

Introduced by: Mayor
Date: 08/03/21
Hearing: 08/17/21
Action: Enacted as Amended
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-32**

**AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE AT FAIR MARKET
VALUE WITH EDWARD AND KATHLEEN MARTIN, DBA COZY INN, 702 LAWTON
DRIVE, KENAI, ALASKA FOR A PARKING AREA**

WHEREAS, Edward and Kathleen Martin are owners of Lots 1 & 2, Block 4, Inlet View Subdivision 1st Revision, Plat KN-1515 in the City of Kenai; and

WHEREAS, the Martins own and plan to operate Cozy Inn on the property in conjunction with a local construction academy job training program, to house the students; and

WHEREAS, the Martins property lacks sufficient space for customer parking; and

WHEREAS, the borough owns an adjacent large parcel that is classified as Residential and zoned Rural Residential; and

WHEREAS, the Martins have applied for a negotiated lease of an area to be improved and serve as a parking area; and

WHEREAS, the Martins would be responsible for acquiring any necessary conditional use permits required by the City of Kenai for the proposed use; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of August 9, 2021 recommended approval by majority consent;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI
PENINSULA BOROUGH:**

SECTION 1. Pursuant to KPB 17.10.100(I) and 17.10.120(D), the assembly finds that leasing approximately 0.58 Gross/ 0.43 Net acres of borough land more particularly described in Section 2 below at fair market value to Edward and Kathleen Martin, DBA Cozy Inn, for a parking area is in the best interest of the borough based on the following findings of fact:

- A. The proposed use is compatible with the land classification and zoning, subject to City of Kenai conditional use permitting.

- B. The lease of land would support local business and job training and would provide a revenue stream to the Land Trust Fund.
- C. The configuration of the proposed lease would allow for future development of the remaining borough-owned land.

SECTION 2. Subject land lease is described as follows:

Beginning for reference at the N ¼ Corner of Section 4, T5N, R11W, Seward Meridian, thence N 89°56'00"E a distance of 180.00 feet to the point of beginning; thence S 00°09'00"E a distance of 194.00 feet along the east boundary of Inlet View Subdivision 1st Revision, Plat KN1515, to the southeast corner of Lot 2 Block 4 Inlet View Subdivision 1st Revision; Thence N 89°56'00"E a distance of 130.00 feet; thence N 00°09'00"W a distance of 194.00 feet to the north boundary of Section 4; Thence S 89°56'00"W a distance of 130.00 feet to the point of beginning;

Subject to a Section Line Easement along the north 50' of the land lease area; and

further subject to a Stormwater Drain Facility Easement benefitting the City of Kenai per book 578, page 907, Kenai Recording District.

SECTION 3. That the assembly additionally makes an exception to KPB 17.10.110 requiring notice of a disposition of land. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

- 1. Special circumstances or conditions exist.
 - A. The purpose of advertising, pursuant to KPB 17.10.110, is to notify the public of an opportunity to purchase or lease borough land. However, because the authorization of this ordinance is for a sole source lease, advertising will not serve a useful purpose.
- 2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
 - A. Making an exception to advertising, pursuant to KPB 17.10.110, will not affect any substantial property right as this is public land with previous seasonal field uses.
- 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.

- A. Making an exception to advertising, pursuant to KPB 17.10.110, will not be detrimental or injurious to any public or private parties as leasing the subject land is subject to the acquisition of city of Kenai conditional use permits which address such matters.

SECTION 4. Based on the foregoing, the mayor is hereby authorized, pursuant to KPB 17.10.100(I) and 17.10.120(D) to lease the land described in Section 2 above to Edward and Kathleen Martin, DBA Cozy Inn, for a term of 10 years with a 10-year renewal option at fair market value as determined by appraisal methods contained in the lease. The authorization is for lease solely to Edward and Kathleen Martin, DBA Cozy Inn, and they may not assign any rights to negotiate or enter an agreement for lease with any other person or entity without obtaining prior approval in accordance with the lease.

SECTION 5. That the mayor is authorized to execute a lease substantially similar to the one attached, and sign any documents necessary to effectuate this ordinance.

SECTION 6. That Kathleen Martin, DBA Cozy Inn shall have 180 days to execute the lease document from the date of enactment of this ordinance.

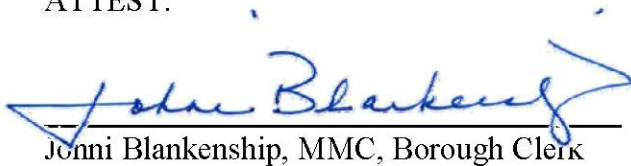
SECTION 7. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF AUGUST, 2021.



Brent Hibbert, Assembly President

ATTEST:



Jonni Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Carpenter, Chesley, Cox, Dunne, Elam, Johnson, Hibbert
No: None
Absent: Derkevorkian

**KENAI PENINSULA BOROUGH
REAL PROPERTY LEASE**

This LEASE (hereinafter called this "Lease"), for good and valuable consideration, and pursuant to Ordinance 2021-____, enacted _____, 2021, is made and entered into by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, (hereinafter called "KPB"), and Edward and Kathleen Martin d.b.a. Cozy Inn, whose address is 35555 Kenai Spur Highway, PMB 471 Soldotna, Alaska 99669 (hereinafter called "Lessee").

