



## Meeting Agenda Planning Commission

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Monday, October 9, 2023

7:30 PM

Betty J. Glick Assembly Chambers

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**Zoom Meeting ID: 907 714 2200**

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

- 1) Staff will present a report 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 per person
- 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) Staff may respond to any testimony given and the Commission 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 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
2. Planning Commission Resolutions
3. Plats Granted Administrative Approval

- [KPB-5536](#)
- a. Baywood 2022; KPB File 2022-129
  - b. Bear Run Kilpin 2023 Replat; 2023-002
  - c. Diamond Cape No. 6; KPB File 2022-094
  - d. Kingswood Estates Subdivision 2022; KPB File 2022-183
  - e. Razdolna 2023 Replat Lot 10-D-2; KPB File 2022-163
  - f. Southern Bluff Acres 2023 Replat; KPB File 2023-029

Attachments: [C3. Admin Approvals](#)

4. Plats Granted Final Approval (KPB 20.10.040)

- [KPB-5537](#)
- a. Corea Bend Subdivision Bumpus Replat; KPB File 2023-089
  - b. Moose Range Meadows Duchame Replat; KPB File 2023-090

Attachments: [C4. Final Approvals](#)

5. Plat Amendment Request
6. Commissioner Excused Absences
7. Minutes

- [KPB-5538](#) September 25, 2023 Planning Commission Meeting Minutes

Attachments: [C7. 092523 Minutes](#)

## D. OLD BUSINESS

## E. PLAT COMMITTEE REPORT

**F. OTHER****G. PUBLIC COMMENT/PRESENTATION**

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

**H. DIRECTOR'S COMMENTS****I. COMMISSIONER COMMENTS****J. NEW BUSINESS**

[KPB-5539](#) Remand Hearing  
Building Setback Encroachment; KPB File 2022-121  
Legal Description: Lot 10, Lake Estates Subdivision, Plat KN 1648  
Applicants: David & Nancy Whitmore  
General Location: GL Hollier Street  
Ridgeway Area

Attachments: [J1. Remand Hearing Packet\\_R](#)  
[J1. Remand Hearing-Desk Packet](#)

**K. ADJOURNMENT**

**MISCELLANEOUS INFORMATIONAL ITEMS  
NO ACTION REQUIRED**

**NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING**

The next regularly scheduled Planning Commission meeting will be held Monday, October 23, 2023 in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 North Binkley Street, Soldotna, Alaska at 7:30 p.m.

**CONTACT INFORMATION**

**KENAI PENINSULA BOROUGH PLANNING DEPARTMENT**

Phone: 907-714-2215

Phone: toll free within the Borough 1-800-478-4441, extension 2215

Fax: 907-714-2378

e-mail address: [planning@kpb.us](mailto: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.

## **C. CONSENT AGENDA**

### **\*3. Plats Granted Administrative Approval**

- a. Baywood 2022; KPB File 2022-129**
- b. Bear Run Kilpin 2023 Replat; 2023-002**
- c. Diamon Cape No. 6; KPB File 2022-094**
- d. Kingswood Estates Subdivision 2022; KPB File 2022-183**
- e. Razdolna 2023 Replat Lot 10-D-2; KPB File 2022-163**
- f. Southern Bluff Acres 2023 Replat; KPB File 2023-029**



# Planning Department

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

Peter A. Micciche  
Borough Mayor

## ADMINISTRATIVE APPROVAL

Subdivision: Baywood 2022  
KPB File 2022-129  
Homer Recording District

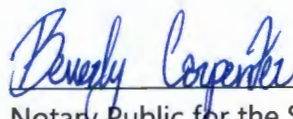
The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on September 26, 2022. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, September 20, 2023.

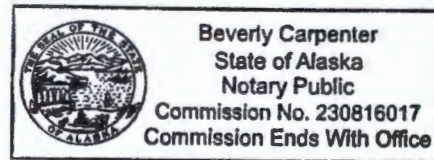
  
\_\_\_\_\_  
Robert Ruffner  
Planning Director

State of Alaska  
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 20 day of September 2023 by Robert Ruffner.

  
\_\_\_\_\_  
Notary Public for the State of Alaska

My commission expires: with office



The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



# Planning Department

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Peter A. Micciche  
Borough Mayor

## ADMINISTRATIVE APPROVAL

Subdivision: Bear Run Kilpin 2023 Replat  
KPB File 2023-002  
Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on March 20, 2023. Approval for the plat is valid for two years from the date of approval.

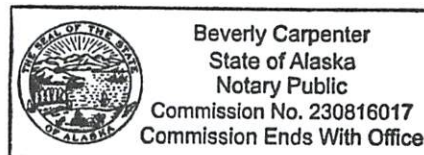
The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, September 20, 2023.

  
\_\_\_\_\_  
Robert Ruffner  
Planning Director

State of Alaska  
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 20 day of September 2023 by Robert Ruffner.

  
\_\_\_\_\_  
Notary Public for the State of Alaska



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Borough Mayor

## ADMINISTRATIVE APPROVAL

Subdivision: Diamond Cape No 6  
KPB File 2022-094  
Homer Recording District

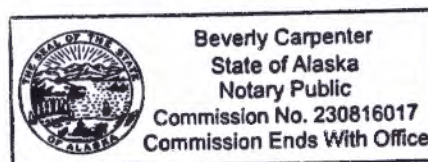
The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on July 18, 2022. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, September 27, 2023.

Vince Piagentini  
Platting Manager

State of Alaska  
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 27 day of September 2023 by Vince Piagentini.

  
Notary Public for the State of Alaska

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Borough Mayor

## ADMINISTRATIVE APPROVAL

Subdivision: Kingswood Estates Subdivision 2022  
KPB File 2022-183  
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on January 23, 2023. Approval for the plat is valid for two years from the date of approval.

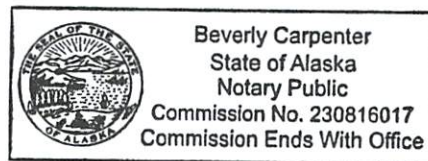
The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, September 20, 2023.

Robert Ruffner  
Planning Director

State of Alaska  
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 20 day of September 2023 by Robert Ruffner.

Notary Public for the State of Alaska



My commission expires: with office

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Peter A. Micciche  
Borough Mayor

## ADMINISTRATIVE APPROVAL

Subdivision: Razdolna 2023 Replat Lot 10-D-2  
KPB File 2022-163  
Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on December 12, 2022. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, September 20, 2023.

