City of Kenai Land Lease Application

Application for:	<input type="checkbox"/> New Lease
<input type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Extension
<input type="checkbox"/> Assignment	<input type="checkbox"/> Renewal
Application Date:	3/17/20

Applicant Information

Name of Applicant:	BAXTER F. SNIDER				
Mailing Address:	799 E. LOEHR LN.	City:	MARTINSVILLE	State:	IN Zip Code: 46151
Phone Number(s):	Home Phone: 414 807 8192		Work/ Message Phone: 414 807 8192		
E-mail: (Optional)	nsac@att.net				
Name to Appear on Lease:	KENAI AVIATION SERVICES, INC.				
Mailing Address:	799 E. LOEHR LN.	City:	MARTINSVILLE	State:	IN Zip Code: 46151
Phone Number(s):	Home Phone: 414 807 8192		Work/ Message Phone: 414 807 8192		
E-mail: (Optional)	nsac@att.net				
Type of Applicant:	<input type="checkbox"/> Individual (at least 18 years of age) <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Government <input type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Other _____				

Property Information and Term Requested

Legal description of property (or, if subdivision is required, a brief description of property):
 LOT 1A BLOCK 1, GENERAL AVIATION APRON SUBDIVISION NO. 6 ACCORDING TO THE OFFICIAL PLAT THEREOF FILED UNDER PLAT NO. 2007-94, KENAI AIRPORT ALASKA

Does the property require subdivision? (if Yes, answer next questions) YES NO
 Subdivision costs are the responsibility of the applicant unless the City Council determines a subdivision serves other City purposes:

1. Do you believe the proposed subdivision would serve other City purposes? YES NO

2. If determined it does not, applicant is responsible for all subdivision costs. Initials BFS

If an appraisal is required to determine the minimum price on the land, applicant is responsible for the deposit to cover costs associated with appraisal. If a sale is approved, the cost of the appraisal will be either refunded or credited to the applicant. Initials BFS

It is the responsibility of the applicant to cover recording costs associated with lease. Initials BFS

Do you have or have you ever had a Lease with the City? (if Yes, answer next question) YES NO

1. Legal or brief description of property leased: THIS PROPERTY

Request a Lease with an Option to Purchase once development requirements are met? YES NO

Requested term for Initial Lease or Renewal (based on Term Table, not to exceed 45 years): 10 YEARS

Requested term for Lease Extension (based on Term Table, not to exceed a total of 45 Years): 10 YEARS

Requested Starting Date: AT TERMINATION OF CURRENT LEASE 30 JUN 2020

Proposed Use and Improvements

Proposed Use (check one): Aeronautical Non-Aeronautical

Do you plan to construct new or additional improvements? (if Yes, answer next five questions) YES NO

1. Will the improvement change or alter the use under an existing lease? YES NO

2. What is the proposed use of the improvement? *SUB LEASED TO UNITED PARCEL SERVICE WILL CONTINUE*

3. What is the estimated value of the improvement? *NONE*

4. What is the nature and type of improvement? *NONE*

5. What are the dates construction is estimated to commence and be completed?
(generally, construction must be completed within two years) *N/A*

Estimated Start Date: Estimated Completion Date:

Describe the proposed business or activity intended: *UPS WILL CONTINUE TO OPERATE THEIR UPLOADING AND DOWNLOADING PACKAGES ON THEIR FEEDER AIRCRAFT AND SORTING TRUCKS LOADS INBOUND AND CONSOLIDATED OUTBOUND*

How does the proposed lease support a thriving business, residential, recreational, or cultural community?
THIS LEASE WILL EXTEND THE UPS OPERATIONS IN KENAI

Lease Assignment Only: What is the name of the individual or legal entity the lease is to be assigned?
N/A

Lease Renewal Only — Admin note → lease extension

Renewal of an Existing Lease (at least one year of term remaining): Requires new development.

Lease Term based on: Estimated cost of new improvements and Purchase Price (optional)

Renewal of an Expiring Lease (less than one year of term remaining): Does not require new development.

Lease Term based on: Purchase Price Professional Estimate of Remaining Useful Life

Fair Market Value appraisal and/or Estimated cost of new improvements (optional)

Requested Term for Renewal Based on Term Table, not to exceed 45 Years:

Submitting an application for a lease does not give the applicant a right to lease or use the land requested in the application. The application shall expire twelve (12) months after the date the application has been made if the City and the applicant have not, by that time, entered into a lease, unless the City Council for good cause grants an extension for a period not to exceed six (6) months. The City has no obligation to amend, renew or extend a lease and may decline to do so upon making specific findings as to why a lease renewal, extension, or amendment is not in the best interest of the City

Signature:	<i>Baxter F. Snider</i>	Date:	<i>14 MAR 2020</i>
Print Name:	<i>BAXTER F. SNIDER</i>	Title:	<i>PRESIDENT</i>

For City Use Only:

General Fund Airport Reserve Land
 Airport Fund Outside Airport Reserve
 Account Number:

Date Application Fee Received: *3/17/20*
 Date Application Determined Complete: *3/17/20*
 30-Day Notice Publication Date: *3/20/20*
 City Council Action/Resolution:

File Attachments for Item:

City Council



Kenai City Council - Regular Meeting

June 03, 2020 – 6:00 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

Telephonic/Virtual Information on Page 4

www.kenai.city

Action Agenda

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Agenda Approval
4. Consent Agenda (*Public comment limited to three (3) minutes) per speaker; thirty (30) minutes aggregated*)

All items listed with an asterisk () are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a council member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. SCHEDULED PUBLIC COMMENTS

(Public comment limited to ten (10) minutes per speaker)

C. UNSCHEDULED PUBLIC COMMENTS

(Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated)

D. PUBLIC HEARINGS

1. **UNANIMOUSLY POSTPONED TO 07/01/2020. Ordinance No. 3127-2020** - Repealing and Replacing Kenai Municipal Code Title 6 - Elections to Provide Clarity, Process Improvements, and Increase Voter Accessibility through Vote By Mail Elections. (Council Member Peterkin)
2. **UNANIMOUSLY POSTPONED TO 07/01/2020. Ordinance No. 3128-2020** - Amending Kenai Municipal Code Section 1.85.040 – Records Public, To Provide For A Record Retention Length. (City Clerk)
3. **ENACTED UNANIMOUSLY. Ordinance No. 3129-2020** - Accepting and Appropriating Private Donations to the Kenai Animal Shelter for the Care of Animals. (Administration)
4. **ADOPTED UNANIMOUSLY. Resolution No. 2020-34** - Authorizing the City Manager to Extend the Restaurant Concession Agreement in the Kenai Municipal Airport for One Year. (Administration)
5. **ADOPTED UNANIMOUSLY. Resolution No. 2020-35** - Approving the Fourth Amendment to the Airline Operating Agreement and Terminal Area Lease and Authorizing the City Enter Into Such Agreement with Grant Aviation, Inc. (Administration)

6. **ADOPTED UNANIMOUSLY. Resolution No. 2020-36** - Authorizing a Budget Transfer in the Airport Fund, Airfield Department for Costs in Excess of Budgeted Amounts. (Administration)
7. **ADOPTED AS AMENDED. Resolution No. 2020-37** - Supporting The Kenai Peninsula Borough Assembly Establishing The Resilience And Security Advisory Commission For The Kenai Peninsula Borough. (Vice Mayor Molloy)
8. **ADOPTED UNANIMOUSLY. Resolution No. 2020-38** - Authorizing the City Manager to Enter into an Agreement with the City of Soldotna to Provide Animal Shelter Services for the City of Soldotna at the Kenai Animal Shelter. (Administration)
9. **ADOPTED AS AMENDED. Resolution No. 2020-39** - Approving a Grant Disbursement Program for Small Businesses and Non-Profit Organizations Utilizing Funds from the Coronavirus Aid, Relief, and Economic Security (CARES) Act. (Administration)
10. **ADOPTED UNANIMOUSLY AS AMENDED. Resolution No. 2020-40** - Further Extending the Disaster Emergency Declaration for the City of Kenai Made on March 18, 2020 in Response to the COVID-19 Pandemic. (Administration)