I. DESCRIPTION OF REAL PROPERTY

This Lease grants Lessee use of the real property (hereinafter called "Property") described as follows:

Beginning for reference at the N ¼ Corner of Section 4, T5N, R11W, Seward Meridian, thence N 89°56'00"E a distance of 180.00 feet to the point of beginning; thence S 00°09'00"E a distance of 194.00 feet along the east boundary of Inlet View Subdivision 1st Revision, Plat KN1515, to the southeast corner of Lot 2 Block 4 Inlet View Subdivision 1st Revision; Thence N 89°56'00"E a distance of 130.00 feet; thence N 00°09'00"W a distance of 194.00 feet to the north boundary of Section 4; Thence S 89°56'00"W a distance of 130.00 feet to the point of beginning;

Subject to a Section Line Easement along the north 50' of the land lease area;
and

further subject to a Stormwater Drain Facility Easement benefitting the City of Kenai per book 578, page 907, Kenai Recording District;

Containing 0.43 acres +/- acres in Net.

II. PURPOSE OF LEASE

Pursuant to Ordinance 2021-____ the purpose of this lease is for parking area (hereinafter called "ACTIVITIES"). The allowed uses shall be in conformance with of the Lessee's Development Plan (, and the terms and conditions of any city zoning permits.

Development Plan

The Lessee's Development Plan illustrates the type and location of improvements, basic design and construction standards, landscaping features, location of utilities, and the nature of uses. The Development Plan approved under this lease describes the scope

of ACTIVITIES authorized by the lease. The initial approved development plan is incorporated by reference as Attachment A.

- a. Modification of Development Plan. The Development Plan may be modified by mutual agreement as necessary to advance the purposes of this lease. Modifications of Lessee's development plan may be made through the written approval of the KPB Mayor of a modified development plan submitted by Lessee to KPB in writing at least 60 days prior to anticipated modification of ACTIVITIES. Approved modifications shall be attached to this lease and effective upon the Mayor's written approval.

Ingress and Egress

Lessee may, at any time, have ingress and egress directly from Lessee's own property. As a revocable matter of permission, Lessee may have ingress and egress along the existing driveway from Lawton Drive to the east of the lease area, until such time as permission is revoked in writing by KPB. Lessee has the option of developing a new driveway directly to Lawton Drive along the frontage of the lease area, subject to any permitting requirements of the local road authority.

III. RECITALS AND RIGHTS RESERVED TO KPB

1. Nothing contained herein creates or implies any additional property interests, including easements or rights-of-way in the Property beyond the terms and conditions of this Lease.
2. The KPB reserves the right to require improvements to be removed by the Lessee at the termination of the Lease.
3. Lessee shall not develop beyond what is specified in the development plan, unless approved in writing by KPB.
4. KPB reserves the right to authorize other land uses on the Property by easement or permit which do not unreasonably interfere with Lessee's use.

IV. TERMS AND CONDITIONS

1. Lease Term. This lease is for term of ten (10) years commencing September 1, 2021 and with an option to renew, by written mutual agreement, for a renewal term of ten (10) years.
2. Lease Rental. The annual lease rental for the first 5 years of this lease is \$_____, which is based on 8 percent of the fair market appraisal of the net leased area. The annual lease rental for each successive 5-year period of the lease shall be set

at 8 percent of the fair market value. The KPB Assessing Department shall conduct the appraisal. Should lessee dispute the value of KPB's appraisal, then Lessee may obtain an appraisal from a professional independent fee appraiser upon which the parties can agree to adopt one appraisal, and if no agreement is reached then then the rate shall be set at the average of the two appraisals.

3. Defense and Indemnification.

The Lessee shall indemnify, defend, save and hold the borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees resulting from Lessee's performance or failure to perform in accord with the terms of this permit in any way whatsoever. The Lessee shall be responsible under this clause for any and all claims of any character resulting from Lessee or Lessee's officers, agents, employees, partners, attorneys, suppliers, and subcontractors' performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the borough or its agents, which are said to have contributed to the losses, failure, violations, or damage. However, Lessee shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the borough, its agents, or employees.

4. Insurance

Insurance coverage required under this Lease shall be primary and exclusive of any other insurance carried by the Borough. Minimum levels of insurance coverage required under this Lease shall remain in effect for the life of this Lease and shall be a part of the contract price. If Lessee's policies contain higher limits, the KPB shall be entitled to coverage to the extent of such higher limits. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Lease, without thirty (30) calendar days' prior written notice to the Borough. Certificates of Insurance, acceptable in form and content, will be delivered to the Borough at the time of submission of the signed Lease and updated certificates shall be provided upon insurance coverage renewal, where applicable.

At its option, the Borough may request copies of required policies and endorsements. Such copies shall be provided within (10) TEN CALENDAR DAYS of the Borough's request. All insurance required hereunder shall be maintained in full force and effect with insurers with Best's rating of AV or better and be licensed and admitted in Alaska. All policies required shall be written as primary policies and not contributing to nor in excess of any coverage the Borough may choose to maintain. By requiring insurance herein, the Borough does not represent that coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed as a limitation on the liability of the Lessee

under the indemnities granted to the Borough in paragraph 3 of this Lease.

4.1 Commercial General Liability. Lessee shall provide and maintain, Commercial General Liability Insurance (CGL). The CGL Policy shall be written on an occurrence basis and with a limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, broad form property damage, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

4.2 Workers' Compensation. Lessee shall provide and maintain, for all of its employees engaged in work under this Lease, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The Lessee shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Lease. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than the minimum amounts required by law. Subrogation shall be waived.