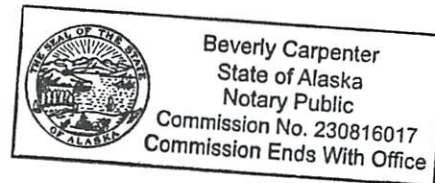
Robert Ruffner  
Planning Director

State of Alaska  
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 20 day of September 2023 by Robert Ruffner.

  
Notary Public for the State of Alaska

My commission expires: With office



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Borough Mayor

## ADMINISTRATIVE APPROVAL

Subdivision: Southern Bluff Acres 2023 Replat  
KPB File 2023-029  
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on April 10, 2023. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, September 20, 2023.

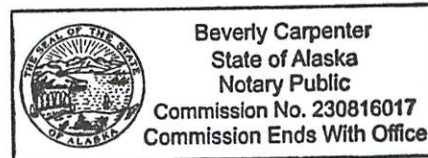
Robert Ruffner  
Planning Director

State of Alaska  
Kenai Peninsula Borough

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Notary Public for the State of Alaska

My commission expires: with office



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## **C. CONSENT AGENDA**

- \*4. Plats Granted Final Approval**
  - a. Corea Bend Subdivision Bumpus Replat; KPB File 2023-089**
  - b. Moose Range Meadows Duchame Replat; KPB File 2023-090**



# Planning Department

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Peter A. Micciche  
Borough Mayor

## FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision:     Corea Bend Subdivision Bumpus Replat  
                      KPB File 2023-089  
                      Homer Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on Wednesday, September 20, 2023.

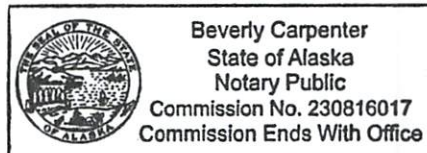
  
\_\_\_\_\_  
Robert Ruffner  
Planning Director

State of Alaska  
Kenai Peninsula Borough

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\_\_\_\_\_  
Notary Public for the State of Alaska

My commission expires: with office



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# Planning Department

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Peter A. Micciche  
Borough Mayor

## FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

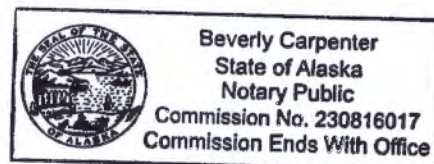
Subdivision: Moose Range Meadows Ducharme Replat  
KPB File 2023-090  
Kenai Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on Wednesday, September 27, 2023.

Vince Piagentini  
Platting Manager

State of Alaska  
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 27 day of September 2023 by  
Vince Piagentini.

  
Notary Public for the State of Alaska

My commission expires: with office

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.

## **C. CONSENT AGENDA**

**\*7. Minutes**

**b. September 25, 2023 PC Meeting Minutes**

# Kenai Peninsula Borough Planning Commission

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

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September 25, 2023  
7:30 P.M.  
UNAPPROVED MINUTES

**AGENDA ITEM A.      CALL TO ORDER**

Commissioner Brantley called the meeting to order at 7:30 p.m.

**AGENDA ITEM B.      ROLL CALL**

*Commissioners Present*

Jeffery Epperheimer, Nikiski District  
Pamela Gillham, Kalifornsky/Kasilof District  
Virginia Morgan, Cooper Landing/Hope District  
Jeremy Brantley, Ridgeway/Sterling District  
Dawson Slaughter, South Peninsula District  
Charlene Tautfest, City of Soldotna  
Franco Venuti, City of Homer  
Diane Fikes, City of Kenai

With 8 members of an 8-member seated commission in attendance, a quorum was present.

*Staff Present*

Robert Ruffner, Planning Director  
Walker Steinhage, Borough Deputy Attorney  
Todd Sherwood, Borough Deputy Attorney  
Samantha Lopez, River Center Manager  
Morgan Aldridge, Planner  
Jenny Robertson, Land Management Administrative Assistant  
Ann Shirnberg, Planning Administrative Assistant

**AGENDA ITEM C.      CONSENT & REGULAR AGENDAS**

- \*2      Planning Commission Resolutions**
  - a. PC Resolution 2023-19
  
- \*3.      Plats Granted Administrative Approval**
  - a. Hank and Mattie Bartos Subdivision; KPB File 2022-180
  - b. Kenai Meadows Addition No. 1; KPB File 2022-035
  - c. Soldotna Junction Sub Creek Side Estates 2023 Addn.; KPB File 2023-027
  
- \*6.      Commissioner Excused Absences**
  - a. City of Seward, Vacant
  
- \*7.      Minutes**
  - a. September 11, 2023 Planning Commission meeting minutes.

Chair Brantley asked Ms. Shirnberg to read the consent agenda items into the record. Chair Brantley then asked if anyone wished to speak to any of the items on the consent agenda. Seeing and hearing no one wishing to comment, Chair Brantley brought it back to the commission for a motion.



**MOTION:** Commissioner Slaughter moved, seconded by Commissioner Gillham to approve the consent agenda and amend the regular agendas.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
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**AGENDA ITEM E. NEW BUSINESS**

Chair Brantley asked Ms. Shirnberg to read the public hearing procedures into the record.

**ITEM 1. BUILDING SETBACK ENCROACHMENT PERMIT - LAKEWOOD ESTATES AMENDED**

<b>KPB File No.</b>	2023-094
<b>Planning Commission Meeting:</b>	September 25, 2023
<b>Applicant / Owner:</b>	Stephen Parker of Montgomery, Texas
<b>Surveyor:</b>	John Segesser / Segesser Surveys
<b>General Location:</b>	Sterling Highway and Lakewood Road, Sterling Area

<b>Parent Parcel No.:</b>	063-021-03
<b>Legal Description:</b>	T 5N R 9W SEC 9 Seward Meridian KN 2004088 Lakewood Estates Amended Lot 1 BLK 1
<b>Assessing Use:</b>	Commercial
<b>Zoning:</b>	Rural Unrestricted
<b>PC Resolution</b>	2023-29

Staff report was given by Planner Director Robert Ruffner.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

**MOTION:** Commissioner Epperheimer moved, seconded by Commissioner Gillham to adopt Planning Commission Resolution 2023-29 granting a setback encroachment permit to Block 1, Lot 1, Lakewood Estates Amended, Plat KN 0970037, citing findings 3, 4, 6 & 9 in support of standard one, findings 3, 6, & 9 in support of standard two and findings 2-4, 6 & 9 in support of standard three. As set forth in the staff report.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
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**ITEM 2. BUILDING SETBACK ENCROACHMENT PERMIT – ASHTON PARK SUBDIVISION**

<b>KPB File No.</b>	2023-097
<b>Planning Commission Meeting:</b>	September 25, 2023
<b>Applicant / Owner:</b>	Laurel Frison of Soldotna, Alaska
<b>Surveyor:</b>	None
<b>General Location:</b>	Merrywood Avenue, Kalifornsky Area

<b>Parent Parcel No.:</b>	055-081-45
<b>Legal Description:</b>	T 5N R 11W SEC 35 Seward Meridian KN 0970074 Ashton Park Sub Lot 1 Blk 1
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted
<b>PC Resolution</b>	Rural Unrestricted 2023-30

Staff report was given by Planning Director Robert Ruffner.