E. MINUTES

1. **APPROVED BY THE CONSENT AGENDA.** *Work Session Summary of May 18, 2020. (City Clerk)
2. **APPROVED BY THE CONSENT AGENDA.** *Regular Meeting of May 20, 2020. (City Clerk)

F. UNFINISHED BUSINESS

G. NEW BUSINESS

1. **APPROVED BY THE CONSENT AGENDA.** *Action/Approval - Bills to be Ratified. (Administration)
2. **APPROVED BY THE CONSENT AGENDA.** *Action/Approval – Special Use Permit to Crowley Fuels, LLC for Aircraft Loading and Parking on the Apron. (Administration)
3. **APPROVED BY THE CONSENT AGENDA.** *Action/Approval – Special Use Permit to Empire Airlines, Inc. for Aircraft Parking on the Apron. (Administration)
4. **APPROVED BY THE CONSENT AGENDA.** *Action/Approval – Special Use Permit to Everts Air Fuel, Inc. for Aircraft Loading and Parking on the Apron. (Administration)
5. **APPROVED BY THE CONSENT AGENDA.** *Action/Approval – Special Use Permit to United Parcel Service Company for Aircraft Loading and Parking on the Apron. (Administration)
6. **INTRODUCED BY THE CONSENT AGENDA / PUBLIC HEARING SET FOR 06/17/2020.** *Ordinance No. 3131-2020 - Amending the Official Kenai Zoning Map by Rezoning a

Portion of S1/2 SE1/4 SW1/4 Lying North of K-Beach Road Excluding VIP Country Estates Subdivision Part 5 from Rural Residential (RR) to Limited Commercial (LC). (Administration)

7. **INTRODUCED BY THE CONSENT AGENDA / PUBLIC HEARING SET FOR 06/17/2020.**
***Ordinance No. 3132-2020** - Increasing Estimated Revenues And Appropriations by \$454.84 in the General Fund – Police Department for Drug Investigation Overtime Expenditures. (Administration)
8. **INTRODUCED BY THE CONSENT AGENDA / PUBLIC HEARING SET FOR 06/17/2020.**
***Ordinance No. 3133-2020** - Authorizing a Budget Transfer in the Airport Terminal Improvement Capital Project Fund and Appropriating FY2020 Budgeted Funds in the Airport Master Plan Capital Project, Airport Snow Removal Equipment and Airport Operations Facility Improvement Capital Project Funds for Heating, Ventilation and Air Conditioning (HVAC) Improvement to the Airport Operations Facility and Replacement of the Airport's Wide Area Mower. (Administration)
9. **INTRODUCED BY THE CONSENT AGENDA / PUBLIC HEARING SET FOR 06/17/2020.**
***Ordinance No. 3134-2020** - Appropriating Funds in the Water & Sewer Improvement and Wastewater Treatment Facility Improvement Capital Project Funds for FY2021 Capital Improvement Plan Projects. (Administration)
10. **INTRODUCED BY THE CONSENT AGENDA / PUBLIC HEARING SET FOR 06/17/2020.**
***Ordinance No. 3135-2020** - Appropriating FY2020 Budgeted Funds in the Kenai Multipurpose Facility Improvements Capital Project Fund for Installation of an Exhaust Fan and Corrosion Remediation. (Administration)
11. **AMENDMENTS UNANIMOUSLY APPROVED. Resolution No. 2020-26** - Amending its Comprehensive Schedule of Rates, Charges, and Fees to Incorporate Changes Included in the FY2021 Budget to Include Adjusting the Kenai Municipal Airport Apron Rental Rates, Airport Reserve Land Annual Lease Rates, and Adjusting the Monthly Rental Rates at Vintage Pointe. (Administration) *[Clerk's Note: This resolution was adopted at the 05/20/2020 meeting. It has been discovered that five of the new rates calculated for Vintage Pointe rents were incorrect. A motion to amend something previously adopted is in order and, as such appearance on this agenda serves as notice.]*

H. COMMISSION / COMMITTEE REPORTS

1. Council on Aging
2. Airport Commission
3. Harbor Commission
4. Parks and Recreation Commission
5. Planning and Zoning Commission
6. Beautification Committee
7. Mini-Grant Steering Committee

I. REPORT OF THE MAYOR

J. ADMINISTRATION REPORTS

1. City Manager

2. City Attorney
3. City Clerk

K. ADDITIONAL PUBLIC COMMENT

1. Citizens Comments (*Public comment limited to five (5) minutes per speaker*)
2. Council Comments

L. EXECUTIVE SESSION

1. Discussion of the Facility Management Agreement for the Kenai Visitor and Cultural Center, pursuant to AS 44.32.310(c)(1)(3) a matter of which the immediate knowledge may have an adverse effect upon the finances of the City, and a matter by which law, municipal charter, or ordinance are required to be confidential.

M. PENDING ITEMS

1. **Ordinance No. 3117-2020** - Appropriating Funds in the Airport Fund, Accepting a Grant From the Federal Aviation Administration and Appropriating Funds in the Airport Equipment Capital Project Fund for the Purchase of Snow Removal Equipment (SRE) – Loader with Attachments. (Administration) [**Clerk's Note:** *At the May 20 Meeting, this item was Postponed to the June 17 Council Meeting. A Motion to Enact is On the Floor.*]
2. **Resolution No. 2020-30** - Recommending the Kenai Peninsula Borough Assembly Enact Ordinance 2020-24 which would Provide for Vote by Mail Elections, More Time Between a Regular Election and Run-Off Election and Removal of Proposition Statements. (Council Member Peterkin) [**Clerk's Note:** *At the May 20 Meeting, this item was Postponed to the June 17 Council Meeting. A Motion to Adopt is On the Floor.*]

N. ADJOURNMENT

O. INFORMATION ITEMS

1. Purchase Orders Between \$2,500 and \$15,000.

The agenda and supporting documents are posted on the City's website at www.kenai.city. Copies of resolutions and ordinances are available at the City Clerk's Office or outside the Council Chamber prior to the meeting. For additional information, please contact the City Clerk's Office at 907-283-8231.

Join Zoom Meeting

<https://us02web.zoom.us/j/81429001838>

Meeting ID: 814 2900 1838 **Password:** 402645

OR

Dial in by your Location: (253) 215-8782 or (301) 715-8592

Meeting ID: 814 2900 1838 **Password:** 402645

File Attachments for Item:

2. Kenai Peninsula Borough



Plat Committee Action Agenda

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

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

Paulette Bokenko-Carluccio – City of Seldovia • Cindy Ecklund – City of Seward

Robert Ruffner – Kasilof/Clam Gulch • Paul Whitney – City of Soldotna

Alternate: Franco Venuti – City of Homer

**May 26, 2020
5:30 p.m.**

Due to the current COVID-19 pandemic and CDC guidelines, the meeting will not be physically open to the public. The meeting will be held through Zoom. The Planning Commission and staff members will be attending via teleconferencing. The public will be able to listen or participate. To join the meeting from a computer visit <https://zoom.us/j/2084259541>. To attend the Zoom meeting by telephone call toll free **1-888-788-0099** or **1-877-853-5247**. When calling in you will need the Meeting ID **208 425 9541**. If you connect by computer and do not have speakers or a microphone, connect online and then select phone for audio. A box will come up with toll free numbers, the Meeting ID, and your participant number. Detailed instructions will be posted on the Planning Commission's webpage prior to the meeting. <https://www.kpb.us/planning-dept/planning-commission>.

The hearing procedure for the Plat Committee public hearings are as follows:

- 1) Staff will present a report and staff recommendations on the item.
- 2) The Chair will ask for petitioner's presentation given by Petitioner(s) / Applicant (s) or their representative – 10 minutes
- 3) Public testimony on the issue. – 5 minutes
- 4) After testimony is completed, the Plat Committee may follow with questions. A person may only testify once on an issue unless questioned by the Plat Committee.
- 5) Staff may respond to any testimony given and the Committee may ask staff questions.
- 6) Rebuttal by the Petitioner(s) / Applicant(s) to rebut evidence or provide clarification but should not present new testimony or evidence.
- 7) The Chair closes the hearing and no further public comment will be heard.
- 8) The Chair entertains a motion and the Committee deliberates and makes a decision.