4.3 Auto Liability. Lessee shall provide and maintain, Auto Liability Insurance (ALI). The Auto Liability Policy shall include a Combined Single Limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Coverage shall include Non-Owned and Hired Car coverage. This policy shall name the KPB as Additional Insured. To the extent damages are covered by auto liability insurance, subrogation shall be waived.

5. Waste. Lessee shall not commit waste or injury upon the lands leased herein.

6. Fire Protection. Lessee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.

7. Safety. Lessee shall be solely responsible for maintaining the premises in a safe and fit condition. Lessee is responsible for the safety of all persons conducting activities on the property under this lease. Lessee agrees to provide the public with information regarding rules and regulations and other information pertaining to the property and the lease.
8. Sanitation. Lessee shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The subject property shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environment Conservation regulations.
9. Hazardous Materials and Hazardous Waste. Storage, handling and disposal of hazardous waste shall not be allowed on lands under lease from KPB per KPB Code, Section 17.10.240(H).

Lessee shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the lands leased herein. In no event may Lessee utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the subject lands during the term of this lease, Lessee shall IMMEDIATELY report such release to the KPB Planning Director or other appropriate KPB official and to any other agency as may be required by law, and Lessee shall, at its own cost, assess, contain and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 C.F.R. 171.8, and any other substance determined by the federal government, the state of Alaska or KPB, to pose a significant health and safety hazard.

As used herein, "hazardous waste" means a hazardous waste as identified by the Environmental Protection Agency under 40 C.F.R. 261, and any other hazardous waste as defined by the federal government, the state of Alaska or KPB.

The covenants and obligations described in this article shall survive the termination of this lease.

10. Compliance With Laws. The Lessee agrees to comply with all applicable federal, state, borough, and local laws and regulations.

11. Easements and Rights-of-Way. This Lease is subject to all easements, rights-of-way, covenants and restrictions of which Lessee has actual or constructive notice. KPB reserves and retains the right to grant additional easements for utility and public access purposes across the property and nothing herein contained shall prevent KPB from specifically reserving or granting such additional easements and rights-of-way across the property as may be deemed reasonable and necessary.

As the parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that KPB grants future additional easements or rights-of-way across the property, it is agreed and understood that Lessee shall receive no damages for such grant.

12. Inspections. Lessee shall allow KPB, through its duly authorized representative, to enter and inspect the leased premises at any reasonable time, with or without advance notice to Lessee, to ensure compliance with the terms and conditions of this lease. KPB's right to enter and inspect shall be exercised at KPB's sole discretion and the reservation or exercise of this right, and any related action or inaction by KPB, shall not in any way impose any obligation whatsoever upon KPB, and shall not be construed as a waiver of any rights of KPB under this agreement.
13. Property Taxes. Lessee shall timely pay all real property taxes, assessments and other debts or obligations owed to KPB. Pursuant to KPB Code, Section 17.10.120(F) this agreement will terminate automatically should Lessee become delinquent in the payment of any such obligations.
14. Assignments. Lessee may assign this Lease only if approved in advance by KPB. Applications for assignment shall be made in writing on a form provided by the Land Management Division. The assignment shall be approved if it is found that all interests of KPB are fully protected. The assignee shall be subject to and governed by the terms and conditions of this lease and applicable laws and regulations.
15. Cancellation. At any time that this Lease is in good standing it may be canceled in whole or in part upon mutual written agreement by the Lessee and either the KPB Mayor or Planning Director when applicable.

This Lease is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.

Lease lands shall be utilized for the purposes of the development, management,

and maintenance of the SPARC facility within the scope of the terms and conditions of the lease and in conformity with the lessee's development plan, applicable classification, and any land use or comprehensive plans. Utilization or development for other than the allowed uses shall constitute a violation of the lease and will become subject to cancellation.

Failure on the part of the lessee to substantially complete the development plan of the land or to not be consistent with the proposed use and terms and conditions of the lease within two years of the anniversary date of said lease shall constitute grounds for cancellation.

16. Termination. Upon termination of this Lease, Lessee covenants and agrees to return the property to KPB in a neat, clean and sanitary condition, and to immediately remove all items of personal property subject to the terms and conditions of Paragraph 23 below. All terms and conditions set out herein are considered to be material and applicable to the use of the property under this Lease. Subject to the following, in the event of Lessee's default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, and such default continues thirty (30) calendar days after written notice of the default, KPB may cancel this lease, or take any legal action for damages or recovery of the property. No improvements may be removed during the time in which the contract is in default.

In the event Lessee breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials or hazardous waste upon the property, and fails to immediately terminate the operation causing such release upon notice from KPB, then KPB may immediately terminate this lease agreement without notice to Lessee prior to the effective date of the termination.

17. Violation. Violation of any of the terms of this lease may expose Lessee to appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.
18. Notice of Default. Notice of the default, where required, will be in writing and as provided in the Notice provision of this Lease.
19. Entry or Re-entry. In the event that the Lease is terminated, canceled, or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the Lessee during the agreement term, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings or by a suitable action or proceeding at law or equity without being

liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the contract.

20. Removal or Reversion of Improvements upon Termination of Lease.

Improvements on the property owned by Lessee shall, within ninety (90) calendar days after the termination of the agreement, be removed by Lessee; provided such removal will not cause injury or damage to the land; and further provided that the Mayor, or Planning Director when applicable, may extend the time for removing such improvements in cases where hardship is proven. The Lessee may dispose of its improvements to a succeeding lessee with the consent of the KPB mayor.