Chair Brantley opened the item for public comment.

Laurel Frison; 47490 Merrywood Avenue, Soldotna, AK 99669: Ms. Frison is the applicant and requested the commission approve her request for a building setback encroachment permit. They were wanting to build a one car garage in the front yard. She also requested that the cedar fence be allowed to remain in the setback as it provides some privacy for themselves and their neighbor. She stated that the cedar fence doesn't appear to be blocking anything. However, they would remove it if required to do so. She also noted that the chain link fence that had been there had been damaged by snow and had been removed.

David Marquiss; 34525 Commerce Street, Soldotna, AK 99669: Mr. Marquiss is a neighboring landowner and did not support approving the setback encroachment permit. He there were already had 5 structures on this lot and he felt another should not be approved. He also believed that one of the buildings in the backyard was another residential structure. He expressed concerns that if this permit were approved it could encourage other landowners to build within their setbacks. He then stated he believed the applicants had already begun building in the setback.

Laurel Frison; 47490 Merrywood Avenue, Soldotna, AK 99669: Ms. Frison stated the structures in the backyard were two sheds that were built to match their house and a greenhouse. She noted they really didn't want to build the garage in the front yard but it was the best location. They had looked into building the garage in the backyard but realized they would have no way to get back there. It would also make removing snow very difficult as they would have nowhere to move the snow to. She stated they had not begun building in the setback but had cleared the land in preparation to build.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

**MOTION:** Commissioner Slaughter moved, seconded by Commissioner Fikes to adopt Planning Commission Resolution 2023-30 granting a setback encroachment permit to Block 1, Lot 1, Ashton Park Subdivision, Plat KN 097074, citing findings 5-8, 10 & 12 in support of standard one, findings 5-7 & 10-12 in support of standard two and findings 5-8 & 10-12 in support of standard three, as set forth in the staff report.

Commissioner Epperheimer noted staff does not have any negative comment related to the construction of this structure in the setback. Would he be correct in assuming that the Planning Department has no issues with this request? Director Ruffner replied the setback code mostly addresses line-of-site issues related to the rights-of-way, which is what staff is most concerned with. Staff does have some potential issues with the cedar fence in the setback as the fence is not see-through. He noted the borough roads department did not have any comment on this permit. The permit request before the commission tonight only addresses the request to build a new structure in the setback.

Commissioner Venuti noted this is a pretty serious request before the commission and asked the applicant why the only drawing supplied was a rough draft on graph paper. He also wondered why the proposed garage cannot be moved to the right side of the house and become an attached garage. That way they would not have to build in the setback. Ms. Frison replied the drawing was just a rough draft of what they were thinking of doing. They had a better drawing as well as a letter explaining more fully what they wanted to do, but were told by staff they had missed the cutoff to submit information for the meeting. She noted their lot was very narrow and deep and that there would not be room to build the garage on either side of the house. She believed on one side of the house they had 10' and about 11' on the other side. Commissioner Venuti then asked if they had already begun building the structure. Ms. Frison replied they had not begun building in the setback but had cleared the land in preparation to build. They cleared the area before they even knew that their preferred location was in the setback. They became aware that they were in the setback when she pulled out and reviewed the 1997 as-built. Commissioner Venuti then stated it appears from their site plan and rough drawing that there is room on the property to build the garage without having to build in the setback. Mr. Frison replied that if they built the garage attached to the house it would block all the sunlight to the home. Ms. Frison noted that where it would be attached is where all their front windows are located.

Commissioner Fikes noted finding 11 in the staff report states that Merrywood Ave. is not fully developed, could staff please clarify and expand on the statement. Director Ruffner replied the section of Merrywood in front of this lot is a developed 60' wide right of way but as you continue to the west the road is not developed and is only a 30' wide dedication. Commissioner Fikes then asked if Merrywood was borough maintained and if roads had any objections. Director Ruffner stated the developed section of Merrywood was borough maintained and the roads department did not supply any comments. Commissioner Fikes then asked the applicants if they had any type of garage on their house as it exists now. Ms. Frison replied the house is a small two-bedroom and has a two-car garage. Currently one half of the garage is being used as a living space, leaving a one-car garage. Commissioner Fikes asked if she was correct in understanding that they currently have a two-car garage and are proposing to build an unattached one car garage in the setback. Ms. Frison replied that is correct.

Commissioner Gillham asked if staff knows the actual distance between the house and the side property lines. How much room is there for the applicant to travel on either side to get to the backyard? Would there be room to push snow and for it to not go on to the neighbor's properties? Director Ruffner replied there is an as-built from 1997 on page E2-3 of the packet. The as-built shows there is 10.8' on the east side and on the west side there is 17.4' between the house and the side lot lines. Again, he noted the as-built is from 1997 and things may have changed since the as-built was produced.

Commissioner Slaughter noted the as-built in the packet is difficult to read. Is he correct in understanding that there is 81' between the house and the property line fronting Merrywood Ave.? Director Ruffner agreed the as-built is difficult to read. To him it looks like there is 81' from the house to the setback line on the west side of the property and a little bit more on the east side of the property. Commissioner Slaughter then stated it appears to him that there would be room to build the garage without having to go into the setback, however the as-built is old and difficult to read. Without some updated information or a new as-built clarifying the actual numbers he isn't sure where he stands on this.

Deputy Borough Attorney Todd Sherwood informed the commission he has some legal guidance for the commission that relates to this situation. The information comes from the decision related to the remand hearing that they will be discussing later in the meeting. It has to do with the standards and conditions the commission applies in these situations. As stated in the staff report there are three standards related to setback encroachment permits that need to be met.