All those wishing to testify must wait for recognition by the Chair. Each person that testifies must write his or her name and mailing address on the sign-in sheet located by the microphone provided for public comment. They must begin by stating their name and address for the record at the microphone. All questions will be directed to the Chair. Testimony must be kept to the subject at hand and shall not deal with personalities. Decorum must be maintained at all times and all testifiers shall be treated with respect.

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA, EXCUSED ABSENCES, AND MINUTES

1. Agenda
2. Member/Alternate Excused Absences
3. Minutes
 - a. April 27, 2020 Plat Committee Meeting
 - b.

Motion to approve the agenda, excused absences, and minutes passed by unanimous consent

D. PUBLIC COMMENT

(Items other than those appearing on the agenda or not scheduled for public hearing. Limited to five minutes per speaker unless previous arrangements are made.)

E. SUBDIVISION PLAT PUBLIC HEARINGS

1. Betty Goodrich Churchill Meadows
KPB File 2020-020R1; [McLane / Best, Buerge]
Location: off Kayeway Rd; Kalifornsky
Kalifornsky APC

Motion to grant preliminary approval based on staff recommendations and compliance with borough code passed by unanimous consent.

2. Camelot by the Sea 2019 Replat
KPB File 2020-032; [Lang & Associates / Turnbull]
Location: off Camelot Dr. & Wizard Ave.; Bear Creek

Motion to grant preliminary approval based on staff recommendations and compliance with borough code passed by unanimous consent.

3. Cranewings No. 4
KPB File 2020-041; [Geovera / Artz]
Location: off East End Rd., Seaside Farm Dr. & Cranewings Ct., Homer

Motion to grant preliminary approval based on staff recommendations and compliance with borough code passed by unanimous consent.

4. East Ridge Subdivision Reilly Addition
KPB File 2020-039; [Peninsula Surveying / Reilly]
Location: Off Mosey Along Rd. & Kalifornsky Beach Rd.; Kalifornsky
Kalifornsky APC

Motion to grant preliminary approval based on staff recommendations and compliance with borough code passed by unanimous consent

Motion to grant the exception request to KPB 20.30.030 Proposed street layout and KPB 20.30.170 block length passed by unanimous consent.

Motion to grant the exception request to KPB 20.30.230 Double frontage prohibited on Lots 3 & 4 passed by unanimous consent.

5. General Aviation Apron Tract A Replat
KPB File 2020-038; [Segesser / City of Kenai]
Location: off N. Willow St. & Granite Point St.; Kenai

Motion to grant preliminary approval based on staff recommendations and compliance with borough code passed by unanimous consent

6. Grant Fritz Subdivision No. 5
KPB File 2020-042; [Johnson / Fitz III, Blossom]
Location: Off Moose Head St.; Kasilof

Motion to grant preliminary approval based on staff recommendations and compliance with borough code passed by unanimous consent

Motion to grant the exception request to KPB 20.30.030 Proposed street layout and KPB 20.30.170 block length, for Marina Ave passed by unanimous consent.

Motion to grant the exception request to KPB 20.30.030 Proposed street layout requirements & KPB 20.30.120 Street width requirement for Moosehead St. passed by unanimous consent.

7. Inglima Tracts 2019 Replat
 KPB File 2019-139; [Geovera / Drake, Gallios]
 Location: off Old Sterling Hwy., Appleberry St., Mossberry St.
 Anchor Point APC

Motion to grant preliminary approval based on staff recommendations and compliance with borough code passed by unanimous consent

8. Kristine Subdivision No. 1
 KPB File 2020-037; [McLane / Ambrose, Estate of Donald Fredrickson]
 Location: on Bridge Access Rd.; Kenai

Motion to grant preliminary approval based on staff recommendations and compliance with borough code passed by unanimous consent

9. Team Shredder Subdivision
 KPB File 2020-040; [Peninsula Surveying / Phillips]
 Location: off Rust Ave. & Woohead St.; Ninilchik

Motion to grant preliminary approval based on staff recommendations and compliance with borough code passed by unanimous consent

Motion to grant the exception requested to KPB 20.40 Wastewater review for Lots 1 & 2 passed by unanimous consent.

10. Voznesenka 2020
 KPB File 2020-016R1; [Ability / Basargin, Voznesenka Community Council Inc.]
 Location: off East End Rd. & Thereses Ln.; Fox River
 Kachemak APC

Motion to grant preliminary approval based on staff recommendations and compliance with borough code passed by unanimous consent

F. FINAL SUBDIVISION PLAT PUBLIC HEARING - None

G. OTHER / NEW BUSINESS

H. MISCELLANEOUS INFORMATION – NO ACTION REQUIRED

I. ADJOURNMENT

NEXT REGULARLY SCHEDULED MEETING

June 22, 2020
 5:30 P.M.

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building
 144 N. Binkley St.
 Soldotna, Alaska 99669

CONTACT INFORMATION

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Phone: 907-714-2215 (toll free within the Borough 1-800-478-4441, extension 2215)

Fax: 907-714-2378

e-mail address: planning@kpb.us

website: <http://www.kpb.us/planning-dept/planning-home>

An interested party may request that the Planning Commission review a decision of the Plat Committee by filing a written request within 10 days of the written notice of decision in accordance with KPB 2.40.080.



Planning Commission Tentative Agenda

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2215 • (907) 714-2378 Fax

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

Max J. Best, Planning Director • Charlie Pierce, Borough Mayor

*Blair Martin, Chairman – Kalifornsky Beach • Robert Ruffner, Vice Chairman – Kasilof/Clam Gulch
Dr. Rick Foster, Parliamentarian – Southwest Borough • Syverine Abrahamson-Bentz – Anchor Point/Ninilchik
Jeremy Brantley – Sterling • Paulette Bokenko-Carluccio – City of Seldovia • Cindy Ecklund – City of Seward
Robert F. Ernst – Northwest Borough • Diane Fikes – City of Kenai • Virginia Morgan – East Peninsula
Franco Venuti – City of Homer • Paul Whitney – City of Soldotna*

June 8, 2020

7:30 p.m.

Due to the current COVID-19 pandemic and CDC guidelines, the meeting will not be physically open to the public. The meeting will be held through Zoom. The Planning Commission and staff members will be attending via teleconferencing. The public will be able to listen or participate. To join the meeting from a computer visit <https://zoom.us/j/2084259541>. To attend the Zoom meeting by telephone call toll free **1-888-788-0099** or **1-877-853-5247**. When calling in you will need the Meeting ID **208 425 9541**. If you connect by computer and do not have speakers or a microphone, connect online and then select phone for audio. A box will come up with toll free numbers, the Meeting ID, and your participant number. Detailed instructions will be posted on the Planning Commission's webpage prior to the meeting. <https://www.kpb.us/planning-dept/planning-commission>.

The hearing procedure for the Planning Commission public hearings are as follows:

- 1) Staff will present a report and staff recommendations on the item.
- 2) The Chair will ask for petitioner's presentation given by Petitioner(s) / Applicant (s) or their representative – 10 minutes
- 3) Public testimony on the issue. – 5 minutes
- 4) After testimony is completed, the Planning Commission may follow with questions. A person may only testify once on an issue unless questioned by the Planning Commission.
- 5) Rebuttal by the Petitioner(s) / Applicant(s) to rebut evidence or provide clarification but should not present new testimony or evidence.
- 6) The Chair closes the hearing and no further public comment will be heard.
- 7) The Chair entertains a motion and the Commission deliberates and makes a decision.

All those wishing to testify must wait for recognition by the Chair. Each person that testifies must write his or her name and mailing address on the sign-in sheet located by the microphone provided for public comment. They must begin by stating their name and address for the record at the microphone. All questions will be directed to the Chair. Testimony must be kept to the subject at hand and shall not deal with personalities. Decorum must be maintained at all times and all testifiers shall be treated with respect.