If any improvements and/or chattels that are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in KPB. Upon request, the Lessee shall convey said improvements and/or chattels by appropriate instrument to KPB.

21. Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the Lessee or placed on the land during its tenure with or without its permission and remaining upon the premises after the termination of the contract shall entitle KPB to charge a reasonable rent therefor.

22. Resale. In the event that this Lease agreement should be terminated, canceled, forfeited, or abandoned, KPB may offer said lands for sale, lease, or other appropriate disposal pursuant to the provisions of KPB Code, Chapter 17.10 or other applicable regulations.

23. Notice. Any notice or demand, which under the terms of this Lease must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

All notices shall be sent to both parties as follows:

LESSOR

Kenai Peninsula Borough
Planning Director
144 N. Binkley
Soldotna, AK 99669-7599

LESSEE

Edward and Kathleen Martin,
DBA Cozy Inn
35555 Kenai Spur Highway, PMB 471
Soldotna, AK 99669

26. Responsibility of Location. It shall be the responsibility of the Lessee to properly locate its self and its improvements on the leased lands.
27. Liens and Mortgages. Lessee shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease. In the event that any prohibited lien is placed against the property, Lessee shall immediately cause the lien to be released. Lessee shall immediately refund to KPB any monies that KPB may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorneys' fees.

For the purpose of interim financing or refinancing of the improvements to be placed upon the leased premises, and for no other purpose, a lessee may, upon written approval of the KPB, encumber by mortgage, deed of trust, assignment or other appropriate instrument, the lessee's interest in the leased premises and in and to the lease, provided said encumbrance pertains only to the leasehold interest.

28. Non-Waiver Provision. The receipt of payment by KPB, regardless of KPB's knowledge of any breach by Lessee, or of any default on the part of the Lessee in observance or performance of any of the conditions or covenants of this agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of KPB to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and the payment fully satisfies the breach.
29. Jurisdiction. Any suits filed in connection with the terms and conditions of this Lease, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law.
30. Savings Clause. Should any provision of this Lease fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this Lease or constitute any cause of action in favor of either party as against the other.
31. Binding Effect. It is agreed that all covenants, terms, and conditions of this agreement shall be binding upon the successors, heirs and assigns of the original parties hereto.

32. Full and Final Agreement. This agreement constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This agreement may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. Lessee avers and warrants that no representations not contained within this agreement have been made with the intention of inducing execution of this agreement.
33. Warranty of Authority. Lessee warrants that the person executing this agreement is authorized to do so on behalf of Soccer Association of Homer.

KENAI PENINSULA BOROUGH

 Charlie Pierce, Mayor
 Dated: _____

ATTEST:

APPROVED AS TO LEGAL FORM
 AND SUFFICIENCY:

 Johni Blankenship
 Borough Clerk

 Sean Kelley
 Deputy Borough Attorney

Lessee

 Edward Martin Jr.
 Dated: _____

 Kathleen Martin
 Dated: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____ 2021, by Ed Marin Jr, DBA Cozy Inn.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of
_____ 2021, by Kathleen Martin, DBA Cozy Inn.

Notary Public in and for Alaska
My commission expires: _____

ATTACHMENT A DEVELOPMENT PLAN

Kathleen A. Martin

DBA Cozy Inn

Mailing Address: 35555 Kenai Spur Hwy., PMB 471 Soldotna, AK 99669

Physical Address: 702 Lawton Drive Kenai, AK 99611

Email: keeconstructionllc@yahoo.com

Phone: (907)252-8163

July 1, 2021

Julie Denison, Land Management Technician
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, AK 99669

Re: Letter Dated 6/29/2021 via certified mail 7019 2280 0000 7385 7087
Application for Land Use Permit and Negotiated Lease
APN: 04901048

Dear Ms. Denison,

In regards to your letter requesting more information as noted above:

To clarify, the Land Use Permit and Negotiated Lease are both requested for the proposed use of the NW corner of APN 04901048 as parking for student vehicles. Specifically, the students are all adults attending Commercial Drivers License and/or Basic Civil Construction courses.

HOWEVER, they are NOT attending these courses at 35555 Kenai Spur Highway in Soldotna; that is the location of our mail box. They are attending courses held at our 37200 Thomas Street property in Sterling, AK.

Types and quantity of vehicles anticipated is unclear you said; the vehicles will be the students privately owned vehicles (cars, vans, pick-up trucks, SUVs). There can be up to 8 students in each class, so up to a total of 16 (8x2) student vehicles parking on the requested property (Marcus Mueller computes .5 acres) at any one time. Each class last 3 weeks, so the specific vehicles parking on property will change as new classes begin with new students.

Development Plan

USE: Parking of Student owned vehicles as described above.

Nature of Improvements: Clearing, use of existing on-site material or imported gravel to meet requirements & log bumpers.

Estimated value of Improvements: \$5,000.00

The property, APN: 04901048, had been cleared/used in the past by the former owners of Irene's B&B. Some trees have begun to grow in the area again as you would have noticed on your site visit. We would like to mulch some of said trees to provide a flat parking area. A 34' vegetation boarder of second growth can be left within the 50' ROW (we would like to do this if you don't object). The area would be designated as a parking area so that each student can be assigned a specific parking space. The property would be kept clean with regular litter patrols and maintained to keep plant life, like trees, from re-growing in the area we clear. The estimated value of the improvements is \$5,000.00

In your letter you also asked that we not materially interfere with or hinder the City of Kenai's ability to manage storm water. The City of Kenai's storm water line is located underground in this area. We will not be constructing anything onto the site, nor will we be fencing in the site; we are simply asking to park privately owned vehicles on the site. City of Kenai Municipal Code 14.20.250 you provided (4A) states bumper guards should be used where needed; we can use

lengths of log that can be rolled/moved out of their way should they need to dig up their line for replacement or maintenance. A durable, well drained and dust free surface can be accomplished with gravel. We have no intention of hindering any City of Kenai employee(s) from access to do his/her/their job(s).