1. The building setback encroachment may not interfere with road maintenance.
2. The building setback encroachment may not interfere with sight lines or distances.
3. The building setback encroachment may not create a safety hazard.

In the decision from the hearing officer related to the remand hearing, he stated he did not find there was substantial evidence to support several findings used by the commission to support their decision. He then noted there was a comment received regarding tonight's permit raising concerns related to road maintenance interference and safety. The findings in the staff report supporting the standard that the setback encroachment would not interfere with road maintenance are basically conclusionary statements. The commission may want to ask themselves whether there is substantial evidence to support the conclusion that standard has been met. The commission may wish to develop evidence to support the finding by asking questions of staff or the applicant. What is it about the fact (finding) that there is 11 feet left in the building setback? How does that ensure that road maintenance won't be negatively affected? How does that finding meet the standard? In the end the burden is on the applicant to show substantial evidence that the standards have been met. He is not saying the commission should vote one way or another, he is just saying that it would be wise legally to develop the record further before taking a vote.

Chair Brantley had a question for staff. He noted the snow removal issue has come up several times. It is his understanding that borough maintenance cannot push snow from clearing rights-of-way over the property lines on to private property. The snow must remain within the right-of-way. Setbacks are not for the borough to use for snow removal. Is his understanding correct. Director Ruffner replied that he is correct, snow that falls into public rights-of-way has to be stored within the right-of-way. Chair Brantley noted snow removal is often cited as a concern that road maintenance will be interfered with. Since the borough cannot use the setback for snow removal, he doesn't believe that would be a concern here. Other work that road maintenance does, such as pulling ditches does not happen within the setback either. Since road maintenance cannot use the setback for any of their maintenance activities, he doesn't see encroaching 9 feet into the setback causing road maintenance interference.

Commissioner Fikes asked staff how they came to the conclusion in finding 5, that there is not enough room to build. The applicants already have a 2-car garage and she wondered why they could not just add on to the existing garage? Director Ruffner replied the finding may have been derived from the as-built submitted by the applicant and the commission may wish to enquire about it to develop further evidence. Commissioner Fikes noted the as-built was not clear and was difficult to read. She is having a difficult time using the as-built as evidence to support this finding. She wondered if they should postpone making a decision and ask the applicants for further information. Deputy Attorney Steinhage replied the commission could postpone action on this matter until brought back by staff. It also might be helpful if the commission had specific questions or guidance for staff. Commissioner Fikes stated it would be helpful if they could have a clearer copy of the as-built and better diagrams of the proposed structure. That would be helpful in determining whether or not the standards have been met.

Deputy Attorney Sherwood noted the burden to supply substantial evidence that the standards have been met falls on the applicant. Staff is not responsible for developing evidence. Staff can be a resource to support and assist the applicant but the responsibility still remains with the applicant.

Chair Brantley asked if there were any other commissioners who supported the idea of postponement.

Commissioner Fikes stated she supported postponement as she doesn't feel they have enough evidence to support the conclusions that the standards have been met.

Commissioner Gillham agreed with Commissioner Fikes and would like more evidence showing that the standards have been met. She agrees that more information is needed before they can make a decision.

Chair Brantley stated he prefers to postpone action instead of denying the permit. If the commission were to deny the permit the applicants would have to wait a year before coming back with a new application.

Commissioner Slaughter agreed with postponing action and moved to withdraw his earlier motion. Commissioner Fikes as the second agreed. The motion was withdrawn.

**MOTION:** Commissioner Slaughter moved, seconded by Commissioner Venuti to postpone action on this item until brought back by staff

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
---------	--

**ITEM 3. CONDITIONAL USE PERMIT – WILSON**

<b>KPB File No.</b>	2023-28
<b>Planning Commission Meeting:</b>	September 25, 2023
<b>Applicant / Owner:</b>	Trevor Wilson
<b>Legal Description:</b>	T 5N R 10W SEC 19 SM KN 0870069 POACHER'S COVE PLANNED UNIT DEVELOPMENT AMENDED LOT 4
<b>Physical Address:</b>	45646 Spruce Avenue W.
<b>KPB Parcel Number</b>	05748938

Staff report was given by Resource Planner Morgan Aldridge.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

**MOTION:** Commissioner Slaughter moved, seconded by Commissioner Fikes to adopt Planning Commission Resolution 2023-28 granting a conditional use permit pursuant to KPB 21.18 for the construction of a residential structure with the 50-foot Habitat Protection District of the Kenai River.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
---------	--

**ITEM 4. ORDINANCE 2023-23**

**AMENDING KPB 20.30.280 & KPB 21.06 REGARDING FLOODPLAIN MANAGEMENT TO ADOPT REQUIRED CHANGES TO REMAIN COMPLIANT WITH THE NATIONAL FLOOD INSURANCE PROGRAM**

Staff report was given by River Center Manager Samantha Lopez.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

**MOTION:** Commissioner Slaughter moved, seconded by Commissioner Epperheimer to forward to the Assembly a recommendation to adopt Ordinance 2023-23, amending KPB 20.30.280 & KPB 21.06 regarding floodplain management to adopt required changes to remain compliant with the National Flood Insurance Program.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
---------	--

**AGENDA ITEM F. PLAT COMMITTEE REPORT**

Commissioner Slaughter reported the plat committee reviewed and granted preliminary approval to 4 plats,

**AGENDA ITEM G. OTHER**

**ITEM 1. REMAND HEARING**

<b>KPB File No.</b>	2022-121
<b>Planning Commission Resolution:</b>	2022-46
<b>Applicant / Owner:</b>	David & Nancy Whitmore
<b>General Location:</b>	GL Hollier Street / Ridgeway Area
<b>Legal Description</b>	Lot 10, Lake Estates Subdivision, Plat KN 1648
<b>Parcel ID Number</b>	057-250-01

Borough Attorney Walker Steinhage gave a brief review the remand decision with the commission. He noted the only thing that the commission needs to discuss tonight is the date for the hearing and whether or not they wish to reopen the record.

Commission Morgan disclosed that she had been contacted by a community member about this matter. The community member suggested that the hearing should be held as soon as possible and that the structure should be removed. She stated she did not respond to either of the suggestions and did not engage in discussion on this matter with the individual and she believes that she can still be impartial on this matter. Chair Brantley ruled that there was no ex parte communication that took place and that Commissioner Morgan can participate in the matter.