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF CONSENT AND REGULAR AGENDA

All items marked with an asterisk (*) are consent agenda items. Consent agenda items are considered routine and non-controversial by the Planning Commission and will be approved by one motion. There will be no separate discussion of consent agenda items unless a Planning Commissioner so requests in which case the item will be removed from the consent agenda and considered in its normal sequence on the regular agenda.

If you wish to comment on a consent agenda item or a regular agenda item other than a public hearing, please advise the recording secretary before the meeting begins, and she will inform the

Chairman of your wish to comment.

- *1. Time Extension Request**
 - a. Christensen Tracts 2009 Addition
 KPB File 2010-024; [None/Hough]
 Location: City of Homer
- *2. Planning Commission Resolutions - None**
- *3. Plats Granted Administrative Approval**
- *4. Plats Granted Final Approval (20.10.040) - None**
- *5. Plat Amendment Request - None**
- *6. Utility Easement Vacations**
- *7. Commissioner Excused Absences**
 - a. Dr. Rick Foster, Southwest Borough
 - b. Vacant, Ridgeway
- *8. Minutes**
 - a. May 11, 2020 Planning Commission Meeting

D. UNFINISHED BUSINESS

E. PUBLIC HEARINGS

1. Vacate approximately 200-foot-long Wild Salmon Way cul-de-sac adjacent to lots 1-A, 2-A, 14-A & 15-A Ninilchik River Estate Addition No. 1 (HM 91-71); KPB File: 2020-043V; Petitioners: Bruce & Charlene Mclean Living Trust of Soldotna, AK and Christina M. Hoffman
2. Ordinance 2020-025: Establishing the Resilience & Security Advisory Commission for the Kenai Peninsula Borough
3. Ordinance 2020-0_: Authorizing cooperative leases of space at the Kenai River Center building with the State of Alaska Departments of Fish & Game and Natural Resources
4. Application for a retail marijuana store license in the Kalifornsky area; Applicant: Alaska Harvest Company LLC, KPB Parcel Number: 055-160-35; Location: 43837 Kalifornsky Beach Road, Soldotna, AK 99669
5. Application for a retail marijuana store license in the Ninilchik area; Applicant Alaskan Grown Cannabis; KPB Parcel Number: 157-200-13; Location: 14477 Sterling Hwy., Ninilchik, AK 99639

F. ANADROMOUS WATERS HABITAT PROTECTION DISTRICT (21.18) PUBLIC HEARINGS

- 1. Resolution 2020-13; Conditional Use Permit for the installation of an elevated, light-penetration platform within the 50-foot Habitat Protection District of the Kenai River; KPB Parcel Numbers: 055-253-13 & 055-255-47; Applicant Castaway Cove Homer Owners Association, Kenai, AK
- 2. Appeal of permit application denial to install a 16-foot by 130-foot boat ramp in the Borough's 50-foot Habitat Protection District of the Kenai River; KPB Parcel Number: 047-057-03; Applicant: E&E Food, dba Pacific Star Seafoods, P.O. Box 190, Kenai, AK 99611

G. UTILITY EASEMENT VACATIONS – None

H. SPECIAL CONSIDERATIONS – None

I. SUBDIVISION PLAT PUBLIC HEARINGS

- a. The Plat Committee reviewed and approved 10 plats at the May 26, 2020 meeting.

J. PUBLIC COMMENT/PRESENTATIONS/COMMISSIONERS

(Items other than those appearing on the agenda or scheduled for public hearing. Limited to five minutes per speaker unless previous arrangements are made.)

K. OTHER/NEW BUSINESS

- 1. KPB Comprehensive Plan Discussion
Focus Area: Commercial Fishing & Seafood
- 2. New Plat Committee (July, August, September) – 5 Members / 2 Alternates

L. ASSEMBLY COMMENTS

M. LEGAL REPRESENTATIVE COMMENTS

N. DIRECTOR'S COMMENTS

O. COMMISSIONER COMMENTS

P. PENDING ITEMS FOR FUTURE ACTION

Q. ADJOURNMENT

**MISCELLANEOUS INFORMATIONAL ITEMS
NO ACTION REQUIRED**

NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING

June 8, 2020
7:30 P.M.

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building
144 N. Binkley St. Soldotna, Alaska

ADVISORY PLANNING COMMISSION MEETINGS

Due to the current COVID-19 pandemic and CDC guidelines, the meeting will not be physically open to the public. The meeting will be held through Zoom. Please see the area Advisory Planning Commission webpage for meeting details. Advisory Planning Commission webpages are linked to the Planning Department website <https://www.kpb.us/planning-dept/planning-home> .

ADVISORY COMMISSION	MEETING LOCATION	DATE	TIME
Anchor Point	Anchor Point Senior Center	TBD	7:00 p.m.
Cooper Landing	Cooper Landing Community Hall	TBD	6:00 p.m.
Funny River	Funny River Community Center	TBD	6:00 p.m.
Kalifornsky	Cook Inlet Aquaculture Association	TBD	6:00 p.m.
Moose Pass	Moose Pass Community Hall	TBD	6:30 p.m.
Hope / Sunrise	Hope Social Hall	TBD	6:00 p.m.
Kachemak Bay	Zoom Meeting	TBD	6:00 p.m.

NOTE: Advisory planning commission meetings are subject to change. Please verify the meeting date, location, and time with the advisory planning commission chairperson. Chairperson contact information is on each advisory planning commission website, which is linked to the Planning Department website.

CONTACT INFORMATION

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Phone: 907-714-2215 (toll free within the Borough 1-800-478-4441, extension 2215)

Fax: 907-714-2378

e-mail address: planning@kpb.us

website: <http://www.kpb.us/planning-dept/planning-home>

A party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances. An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the filing and records preparation fees.

Vacations of right-of-ways, public areas, or public easements outside city limits cannot be made without the consent of the borough assembly. Vacations within city limits cannot be made without the consent of the city council. The assembly or 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 within the specified period, it shall be considered that consent was given.

A denial of a vacation is a final act for which the Kenai Peninsula Borough shall give no further consideration. Upon denial, 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.

File Attachments for Item:

Information on variances and variance standards

MEMORANDUM

TO: City of Kenai Planning and Zoning Commission
FROM: Elizabeth Appleby, City Planner
DATE: June 5, 2020
SUBJECT: **Informational Items on Variances**

Attached as informational items are some materials from the American Planning Association website on variances. Please review the attached documents I have listed below.

ATTACHMENTS

1. Salkin, Patricia E. 2012. "PAS Quicknotes No. 38: Zoning Ordinance Variances". American Planning Association's Planning Advisory Service (PAS).
2. Kendig, Lane. 2012. "Avoiding Idiotic Variances." *Zoning Practice*, 6.
3. Lovelady, Adam. 2014. "Coates' Canons Blog: Variance Standards: What is hardship? And when is it unnecessary?" University of North Carolina School of Government. <https://canons.sog.unc.edu/variance-standards-what-is-hardship-and-when-is-it-unnecessary/>

QUICKNOTES

Zoning Ordinance Variances

OVERVIEW

A variance is a form of administrative relief from zoning regulations. It allows for the construction of or change to a structure or land that is prohibited by a zoning ordinance. A variance is granted to render justice where the strict application of a zoning ordinance results in a hardship for a property owner. A hardship arises when highly unusual circumstances prevent a property owner from securing a reasonable return from or making a reasonable use of their property. Oddly shaped or sloping lots, for example, may make it difficult for a property owner to meet setback or height requirements. A granted variance stays with the land and passes to the next purchaser.

Zoning boards of appeal are delegated the authority to grant variances by state or municipal legislative bodies. The zoning boards are constrained by limitations on this power. For example, the board has no authority to determine the validity of the zoning law and must follow proper statutory procedures for granting variances. While the zoning boards are delegated a certain amount of discretion, they are usually directed by law to grant the minimum variance necessary and adequate to readdress the complained-of “hardship.” The board must consider any impact on the community and devise a solution to accommodate the applicant and the community.