Site Plan Drawing (see Exhibits A, B & C)

Exhibit A – detailed drawing

Exhibit B – smaller in scale to give a clearer view of the property/project as a whole

Exhibit C – Photo taken from KPB map site to show exact location of old entrance/exit used by Irene’s B&B.

In your letter you state that the property is located within the City of Kenai and the west half is zoned Rural residential; the east half is zoned Education – please provide me with the documentation. The Kenai Peninsula Borough map site list the property uses as “Institutional.” I spoke with Marcus Mueller about this and we both understood this property to be “educational” in use and therefore a good fit as we are intending its use to be for the parking of students’ vehicles.

You go on to say the parcel is subject to a 50’ wide section line easement along the north boundary.

I have made multiple calls to you for further information/clarification because I need to know where the 50’ starts/originates to avoid the totality of it (the photo you provided is too digitalized to see even the roadway clearly and there are no labeled reference points). I understand you may be busy, but without a point of origin a layman can understand, I have to assume it begins at the centerline of Lawton Drive. If this is true, half the width of the road (16’4”) plus a 34 foot vegetation buffer will avoid the 50’ section line easement.

If I am incorrect as to where the 50’ section line easement begins, we can shift the area on the Site Plan Drawing, with your assistance to identify where it actually is, to make it avoid the area.

As you can see on the Site Plan Drawing enclosed, I have drawn out 24 (12’x20’) parking spaces in a herringbone pattern. A typical personally owned pick-up truck measures 6.9’x20’ – this will allow for plenty of space to open doors without denting/scratching the vehicle that may be in the neighboring spaces. We can keep the design at 24 spaces to allow for future class growth or we can eliminate spaces to avoid the 50’ section line easement if necessary. The parking spaces can also be shifted west to east if necessary; we are willing to work with you to accomplish whatever will work.

To clarify that we read and are planning to be consistent with the City of Kenai Municipal Code 14.20.250 Off Street Parking and Loading Requirements:

(a) For commercial development, there shall be provided at the time of construction of any main building or at the time of the alteration, enlargement, or change in use of any main building, permanently maintained off-street parking facilities for the use of occupants, employees, or patrons of such building. It is the joint and several responsibility of the owner and/or occupant of any main building or structure to provide, and thereafter maintain, minimum free off-street parking facilities as required in this section.

We purchased an existing structure built in 1976 that was used as Irene’s B&B. We are trying to provide parking as required that the prior owners did not have.

(b) No existing parking area and no parking area provided for the purpose of complying with the provisions of this chapter shall hereafter be relinquished or reduced in any manner below the requirements herein established.
OK.

(1) Site Plan Submission. A site plan showing all parking and loading areas shall accompany all applications for building permits. The plan shall show dimensions of spaces, curb cuts, and other information necessary to determine compliance with the provisions of this chapter. The administrative official shall approve or reject the site plan on the basis of compliance with the requirements of this chapter. No certificate of zoning compliance and building permit shall be issued unless the parking site plan is approved.

We do not need a building permit. A site plan has been included to show the dimensions of spaces. A curb cut is not necessary to utilize the egress from our 436 Rogers Road lot (back yard). A curb cut will be necessary if the Kenai Peninsula Borough is willing to allow us to utilize the old access shown in Exhibit C (marked with blue dot) off of Lawton Drive.

(2) Joint Parking Areas. Where there is more than one (1) use in a single structure or on a site (e.g., doctor, attorney, and retail grocery) or two (2) or more separate instances of the same use, off-street parking requirements shall be the sum of the requirements for the various uses; provided however, that where two (2) or more uses provide a single joint parking area, and their total required spaces totals twenty (20) or more, the minimum requirement will be seventy-five percent (75%) of the sum of the requirements for the various computed separately.

Doesn't apply; no joint parking area.

(3) Location of Parking. Any parking space provided pursuant to this section shall be on the same lot with the main use it serves or on an adjoining lot except that the Commission, by a conditional use permit as specified in this chapter, may allow parking spaces on any lot if it is determined that it is impractical to provide parking on the same or adjoining lot.

Impractical; need 16 spaces. That is why we have applied to lease property from the adjoining lot.

(4) Design Standards.

(A) All parking lots shall be provided with a durable, well-drained, and dust-free surface and shall have appropriate bumper guards where needed;

This can be accomplished with gravel. If the City of Kenai wants us to have bumper guards we can use logs that can be rolled/moved out of their way if they should need to dig up their line for repair/replacement.

(B) Parking areas and front yards as defined in KMC [14.20.320\(b\)](#), which includes the required parking spaces, in commercial use areas shall not be used for storage, repair work or any purpose other than parking, landscaping, signage, or sales displays. A non-conforming use of parking areas and front yards prohibited by this section shall be made to conform to this section within a period of one (1) year after adoption of the ordinance codified in this section. OK.