**MOTION:** Commissioner Gillham moved seconded by Commissioner Venuti to set the remand hearing for the October 9, 2023 Planning Commission meeting and to reopen the record to the parties and the public.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Slaughter, Tautfest, Venuti
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**AGENDA ITEM H. PUBLIC COMMENT/PRESENTATIONS**

Chair Brantley asked if there was anyone from the public who would like to comment on anything not appearing on the agenda. No one wished to comment

**AGENDA ITEM J. COMMISSIONER COMMENTS**

Commissioner Gillham requested an excused absence from the October 23 Planning Commission meeting.

**AGENDA ITEM K. ADJOURNMENT**

Commissioner Venuti moved to adjourn the meeting at 8:58 P.M.

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Ann E. Shirnberg  
Administrative Assistant

# J. NEW BUSINESS

## 1. Remand Hearing

Building Setback Encroachment; KPB File 2022-121

Lot 10, Lake Estates Subdivision, Plat KN 1648

Applicants: David & Nancy Whitmore

General Location: GL Hollier Street

Ridgeway Area

*(PLEASE NOTE ADDITIONAL MATERIALS RECEIVED AFTER THE PACKET PUBLICATION DATE OF 9/29/23 WILL BE IN THE DESK PACKET WHICH WILL BE PUBLISHED AFTER 2:00 PM ON 10/6/23)*

**APPEAL OF THE KENAI PENINSULA BOROUGH  
PLANNING COMMISSION DECISION  
PC RESOLUTION 2022-46**

**Building Setback Encroachment Permit  
Lot 10, Lake Estates Subdivision  
KPB File 2022-2022-121**

**KPB Tax Parcel ID#: 057-250-01**

**Legal Description: a lot 10, Lakes Estates Subdivision, Plat  
K-1648, Section 21, Township 5 North, Range 10 West**

**Applicant/Landowner:  
David & Nancy Whitmore**





# Planning Department

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

Mike Navarre  
Borough Mayor

"I, Robert Ruffner, the Kenai Peninsula Borough Planning Director, do hereby certify that to the best of my knowledge the attached record contains true and correct copies of all documents required by KPB 21.20.270 to be included in the record on appeal in the matter of the approval of a building setback encroachment permit for Lot 10, Lake Estates Subdivision, Plat K-1648; KPB File 2022-121.

Robert Ruffner  
Planning Director  
Kenai Peninsula Borough

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

)  
)ss.  
)



Ann E. Shirnberg  
State of Alaska  
Notary Public  
Commission No. 211108013  
My Commission Expires With Office

The foregoing instrument was acknowledged before me this 19th day of December by Robert Ruffner of the Kenai Peninsula Borough, a municipal corporation, on behalf of the corporation.

Notary Public for the State of Alaska

# INDEX

<b>Record Page #</b>	<b>Document</b>
R-1	PC Resolution 2022-46
R-2 to R-7	October 25, 2022 Notice of Decision
R-8 to R-21	October 24, 2022 Meeting Materials
R-22 to R-28	Miscellaneous Information: Public Hearing Notice Agenda Newspaper Ad
R-29 to R-33	October 24, 2022 Planning Commission Meeting Minutes
<b>VERBATIM TRANSCRIPTS</b>	
T-1 to T-14	October 24, 2022 Planning Commission Verbatim Transcript

**PLANNING  
COMMISSION  
RESOLUTION  
2022-46**

**KENAI PENINSULA BOROUGH PLANNING COMMISSION  
RESOLUTION 2022-46  
KENAI RECORDING DISTRICT**

GRANT A BUILDING SETBACK ENCROACHMENT PERMIT TO A PORTION OF THE 20-FOOT BUILDING SETBACK ADJOINING THE WEST BOUNDARY OF LOT 10, LAKE ESTATES SUBDIVISION (K-1648), GRANTED BY LAKE ESTATES SUBDIVISION (K-1648); IN SE1/4 NE1/4 SECTION 21, TOWNSHIP 5 NORTH, RANGE 10 WEST, SEWARD MERIDIAN, ALASKA, WITHIN THE KENAI PENINSULA BOROUGH. KPB FILE 2022-121.

WHEREAS, per KPB 20.30.240 – Building Setbacks, a minimum 20-foot building setback shall be required for fee simple non-arterial rights-of-way in subdivisions located outside incorporated cities.

WHEREAS, Nancy and David Whitmore of Soldotna, Alaska requested a building setback permit for a portion of a shop located on said lot; and

WHEREAS, per the petition, a shop was recently constructed and is located 9.8 feet for a distance of 49 feet within the 20 foot building setback adjoining GL Hollier Street right-of-way;

WHEREAS, the existing building will not obstruct line of sight for traffic; and

WHEREAS, on October 24, 2022, the Kenai Peninsula Borough Planning Commission considered the background information, all comments received, and recommendations from KPB Planning Department staff regarding the proposed exception; and

WHEREAS, the Planning Commission found that granting the building setback permit will not be detrimental to the public interest; and

WHEREAS, 20.10.110 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to approve building setback permits by Resolution.

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

Section 1. Approved a permit to allow only the encroaching portion of the shop that extends 9.8 feet into the 20 foot building setback adjoining GL Hollier Street right-of-way on the west boundary of Lot 10, Lake Estates Subdivision, granted by Lake Estates Subdivision (K-1648).

Section 2. That any new, replacement and/or additional construction will be subject to the twenty-foot building setback limit.

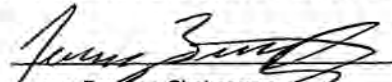
Section 3. That the twenty-foot building setback shall apply to the remainder of said lot.

Section 4. That an exhibit drawing or as-built survey prepared by a licensed land surveyor, showing the location of the portion of the building setback exception to be granted be attached to and made a part of this Resolution, becoming page 2 of 2.


Section 5. That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.

Section 6. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 24<sup>TH</sup> DAY OF OCTOBER, 2022

  
Jeremy Brantley, Chairperson  
Planning Commission

ATTEST:

  
Ann Shimberg  
Administrative Assistant

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

**OCTOBER 25, 2022**  
**NOTICE OF DECISION**

Landowner  
Party of Record

October 25, 2022

**KENAI PENINSULA BOROUGH PLANNING COMMISSION  
NOTICE OF DECISION  
MEETING OF OCTOBER 24, 2022**

Lot 10, Lake Estates Subdivision Building Setback Encroachment Permit  
KPB File 2022-121; KPB PC Resolution 2022-46  
Location: on GL Hollier Street, Ridgeway area.