TYPES OF VARIANCES

There are two types of variances: use and area. A use variance is requested when a zoning ordinance prohibits a particular use (e.g., a commercial building in a residential area). An area variance is requested if the zoning ordinance regulates a particular use (e.g., height restrictions). Eighteen states do not distinguish between use and area variances and instead set forth four basic common general criteria for granting variances: (1) the variance is not contrary to public interest; (2) there are special conditions pertaining to the parcel; (3) literal enforcement of the variance would result in unnecessary hardship; and (4) the spirit of the ordinance is observed and justice done.

Use Variances

Use variances should be difficult to obtain. In fact, 12 states prohibit zoning boards from approving use variances altogether. The rationale is that a legislative determination has been made that the proposed use is incompatible in the zoning district and therefore it can threaten adjacent land or the character of a neighborhood. This is why there is heightened scrutiny when reviewing request for relief from a legislative determination as to appropriate uses, and applicants typically have to prove that their hardship is unique and not likely to be experienced by nearby property owners. If a critical mass of property owners in the same locale start requesting use variances, the more appropriate remedy may be consideration of a rezoning.

The granting of a use variance usually requires that the applicant show unnecessary hardship. Establishing such hardship typically requires proving that the land in question cannot realize a reasonable return, that the hardship relates to circumstances unique to the parcel of land, and that granting of the variance would not adversely affect the neighborhood. Each element of the unnecessary hardship test in a particular jurisdiction must be satisfied for a variance to be granted. Some jurisdictions use the terms “undue hardship” or “unusual hardship” to refer to their specific test. There seems to be no substantive difference in the requirements. While there is some variation on how to establish the elements depending on the jurisdiction, the basic formulation of the test is similar.

A variance is granted to render justice where the strict application of a zoning ordinance results in a hardship for a property owner.



American Planning Association

Making Great Communities Happen

Area Variances

It is typically easier to obtain an area variance than a use variance. The test applied is usually “practical difficulties,” used in three ways: (1) synonymously with “unnecessary hardship”; (2) to denote a version of the “unnecessary hardship” standard where the standard of proof for the elements is relaxed—this standard probably represents the most common usage of the term, “practical difficulties”; and (3) to describe a balancing test where various factors are weighed against one another. Many factors are considered and under this type of standard, typically no factor outweighs the others in determining whether the variance should be granted. Rather, the benefit to the applicant is weighed against the potential negative effects granting the variances would have for each factor.

Among the factors considered in most typical variations of the balancing standard are: (1) whether the property in question has any beneficial use without the variance; (2) whether the variance is substantial; (3) whether the essential character of the neighborhood would be substantially altered or whether adjoining property would suffer detriment if the variance were granted; (4) whether the difficulty was self-created; (5) whether there are alternative means to obviate the owner’s predicament; and (6) whether the spirit of the ordinance can be observed and substantial justice done by granting a variance.

CONDITIONS ON VARIANCES

Where recognized, zoning boards of appeal may attach conditions to a variance. Conditions must be used to reduce any adverse impacts of the land use, such as protecting nearby property. Boards cannot impose conditions that are not rationally related to minimizing the adverse impacts of granting a variance. Boards must clearly state any conditions in its decision to grant a variance. Zoning boards may also impose time conditions. For example, a board can grant a limited variance that will lapse if not acted upon within a specified time. They may not, however, limit a variance to the period of the applicant’s ownership since variances run with the land.

ALTERNATIVES TO VARIANCES

In some instances, a rezoning may be more appropriate than a use variance. If the use is deemed appropriate in the zoning district, then the community should evaluate whether the use should be permitted by right or as a conditional use in that district. Permitting a use with conditions (also known as special uses or special exception uses) allows the local planning commission, zoning board, or city council to impose additional standards to ensure compatibility and can minimize the need for use variances.

Numerous requests for area variances in a specific zoning district may indicate that there is a poor fit between the dimensional standards for a particular zoning district and the existing building stock. This mismatch means that the district has a high number of nonconforming structures. In some cases the municipality may be actively trying to promote a transition to a different development pattern. In other cases, this mismatch reflects an outdated goal to recreate suburban development patterns in traditional urban neighborhoods. In the latter case the easiest way to avoid excessive area variance requests is to amend the district standards to match the historic fabric of the neighborhood.

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Avoiding Idiotic Variances

By Lane Kendig

The drafters of the first zoning ordinances felt it was legally essential to provide a variance procedure to deal with unique circumstances that render a lot unbuildable.

All photos and diagrams by Lane Kendig



➡ Because these town houses have a variety of unit configurations, many communities would require variances before approving the project.

For example, an existing lot might have a small ravine on it, making it impossible to locate a home within the required setbacks. The ravine was a unique condition that differed from the conditions on neighboring lots and a variance could allow for a relaxation of the setbacks to make the lot buildable.

All state enabling laws delegate the power to grant variances to a zoning board or board of appeals (comprised either of elected or appointed officials). These state laws generally include criteria that should

be met in granting a variance. Some common ones are:

- There is a special condition on the site not present on other properties in the district.
- A literal enforcement of the provisions will result in unnecessary hardship.
- The condition is not self created.
- A strict interpretation would prevent the owner from enjoying the same rights as others in the district.

- A variance would not create a special privilege for the land owner.

The variance was an excellent tool for big cities where streets and blocks were often platted in advance of development and before the adoption of zoning. The initial intent of the variance was to grant relief to an existing lot that was rendered unbuildable, but planning and zoning objectives have expanded greatly since the first zoning codes. Consequently, there is now a second class of variances that develop-

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About the Author

Lane Kendig is the founder and former president of Kendig Keast Collaborative. He has been practicing and writing about the relationship between community design planning and regulatory tools for more than 40 years. In addition to the recent books *Community Character* and its companion, *A Guide to Planning with Community Character*, Kendig is the author of *Performance Zoning* and the PAS reports *Too Big, Boring, or Ugly*; *Traffic Sheds*, *Rural Highway Capacity*, and *Growth Management*; and *Performance Standards for Non-Residential Uses*.

ers seek because standards in the code do not permit a creative solution to laying out the development or result in the loss of lots or increased costs. A third class of variance applies to a whole series of controls in the zoning—none of which render a site unbuildable—that simply frustrate a developer’s attempt to build a different type of community. For example, in some communities developers might have to obtain more than a dozen variances to build a cluster subdivision, planned unit development (PUD), or a rural hamlet. Yet another class of variances is attributable to code amendments that create a host of nonconforming uses. These last three classes are foolish, or idiotic, variances because good planning is frustrated by the ordinance.

Unfortunately, the administration of variance requests in many communities can also be described as idiotic. It is not unusual for communities to grant 70 to 95 percent of all variance requests. When nearly every variance for a larger sign, enclosed porch, or reduced setback is granted, then it is foolish to force owners to go through the variance process. This means zoning boards are either ignorant of or not following the local zoning code and variance criteria established by state statute.

Leaving aside the possibility that zoning board members are incompetent, why is this happening? One reason is that zoning boards see themselves as problem solvers for the residents. In small communities this may be a “help your neighbor” attitude. In other cases zoning board members may not understand the role of their quasi-judicial body. In older cities it may simply

be a desire not to impede reinvestment. Too few communities use a hearing officer to create a truly quasi-judicial process, and there is rarely a review of the zoning board’s performance.

Planners often share the blame. For example, some planners fail to strongly recommend denial in staff reports when an application fails to meet the criteria. There are many communities where staff never makes recommendations. In the absence of strong recommendations it is easy for zoning boards to grant variances. Furthermore, many variances are the result of poorly written or obsolete codes. Citizens are left to muddle through the zoning board instead of planners proposing code amendments to fix the code and eliminate the need for a variance. If there are many approved variances to a specific provision, it is irresponsible not to amend the code.

The last reason for the idiotic variance is rigidity. The first zoning codes used a minimum lot size combined with setbacks from front, side, and rear property boundaries to control character. Over the last nearly 100 years, designers developed more creative approaches to development: cluster, PUD, mixed use, and traditional neighborhood design. Unfortunately, zoning has not kept up and Euclidean provisions remain the dominant form of ordinance.