Exception: Semi-trailers or containers may be parked in these areas for no more than thirty (30) consecutive days to facilitate unloading. Trucking terminals and bona fide construction sites are exempt; N/A No semi-trailers

(C) Any lighting of parking lots shall be arranged to reflect away from public rights-of-way and from any adjoining residential areas; No lighting

(D) Curb cuts shall be located so as to avoid traffic hazards and shall be approved by the administrative official; OK – please let me know if a curb cut at the afore mentioned old entrance/exit point on Exhibit C would be considered a traffic hazard. I don't believe it would be.

(5) Interpretation of Space Requirements. If a use is not specifically mentioned in this section, the administrative official shall determine the most similar use which is specifically mentioned. Parking requirements shall be the same as for that use; OK.

(6) Exception to this Section—Public Parking Lots. Notwithstanding other provisions of this section, when a use is located within three hundred feet (300') of an existing or planned public lots, the off-street parking requirements of this chapter may be met if under the procedures specified in this chapter, the Commission issues a conditional use permit stating that the following conditions have been met: *The closest Public Parking lot is the City of Kenai Multipurpose Facility (9775 Kenai Spur Hwy.). It is across Lawton Drive from our property and does not abut our property. I have no idea what types of events they may host, how much "extra" parking area they may have, etc.*

(A) The public parking lot exists within reasonable distance of the use, or plans for the public parking lot are sufficiently advanced to give reasonable assurance that the lot will be in use within one (1) year of the time of issuance of the conditional use permit;

(B) The owner and/or occupant of the use in question shall sign a covenant agreeing to join an assessment district to pay for the public parking lot;

(C) The public parking lot has or will have sufficient capacity to accommodate the use in question plus other parking needs of existing and potential uses within a reasonable distance of the lot. The Commission shall use the off-street parking requirement as cited above to estimate the parking spaces needed within a reasonable distance of the lot.

(7) Off-Street Loading. Every building or structure used for business, trade, or industry and normally requiring truck loading or unloading with respect to the use, shall provide space as herein indicated for the loading and unloading of vehicles off the street or public alley. Such space shall have access to a public alley, or, if there is no alley, to a street. Off-street loading and unloading space shall be in addition to and not considered as meeting a part of the requirement for off-street parking space. Off-street loading and unloading space shall not be used or designed, intended, or constructed to be used in a manner to obstruct or interfere with the free use of any street or adjoining property. The minimum off-street loading and unloading space required for specific uses shall be as follows: *No off-street loading.*

(A) Retail business and service establishments shall provide one off-street loading and unloading space at least ten feet (10') wide and thirty-eight feet (38') long with a fourteen-foot (14') height clearance per building;

(B) Industrial plants shall provide one off-street loading and unloading space for each twenty thousand (20,000) square feet of gross floor area. Each loading space shall be minimum of twelve feet (12') wide and fifty feet (50') long with a fourteen-foot (14') height clearance;

(C) Trucking terminals shall provide one off-street loading and unloading space for every five thousand (5,000) square feet of total floor area used for storage, warehousing, and shipping. Each loading space shall be a minimum of fourteen feet (14') wide and sixty-five feet (65') long with fourteen-foot (14') clearance.

(8) Off-Street Parking Requirements.

DWELLING AND LODGING

MINIMUM NUMBER OF PARKING SPACES REQUIRED

Lodges, rooming/boarding houses, dormitories, bed and breakfast, and other structures containing sleeping rooms other than, or in addition to dwelling units	One (1) per principal dwelling unit and one (1) per guest room or one for every two (2) beds whichever is greater.
Mobile home parks	Two (2) per mobile home.
Motels, hotels and cabin rentals	One (1) per unit plus two (2) spaces.

DWELLING AND LODGING

MINIMUM NUMBER OF PARKING SPACES REQUIRED

Multiple-family dwellings, retirement homes and other places containing multiple dwelling units
Single-family dwellings, two-family dwellings and child care homes

One (1) per efficiency unit; and two (2) per other units.
Two (2) per dwelling units.