By unanimous consent and based on the following findings of fact, the Kenai Peninsula Borough Planning Commission conditionally approved the building setback encroachment permit thereby adopting KPB PC Resolution 2022-46 during their regularly scheduled meeting of October 24, 2022.

Standard 1. The building setback encroachment may not interfere with road maintenance.

*Findings:*

10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
12. The road is constructed by privately maintained.
13. Due to the width of the street, improvements, the location of Sports Lake, it does not appear that this right-of-way will ever serve additional lots.
14. The encroachment is along a straight portion of the right-of-way.
15. There are no terrain issues within the dedication.

Standard 2. The building setback encroachment may not interfere with sight lines or distances.

*Findings:*

10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
11. There does not appear to be any line of sight issues.
12. The road is constructed by privately maintained.
13. Due to the width of the street, improvements, the location of Sports Lake, it does not appear that this right-of-way will ever serve additional lots.
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Standard 3. The building setback encroachment may not create a safety hazard.

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The approval is subject to:

1. Approved a permit to allow only the encroaching portion of the shop that extends 9.8 feet into the 20 foot building setback adjoining GL Hollier Street right-of-way on the west boundary of Lot 10, Lake Estates Subdivision, granted by Lake Estates Subdivision (K-1648).
2. That any new, replacement and/or additional construction will be subject to the twenty-foot building setback limit.
3. That the twenty-foot building setback shall apply to the remainder of said lot.
4. That an exhibit drawing or as-built survey prepared by a licensed land surveyor, showing the location of the portion of the building setback exception to be granted be attached to and made a part of this Resolution, becoming page 2 of 2.
5. That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.
6. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

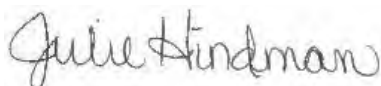
Our office is responsible for recording the resolution. Please send a check to this office for **\$28.84** made payable to the **Kenai Peninsula Borough**. The borough has a three-day hold for checks received for payment of recordation of resolutions.

The deadline to appeal the Planning Commission's approval is 15 days from the date of this notice. The resolution cannot be recorded until that period has expired.

The Kenai Peninsula Borough had an as-built done during the compliance review. Staff has reached out to the surveyor for permission to use the as-built as the required exhibit drawing required for recording. If permission is not received we will notify you to acquire an as-built for recording.

To ensure timely recording of this document, please send your check to our office (Planning Department, 144 N. Binkley St., Soldotna, AK 99669) no later than January 9, 2023.

Sincerely,



Julie Hindman  
Administrative Assistant

Notice was mailed on October 25, 2022 to:

Nancy and David Whitmore  
PO Box 881  
Soldotna, AK 99669-0881



October 25, 2022

**KENAI PENINSULA BOROUGH PLANNING COMMISSION  
NOTICE OF DECISION  
MEETING OF OCTOBER 24, 2022**

Lot 10, Lake Estates Subdivision Building Setback Encroachment Permit  
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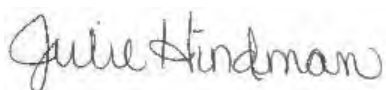
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5. That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.
6. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

Per KPB 20.10.110.(H), a decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250. The resolution cannot be recorded until that period has expired.

Sincerely,



Julie Hindman  
Administrative Assistant

Notice was mailed on October 25, 2022 to:

Troy Taylor  
43680 Ross Dr.  
Soldotna, AK 99669

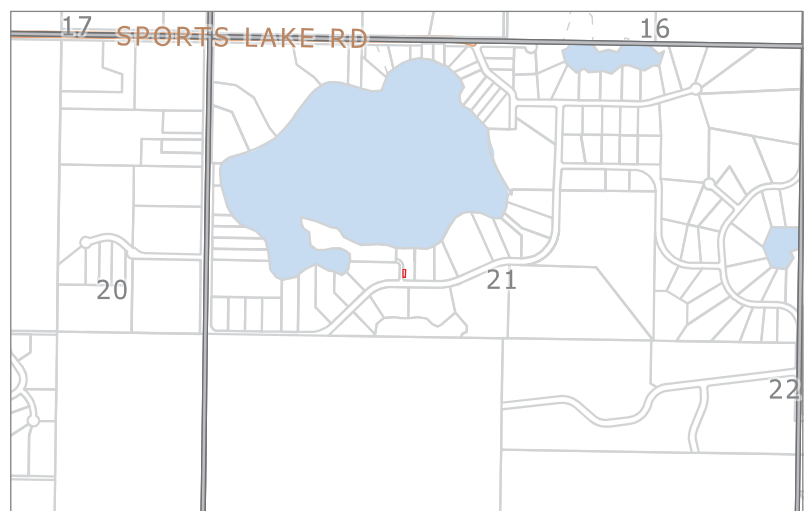
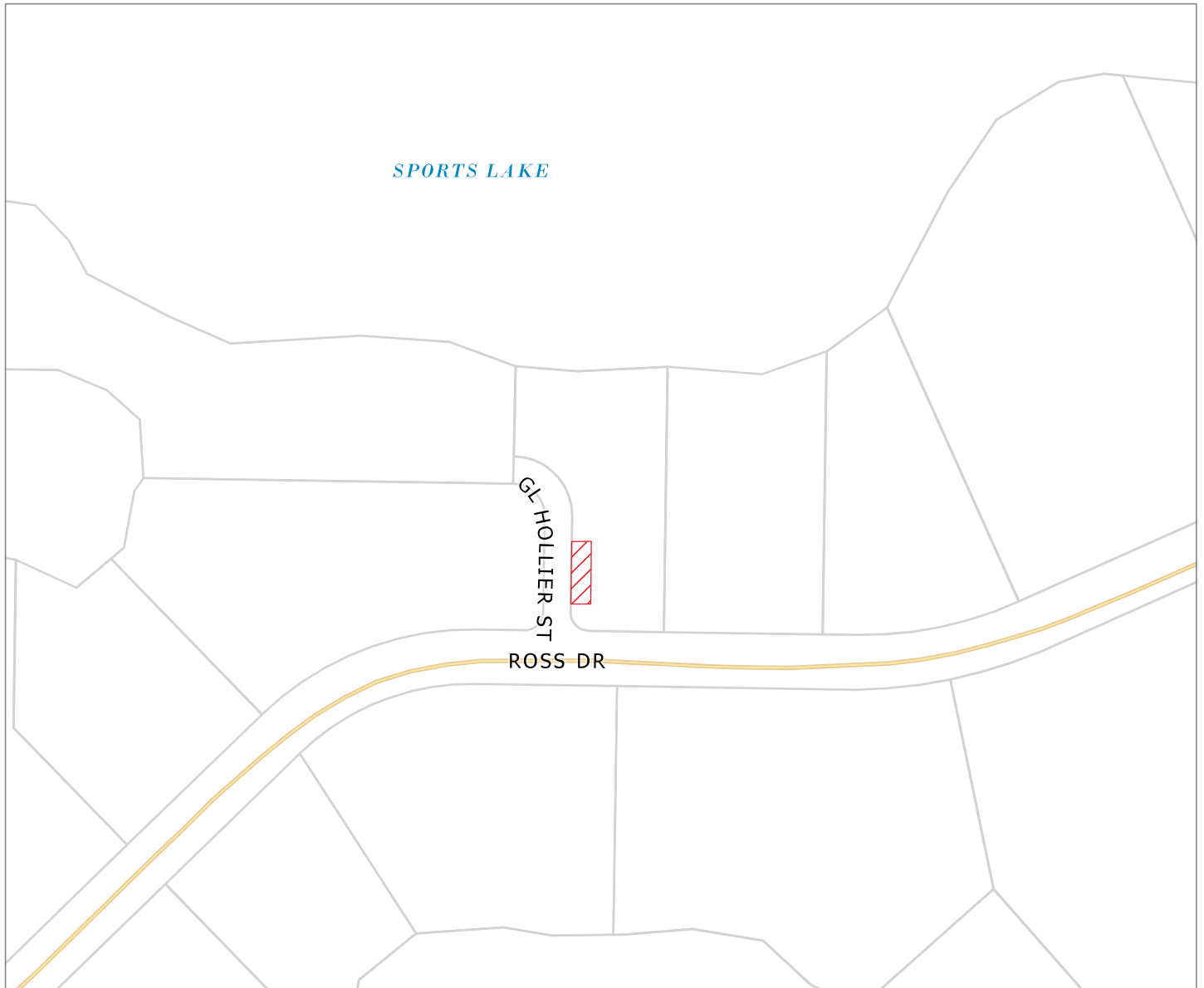
# **OCTOBER 24, 2022 MEETING MATERIALS**