In an attempt to provide flexibility, communities introduced conditional approval processes instead of writing flexible standards. In many codes there is a specific enumeration of variances required for cluster or planned development options. The problem with this approach is that it is pro-

cedural and does not address the underlying inflexibility and rigidity. Worse, the approval process quickly became a battleground between developers seeking flexibility and NIMBYists who would prefer no development. While new urbanists decry the failure of Euclidean zoning to permit mixed use and traditional designs, form-based codes are rigid too in their street design, setbacks, requirements for porches and fences, and architectural detailing.

THE SOLUTION

The tongue-in-cheek solution is to permit “idiot variances” when the code is foolish as applied or if it stifles creativity. The reality is this would exacerbate the problem. It is unconscionable for a community to force its citizens to seek a variance (at considerable time, effort, and expense) when relief is nearly always granted. The solution is to reduce the need for variances to a few unique conditions. The discussion in the following sections details various approaches that eliminate the need for a variance to be requested.

Annual Review

One simple procedural means of eliminating improper variance approvals is an annual review. At the end of the year all approved variances would be submitted to the elected officials for review. The staff would prepare a report as to whether the approvals conformed to the required standards. In the case of the municipality that approved numerous sign-size variations, the elected officials could indicate to the zoning board that their actions were either improper—



➡ This mix of single- and two-family homes in Serenbe Hamlet (Chattahoochee Hill Country, Georgia) shows how flexible standards can encourage high-quality design.

directing them not to approve similar requests, or proper—directing staff to change the maximum sign size. Either of the actions should eliminate the need for variances.

Neighborhood Conservation Districts

In cities and counties with a long development history, many subdivisions are nonconforming. Often the problem arose because areas were platted before zoning or because the zoning was changed. The problem of nonconforming residential lots is best addressed by creating a neighborhood conservation (NC) district that matches existing conditions. The NC district is applied to existing developed areas that were built to different standards than current districts, and no unplatted land may be zoned NC.

An example of the problem was a community that 20 years previously had changed the frontage requirement for their 5,000-square-foot lots from 50 to 60 feet. The result was that nearly half the homes in the zone were nonconforming, requiring many home owners to seek variances. This was corrected by creating two neighborhood conservation districts, an NC5n (narrow) and an NC5w (wide). The zoning map was revised to place all 5,000-square-foot lots in the proper class. The result was that

the existing 5,000-square-foot district was eliminated and the map revised so that all the nonconforming narrow lots became conforming. Since these are residential districts, all single-family NC districts can be treated as one with a single-use table entry and lot requirements in tabular form for each district.

The problem of nonconforming residential lots is best addressed by creating a neighborhood conservation (NC) district that matches existing conditions.

The NC district works very well when the nonconforming areas are entire developments or blocks, and in most municipalities or counties this will be the case. Occasionally single-family lot size may vary within the block or development, which would require parcel-by-parcel mapping that would be tremendously costly and prone to error. A different approach can be used for these types of areas. All such areas would be NC single family with a table showing ranges of lot sizes, with a setback related to each range. Thus, the table might show 20

to 25-, 26 to 30-, 31 to 35-, 36 to 40-, and 41 to 49-foot lot widths. The result of these two approaches is that all, or nearly all, existing lots become conforming, eliminating the need for a variance. Where setbacks of existing homes are not uniform, the community can use setback averaging to eliminate the need to request a variance.

Limited Uses

Limited uses are uses permitted by right, provided they meet specific performance criteria. The performance criteria could be location, history, design, or other factors. For example, in many older cities sizeable areas were developed in the 1920s through 1950s with single-family homes, even though the zoning permitted duplexes or multifamily buildings. Decades later, developers saw opportunities to replace single-family homes in these aging neighborhoods with permitted duplexes or

apartments. Predictably, residents often objected that the redevelopment was inconsistent with the character of their neighborhood. While downzoning is a logical response, all existing higher-intensity uses would then become nonconforming. This was a problem for about 25 percent of such areas. However, if the downzoned district permits duplexes or apartments as limited uses, provided they existed on the date of the downzoning all existing units remain conforming uses and can be remodeled or rebuilt. This approach increases the likelihood that residents will accept the existing units, while preventing teardowns that change neighborhood character.

A similar approach can be used to address corner stores, restaurants, or even bars that existed prior to the zoning and have continued as nonconforming uses. Despite the convenience these uses provide to residents, their value has depreciated because of the nonconforming status. Corner stores are a particular problem because it is difficult to convert the ground floor to residential use. As a consequence, they sit vacant, or the lower floor is abandoned, creating an eyesore. All of these uses could be made limited uses in the district, with conditions that the buildings not only had to be built prior to a specific date, but that they also had to have been built for commercial use. For some uses such as restaurants or bars, additional criteria could be added to prevent a neighborhood-serving use from becoming a regional use involving late-night music or street activity. In this strategy the neighborhood is protected from the introduction of high-intensity commercial uses or nuisances while still permitting local commercial services. If formerly nonconforming uses can invest in improvements, it enhances the value of the neighborhood.

Mitigation

In theory nonconforming uses are supposed to disappear. In fact, nonconformities may continue for decades. When this happens, the nonconforming use often declines in value and appearance because the owner is unable to obtain financing for improvements. For this reason, communities should allow for conditional approvals to provide a means of mitigating nonconforming uses. A landowner can apply for mitigation via a conditional use. This requires a hearing to be held to examine the current effects of the use and to recommend improvements to make the use a better neighbor.

Converting a nonconforming use to a conditional use can remove the cloud that discourages investment and maintenance while protecting the neighbors. An example of this is a tire store on an arterial highway in a residentially zoned neighborhood. It has been nonconforming for decades and remains a viable business. For most residents, who have lived with it for years, the store is only a minor nuisance. The conditional use process would allow the owner to propose expansion of the use while providing things like screening walls or landscaping, facade renovation, or ensuring that tire work occurs indoors. Subject to a hearing that allows the neighborhood to review the proposal and suggest mitigation measures that improve the neighborhood, a conditional use permit can be issued.

ADDING FLEXIBILITY

Why are codes so rigid? First, mandating specific lot area, frontage, use, and other standards is easy to write or illustrate in drawings. No thought needs to be given to a problem with a particular property or to conflicting goals. One-dimensional thinking is easier than systemic thinking. As soon as one identifies a series of objectives that zoning is supposed to address, one needs to understand how all elements of design interact. Secondly, there is complexity associated with flexibility. If something is a problem, it is easier to throw the baby out with the bathwater than to write a section that identifies exceptions to a prohibition and rules governing permitting the design to be used. There are two basic approaches to dealing with rigidity: providing targeted flexibility and providing general flexibility.

Targeted Flexibility Using Modulation

As an alternate to variances or conditional uses, modulation is a tool that can address most flexibility issues. A great many regulations are written to eliminate a specific problem, by prohibiting the use of a design element or setting a limit. Unfortunately, this may mean prohibiting something that, while generally undesirable, can be a valuable tool in specific conditions. Providing flexibility requires looking beyond a specific problem and determining where or when the tool might be useful. Modulation provides staff with rules that permit modulation of the standards without having to appear before the zoning board.

For example, developers used flag lots in the past to avoid building a street. In extreme cases there may be two rows of lots

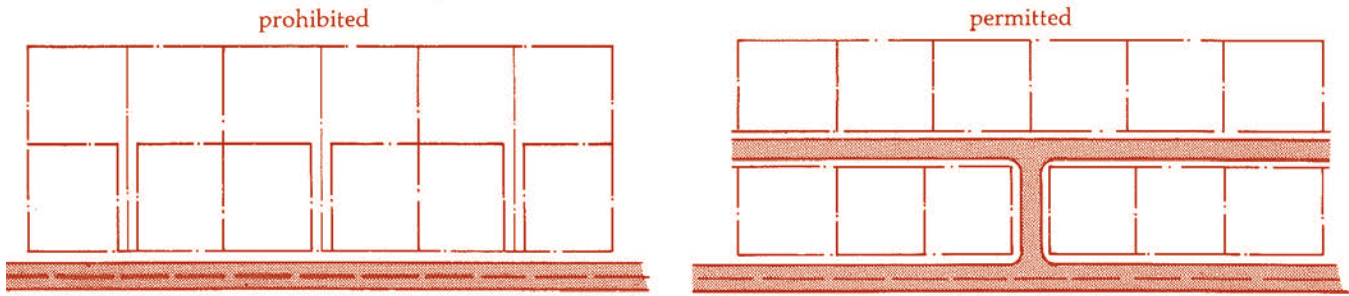
taking access off a street, resulting in numerous additional curb cuts and potential hazards. Consequently, most ordinances prohibit them. However, there are several situations where flag lots actually could result in better planning. As noted above, it is cumbersome and complex to write a series of exceptions to the prohibition. A better solution is a modulation article containing the conditions where the rules can specifically be relaxed, eliminating the need for a variance. Two exceptions illustrate the point. A flag lot that eliminated access on a collector road would be desirable. Another case would be using a shorter cul-de-sac with flag lots accessing several lots to reduce the disturbance of a wooded area created by a longer cul-de-sac.