Development & Construction Timetable

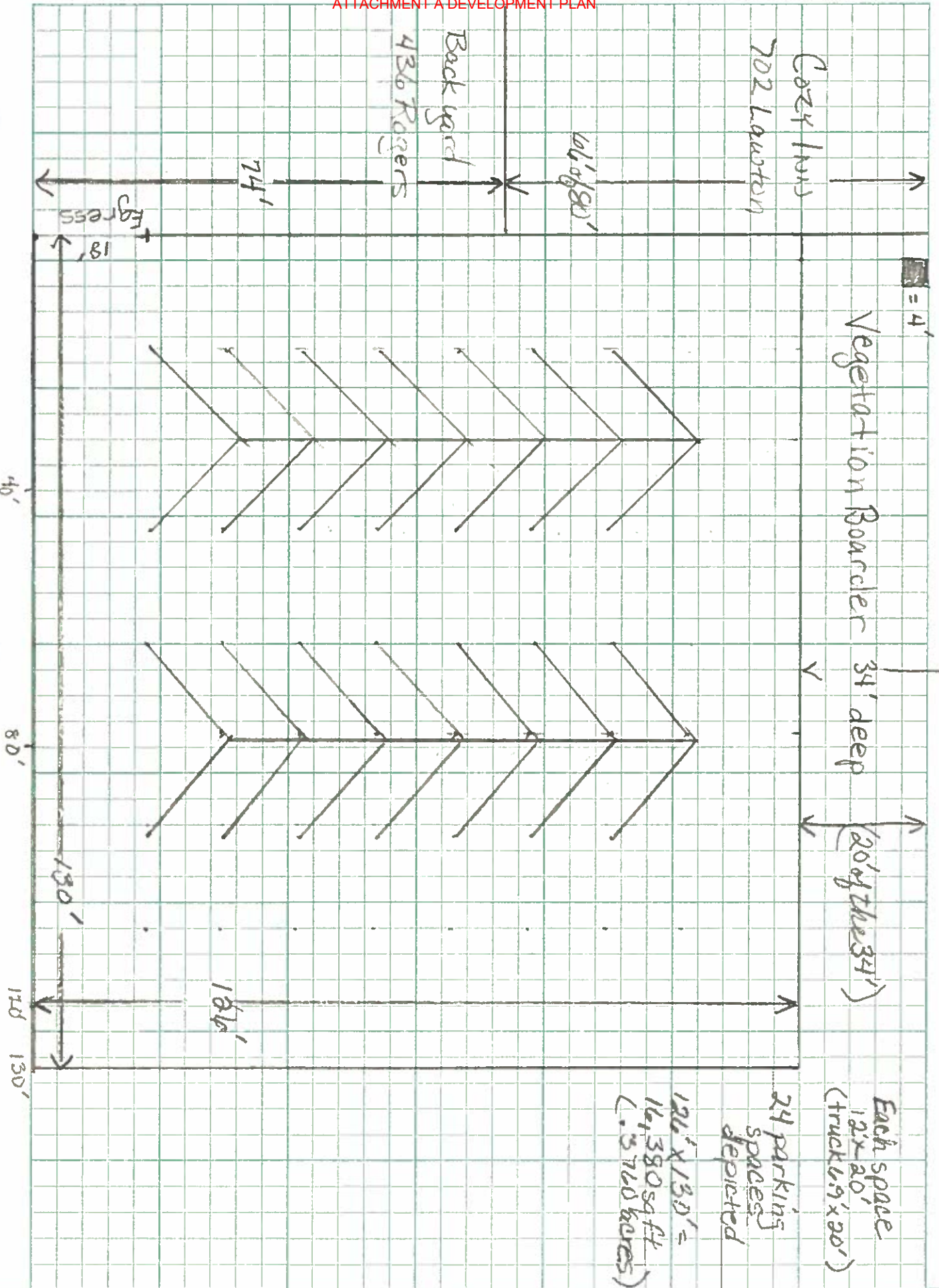
The 2 storage buildings you mentioned as in trespass have been moved; they were placed there by the prior owners apx. 21 years ago. We had our 2 lots surveyed so we could be assured that we moved them completely onto our property. See photo below. We are ready for your site visit.