## **E. NEW BUSINESS**

### **1. Building Setback Encroachment Permit**

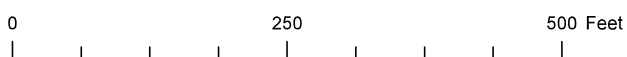
**KPB File 2022-121**

**Lot 10, Lake Estates Subdivision, Plat KN-1648**



KPB File 2022-121  
T 05N R 10W SEC 21  
Ridgeway

9/28/2022





Aerial View



NOTES

- 1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
- 2. BUILDING DIMENSIONS ARE TO THE FACE OF THE BUILDING.
- 3. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT KN 1648.

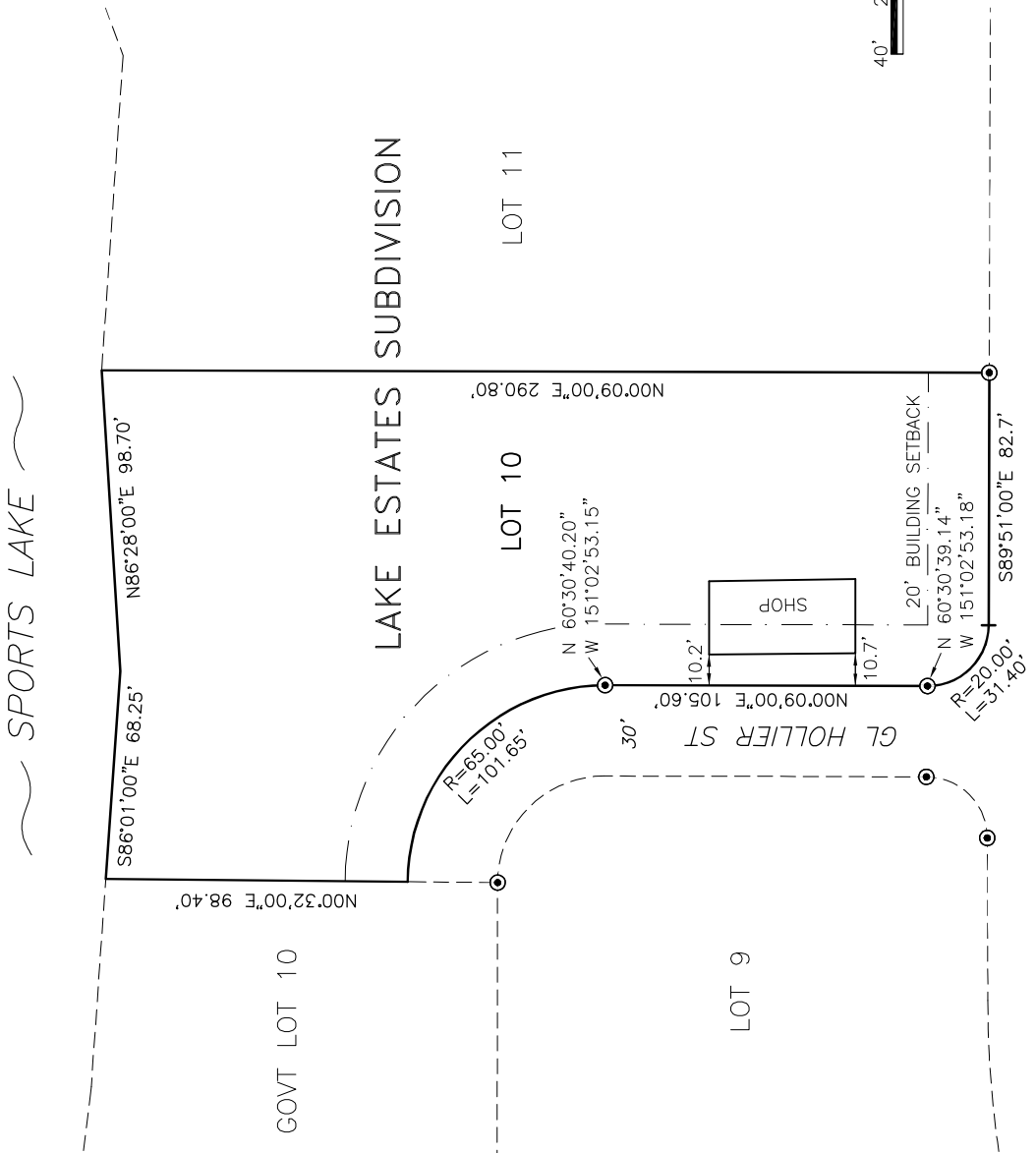
LEGEND

- FOUND REBAR

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE PERFORMED AN AS-BUILT SURVEY ON THE PROPERTY SHOWN HEREON, AND THE IMPROVEMENTS EXIST AS SHOWN. FIELD SURVEY ON 09/26/2022.