A modulation chapter allows for simple base regulations while providing more complex rules in another article that is only used by those needing them. Rigid limits on block, cul-de-sac, or town house group length, or prohibitions on trapezoidal lots, are examples of regulations where flexibility is desirable. The key is providing staff with specific rules for the granting or denying of the modulation. Thus the areas of flexibility are pre-identified as are the rules for granting the flexibility.

Targeted Flexibility Using Pattern Books

Because poor design may make a unit undesirable, a means of permitting good design while avoiding the undesirable is important. For example, to avoid the monotony of row houses, communities often require facade offsets. Unfortunately, the same pattern of setbacks repeated on 100 or more units is equally monotonous. The uniformity of front setbacks makes great sense in cities where blocks are platted and uniformity is desirable. However, for hamlet, village, small traditional neighborhood, or estate developments this can be a severe design restriction. A pattern book includes the site plan but also all the essential design elements, building types, lot standards, setback, facades, and all the design details. It is akin to a final planned development approval in that it locks the developer into building what has been shown in the pattern book submission.

The conditional approval process used by most local governments includes review criteria that have nothing to do with design. Worse, they introduce nondesign issues into the approval process, most of which can be used to deny the approval, lower density, or otherwise frustrate a good design. The



➡ Without carefully written standards, developers may use flag lots to avoid building new roads.

approval of the pattern book addresses the value of the modulation in achieving a superior design. While a single front yard setback makes sense in a large urban area, in a small hamlet or a traditional mixed use neighborhood decreasing setbacks as lots approach the center is one design technique to emphasize the pedestrian-oriented nature of the center. The modulation article should provide for approval of the pattern book-controlled modulation where it creates a desirable design, and the approval criteria should be limited to design considerations. When the regulations prohibit modulation to modify density, land use, and height, many common concerns of citizens at conditional use hearings are taken off the table. Also, limiting modulation to interior lots ameliorates the concerns of citizens worried about impacts on the character of adjoining development.

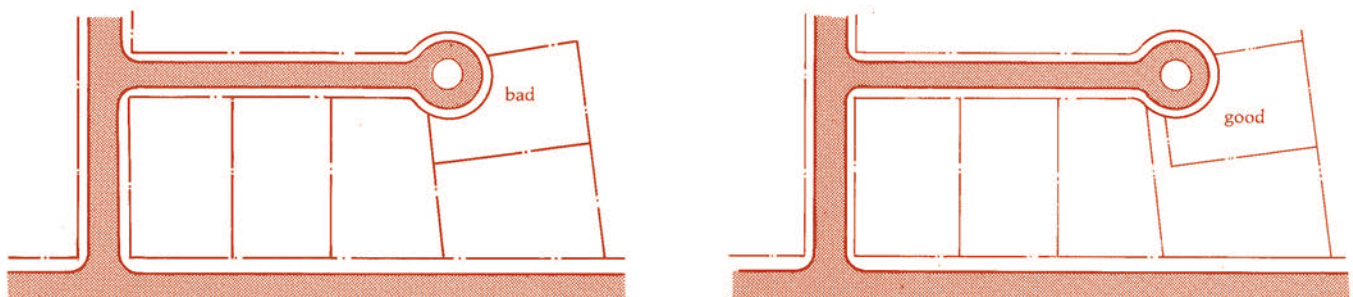
General Flexibility Permitting All Development Forms

Euclidian zoning is very inflexible. Other approaches like clustering, planned developments, traditional neighborhood development, and mixed uses have all been found to be more desirable forms of development. In some states this finding is included in the statutes. Despite this, alternative development patterns are often forced to seek conditional approvals. In the 1960s, when clustering and planned

The modulation article should provide for approval of the pattern book-controlled modulation where it creates a desirable design, and the approval criteria should be limited to design considerations.

developments were new and planners had no experience with them, the conditional approval made sense. But now it makes no sense for a better design form to have to go through a lengthy, costly, and uncertain process.

Communities can provide general flexibility by adopting ordinances that are designed to allow a developer multiple ways of meeting the standards of a district. For residential areas, all dwelling unit types should be permitted in the district subject to meeting density, open space, or design standards to protect the character of the district and to encourage traditional neighborhood, planned, and cluster developments. Permitting all dwelling units eliminates the exclusionary nature of many zoning districts. Development forms such as clustering, planned and traditional neighborhood, and mixed use should be permitted as a matter of right. The zoning standards would still regulate district intensity through density, open space, use mix, scale, average and maximum height, and form requirements. These basic controls are essential to ensure the design intent or character is met. Street width can be varied with general rules that address traffic volumes on the street, unit frontage, and parking needs. Quality should be addressed by sign and other controls that address quality of design by setting high standards that should not be modulated. Landscape can be addressed



➡ With targeted flexibility, communities can permit flag lots only in special cases, such as when a flag lot would eliminate lot access from a collector road.



➡ Communities can use general flexibility to encourage residential clustering by offering increasing density with increasing levels of clustering.

with flexible tools that describe the degree of opacity of the vegetation that is to be required, allowing the landscape architect flexibility in choosing the plant material to achieve the desired result.

Design Rules for Special Cases

There are relatively unique development forms like hamlets, villages, transit-oriented development, or new (very large) new communities where specific design standards are needed over and above density and other controls. For example, a hamlet or village needs a center where commercial and the highest intensities are located, perhaps an employment area for industrial uses, interior open space, provisions for a rural buffer, and setbacks from other developments. These design rules should be included in a modulation or a design article. The rules should be highly generalized, using ranges and illustrations so as not to force a rigid template. Pattern book approval allows a designer freedom to work site constraints and the forms of development in a design review.

CONCLUSION

The excessive use of variances, in conflict with state enabling legislation or through poor planning and zoning, is very costly. The

general solution is to eliminate the need for variances. This can be accomplished by providing a legal path for transitioning existing nonconforming uses to conditional uses and by adopting zoning standards that acknowledge historic development patterns and permit both targeted and general flexibility. All of the tools above can be used in

combination to virtually eliminate the need for a variance. In small communities it should be rare to even have variance request. In larger cities and counties a combination of these rules should also make legitimate variances rare. When variances are necessary, a professional hearing examiner should hold a quasi-judicial hearing for each request.

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DOES YOUR COMMUNITY HAVE A VARIANCE PROBLEM?

6

Coates' Canons Blog: Variance Standards: What is hardship? And when is it unnecessary?

By Adam Lovelady

Article: <https://canons.sog.unc.edu/variance-standards-what-is-hardship-and-when-is-it-unnecessary/>

This entry was posted on May 27, 2014 and is filed under Land Use & Code Enforcement, Quasi-Judicial Decisions, Zoning

Generally, development regulations like zoning and subdivision standards apply equally to all properties. But sometimes a particular property is unfairly burdened by the general rules, creating an unnecessary hardship for the owner. The general statutes authorize the local board of adjustment to grant a variance from the rules in those limited circumstances. But what is an unnecessary hardship? Recent amendments to the state statute clarify what can (and what can't) qualify as unnecessary hardship. This blog explores those new standards.

General Statute section 160A-388(d) sets forth the standards for granting a zoning variance (The standards also may be applied to subdivision and other development regulation). These mandatory standards apply to zoning variances for all counties and municipalities in the state, and the new standards override any contrary ordinance provisions that may have been in place prior to 2013. For a summary of the other changes to the board of adjustment statute, see this blog from my colleague David Owens.