Sincerely,

Kathleen A. Martin
Kathleen A. Martin, Owner
(907)252-8163
7/12/2021

ATTACHMENT A DEVELOPMENT PLAN



← LAWTON DRIVE →

Exhibit A

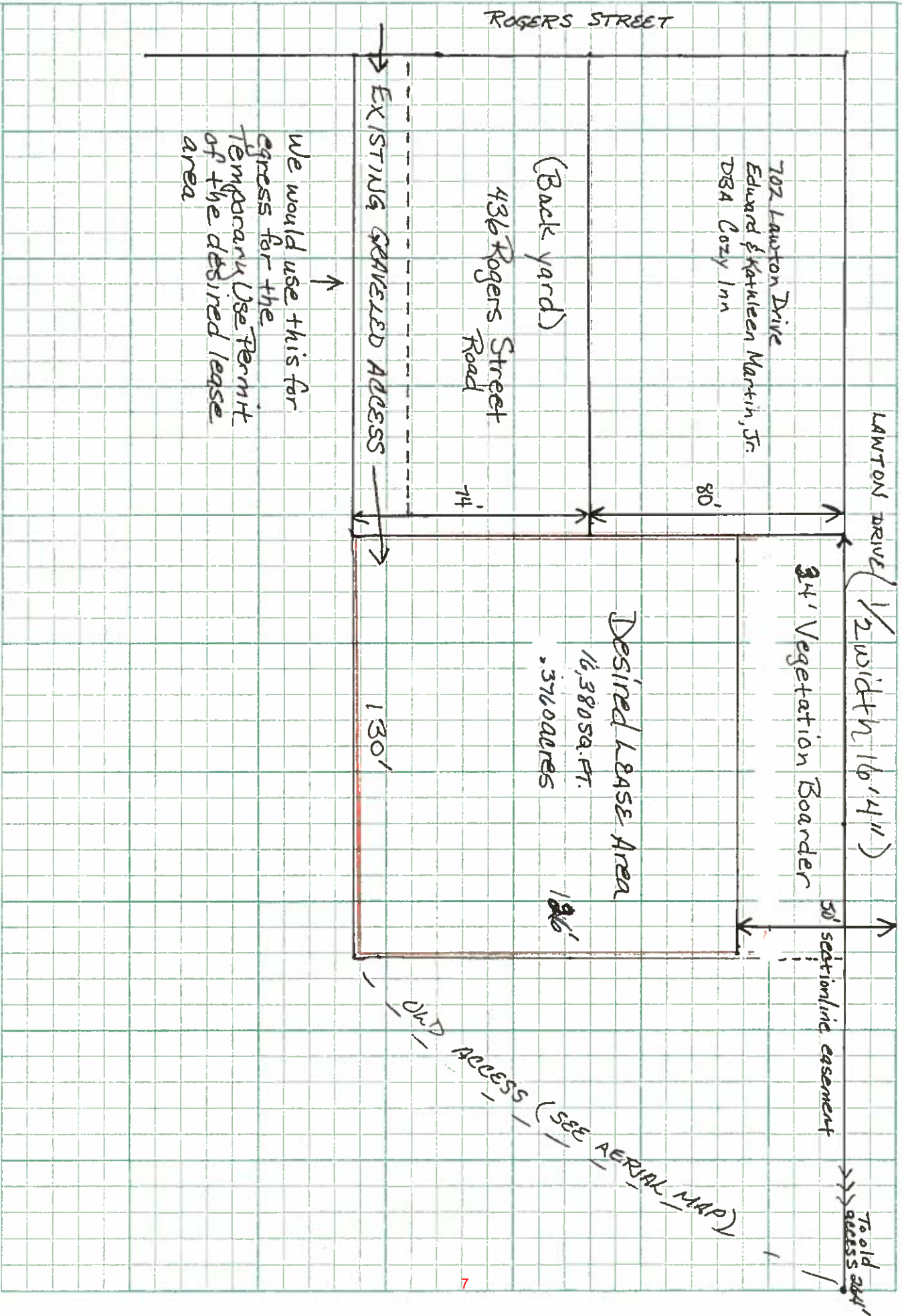
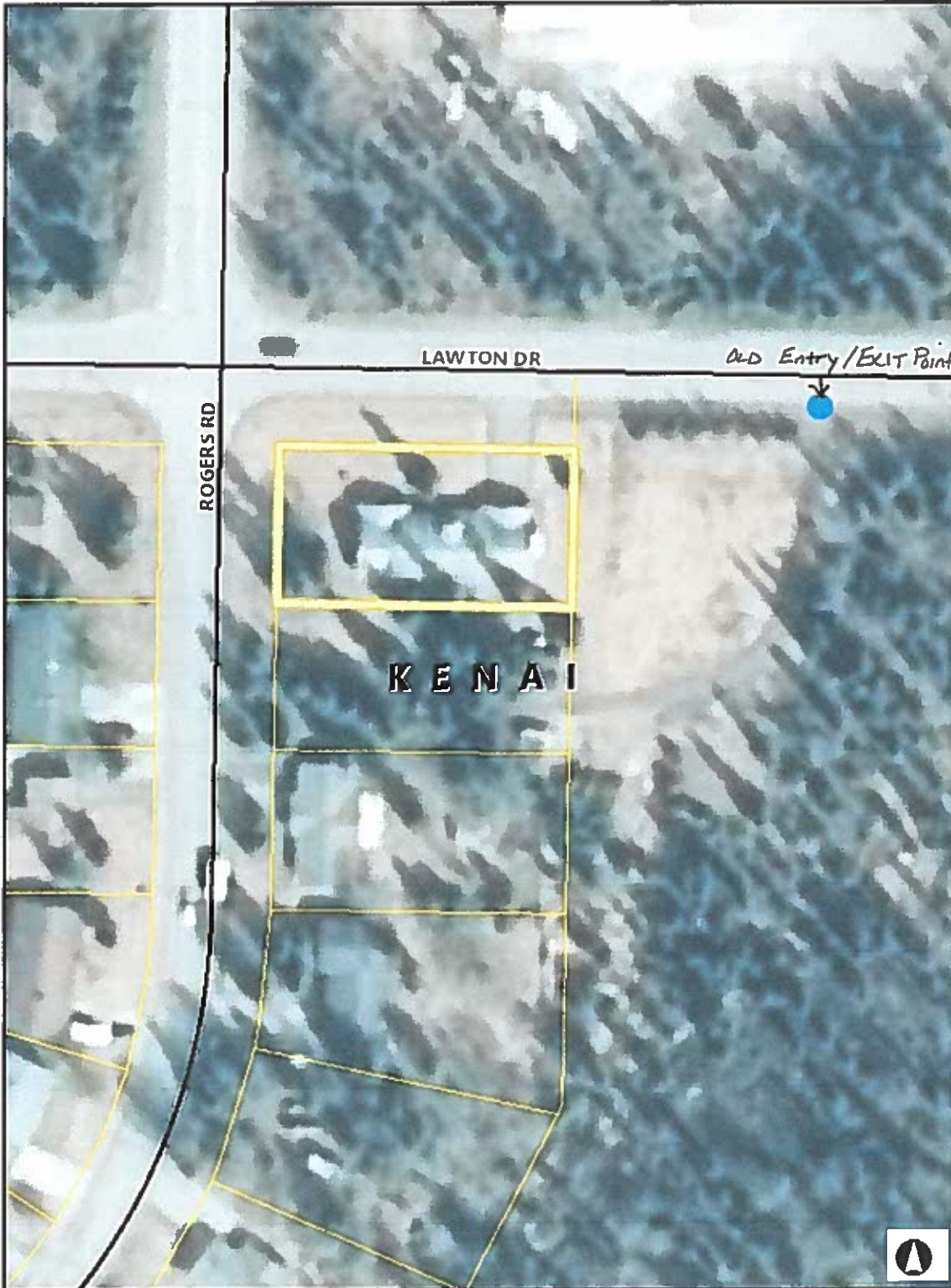


Exhibit B



Legend

- Mileposts
- City Limits
- Highways
- Major Roads
- Roads
 - Town Medium Volume
 - Town Low/Seasonal; Other
 - Proposed
- Parcels
- Image
 - Red: Band_1
 - Green: Band_2
 - Blue: Band_3

Exhibit C

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. It is not to be used for navigation.

Notes

Map of 702 Lawton Drive, 436 Rogers Road and 750 Lawton Drive