Under the new statute a board of adjustment *shall* vary the provisions of the zoning ordinance if strict application of the ordinance would create unnecessary hardship. In order to obtain the variance, the applicant must show all of the following:

- Unnecessary hardship would result from the strict application of the ordinance
- The hardship results from conditions that are peculiar to the property
- The hardship is not a self-created hardship

Additionally, the applicant must show that the variance will

- Be consistent with the intent of the ordinance
- Secure public safety
- Achieve substantial justice

Finally, the statute prohibits any use variance.

To be sure, a variance is not a free pass from regulations or a tool to subvert the zoning ordinances. In order to obtain a variance, the applicant bears the burden of providing competent, substantial and relevant evidence to convince the decision-making board that the property meets all of the statutory standards for a variance. Merely showing some hardship is insufficient.

Let's consider each of the standards in more detail.

Unnecessary Hardship from Strict Application

Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant for a variance must show *unnecessary* hardship. What is enough hardship? Unfortunately, there is no simple formula. It is determined on a case-by-case basis. That is why the board of adjustment holds a quasi-judicial hearing and considers the evidence presented.

The hardship must be more than mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. It is not enough for an applicant to say that development will cost more in order to comply. The applicant must show the substantial and undue nature of that additional cost as compared to others subject to the same restriction.

Under the old statutes, many jurisdictions applied a standard that the applicant must show that there is no reasonable use of the property without a variance. Under current statutes, that stringent standard is no longer allowed. A property owner can prove unnecessary hardship, even if the owner has some reasonable use of the property without the variance.

Peculiar to the Property

The unnecessary hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from location of the property, size or shape of the lot, or topography or water features on the site.

Imagine a lot that narrows dramatically toward the front yard and where the side yard setbacks prohibit the property owner from building an addition. The hardship (not being allowed to build an addition) flows from the strict application of the ordinance (the setback) and is peculiar to the property (because of the shape of the lot). A variance may be appropriate if the owner presents evidence to show she meets all of the standards.

By contrast, a variance is not the appropriate remedy for a condition or hardship that is shared by the neighborhood or the community as a whole. Consider that same narrowing lot. If all of the houses on the street shared that hardship, a variance would not be appropriate. Such conditions should be addressed through an ordinance amendment.

Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances. Bringing an elderly parent to live with the family, for example, is a change in personal circumstance, not a condition peculiar to the property.

The reverse is also true. An applicant's personal circumstances cannot be the basis for denying a variance. The board should consider the property, not the applicant's bank account and ability to cover the cost of the hardship. Moreover, the fact that the applicant owns property nearby is irrelevant to the consideration of whether this particular property deserves a variance (*Williams v. N.C. Dept. of Env. & Nat. Resources*, 144 N.C. App 479, 548 S.E. 2d 793 (2001))

Not Self-Created Hardship

You can't shoot yourself in the foot and then ask for a variance. The hardship must not result from actions taken by the applicant or property owner.

So what is self-created? Suppose a property owner sells part of a conforming lot and makes the remainder of the lot nonconforming. The hardship (limitations on the non-conforming lot) was self-created (by the owner selling the sliver off the parcel). The owner may not seek a variance for building on the substandard lot. Similarly, where an owner failed to seek zoning and building permits and then incorrectly placed foundation footings in the setback, the hardship is self-created. No variance is allowed. Ignorance of the law is no excuse.

What if the owner relied in good faith on seemingly valid surveys and obtained building permits? After construction began, a neighbor objected, citing a new survey and arguing that the foundation wall is within the setback. Is the owner's hardship self-imposed? Our North Carolina courts have held that hardships resulting from such good faith reliance on surveys and permits are eligible for a variance (*Turik v. Town of Surf City*, 182 N.C. App. 427, 642 S.E.2d 251 (2007)).

An important statutory provision applies here: "The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship." For example, if the original owner had a legitimate case for a variance, someone buying the lot from that owner would have the same legal position as the original owner. They could seek a variance. This rule aligns with the broader zoning concept that land-use permissions run with the land, and land-use decisions are based on the property and impacts of development, not based on the particular owner. Is this a loophole for an unscrupulous owner to overcome the limit on variances for self-created hardship by selling the property to a spouse or sham LLC? Maybe, but the requirement for substantial justice (discussed below) probably protects from someone gaming the system.

Restrictive covenants and other legal limitations *may* be a factor in determining hardship. Consider a property that has

limited development ability due to a privately-imposed covenant for a street setback and a publicly-imposed stream setback. Can the owner seek a variance from the public stream setback? The NC Court of Appeals—interpreting a specific local ordinance—found that the board should consider physical *and* legal conditions of the property, including restrictive covenants (*Chapel Hill Title & Abstract Co., Inc. v. Town of Chapel Hill*, 362 N.C. 649, 669 S.E.2d 286 (2008)).

Let me emphasize that covenants and other legal limitations *may* be a factor. In that case, the decision was based on the local ordinance, and the decision pre-dated the statutory variance standards. A self-imposed legal limitation—like an easement across a property that limits buildable area—that was created after a zoning ordinance limitation became effective, could be viewed as a self-imposed hardship so that no variance should be granted.

Ordinance Purpose, Public Safety, and Substantial Justice

In addition to those standards for “unnecessary hardship,” the statutory standard for granting a variance requires the applicant to show that “[t]he requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.”

Where an ordinance expresses a clear intent, a variance cannot subvert that intent. But, alternatively, a variance may help to give effect to the ordinance intent. In one North Carolina case, an applicant was seeking a variance to allow an additional sign at a secondary entrance. Among other things, the ordinance purpose was to provide “adequate and effective signage,” “prevent driver confusion,” and “allow for flexibility to meet individual needs for business identification.” The purpose, the court found, called for the flexibility that the applicant sought, and the variance was allowed. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 369, 713 S.E.2d 511, 515 (2011)).

The applicant also must show that the variance does not harm public safety. Even if an applicant met the standard for unnecessary hardship, a variance may be denied for public safety concerns. A property owner may prove an unnecessary hardship exists from limitations on on-site drives and parking for a commercial use. But, if neighbors presented expert evidence that the increased traffic and stormwater effects will harm public safety, the board may be justified in denying the variance.

Additionally, the statute requires the applicant to show that through the variance “substantial justice is achieved.” The concept of substantial justice raises issue of fairness for the community and neighbors. This concept echoes the requirement that hardship must be peculiar to the property—not shared by the community. If everyone bears this hardship, then one lucky person should not be relieved through a variance. Similarly, the justice standard draws upon a notion of precedence. Suppose Joe sought a variance last year and was denied. If Karl is seeking variance this year that is essentially the same request for a similar property, then the variance outcome should be the same.

The substantial justice standard also can play in favor of the applicant. If an applicant relies in good faith on a city permit, and that permit turned out to be wrongly issued, the applicant would have no vested rights in that mistakenly issued permit. Substantial justice might argue for allowing a variance for the applicant.

No Use Variance

North Carolina courts long ago established that use variances are not permitted, and that rule is now part of the statutory standards. If a land use is not permitted on the property, a variance cannot be used to, in effect, amend the ordinance and allow the use. If only single family residences are permitted in a district, a variance cannot permit a duplex (*Sherrill v. Town of Wrightsville Beach*, 76 N.C. App. 646, 334 S.E.2d 103 (1985)).

If the use is already permitted on the property, a variance to allow the expansion of the permitted use is permissible. So, for example, if a sign is permitted for a commercial property, a variance to permit an additional sign is allowable. It is an area variance, not a use variance. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 713 S.E.2d 511 (2011)).

Conclusion

Making decisions about variances is a hard job. How much hardship is enough hardship? Is justice being served? Does the variance preserve the spirit of the ordinance? Rarely are there clear answers for these questions. Seeking those



answers is the hard task of the board of adjustment. The applicant must present competent, material, and substantial evidence that they meet all of the standards. And the board must consider the issues on a case-by-case basis; they must weigh the evidence, apply the required statutory standards, and decide if a variance is warranted.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-388
- canons.sog.unc.edu/?p=7155