*Jason L. Schollenberg* 09/27/2022  
 JASON L. SCHOLLENBERG DATE  
 PLS 14488-S



PENINSULA SURVEYING, LLC 10535 KATRINA BOULEVARD NINILCHIK, AK 99639 (907)306-7065	
AS-BUILT SURVEY LOT 10, LAKE ESTATES SUBDIVISION SECTION 21, T5N, R10W, S.M.	
SCALE: 1" = 40'	DATE: 09/27/2022
DRAWN: JLS	SHEET: 1 OF 1

ROSS DRIVE 80'

KPB 2022-121



AGENDA ITEM E. NEW BUSINESS

ITEM 1. – BUILDING SETBACK ENCROACHMENT PERMIT – LOT 10, LAKE ESTATES SUBDIVISION (PLAT K-1648)

<b>KPB File No.</b>	2022-121
<b>Planning Commission Meeting:</b>	October 24, 2022
<b>Applicant / Owner:</b>	David and Nancy Whitmore of Soldotna, Alaska
<b>Surveyor:</b>	Jason Schollenberg / Peninsula Surveying, LLC
<b>General Location:</b>	GL Hollier Street, Ridgeway area

<b>Parent Parcel No.:</b>	057-250-01
<b>Legal Description:</b>	Lot 10, Lake Estates Subdivision, Plat K-1648, Section 21, Township 5 North, Range 10 West
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted

STAFF REPORT

**Specific Request / Purpose as stated in the petition:** We are requesting a 20’ Building Setback Exception from the KPB Planning and Platting Department because our garage has been built approximately 10’ into the setback for GL Hollier Street, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115.

At our meeting with representative from the Planning and Platting Department on Friday, July 22, 2022, we were told that the KPB had a surveyor currently surveying 3 parcels in this subdivision, and that we could use this survey as the As-built Survey or Site Survey required for the *Application for Building Setback Encroachment Permit*.

This violation was not intentional; it was a collective error in planning how to use our lot (Lot 10) to meet our objections of building a detached garage, a home, and on-site well and septic systems. The lot is oddly shaped, with poor soils, having the useable area restricted by both Ross Dr. and GL Hollier St.

In discussion with the builder and the excavation company, we were aware of the required 100’ separation between well and septic system (including the wells and septic systems of our adjacent neighbors). We were unaware of the 20’ road setback for GL Hollier St. as there are no dotted lines to indicate this on the plat: a road setback is shown on the plat for Ross Dr. Our error was in not reading the notes on the plat.

Several photos are included to illustrate the situation.

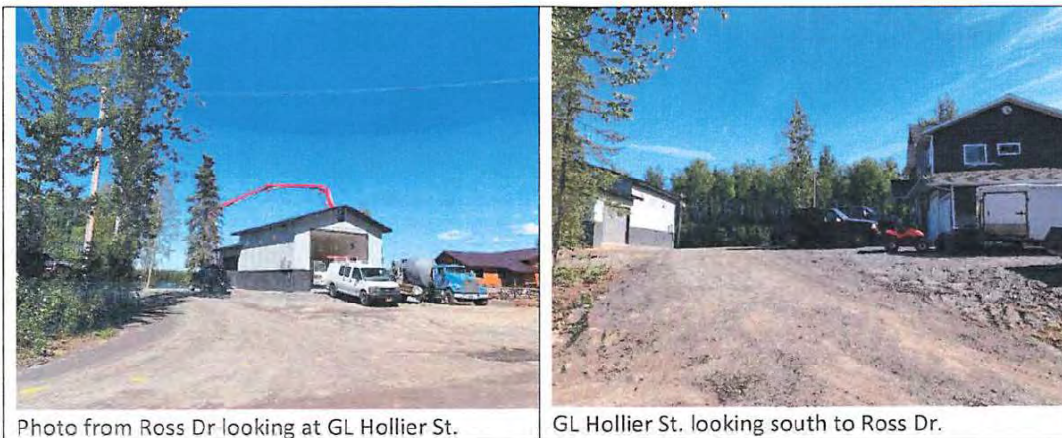


Photo from Ross Dr looking at GL Hollier St.

GL Hollier St. looking south to Ross Dr.

It appears that the 48' exception to the road setback will not;

1. Not interfere with road maintenance (road is privately maintained).
2. Not interfere with sight lines or distances.
3. Not create a safety hazard.

We appreciate your consideration of this matter.

**Site Investigation:** The request is to be granted a permit for a 49 foot by 24 foot shed along GL Hollier Street. The building encroaches 9.8 feet for the length of 49 feet and is slightly angled to be 9.3 feet at the southwest corner of the shed. KPB GIS imagery does not show the structures being discussed as this is new construction. There are no steep slopes present within the area being reviewed or with the intersection with Ross Drive, a borough maintained gravel right-of-way. Wetlands are not present within the right-of-way.

The dedication for GL Hollier Street is only 30 feet wide. This right-of-way does not meet KPB width standards and while constructed is not maintained by the borough. The right-of-way only provides access to three lots.

The sight distances do not appear to be impacted. GL Hollier Street does have a curve on the northern end. The area in question is along the straight portion of the right-of-way and located on the side with the outside of the curve and should not cause any sight issues.

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**Staff Analysis:** Lake Estates Subdivision, Plat K-1648, was recorded in 1969. The plat dedicated Ross Drive and GL Hollier Street (unnamed on the plat). GL Hollier Street was granted as a 30 foot wide right-of-way. Per the minutes from the September 8, 1969 Planning Commission meeting, the dedication of 30 feet was allowable as its intent was to provide access to a land locked parcel, Government Lot 10 that was noted as being the Hollier property.

The issues were brought to the attention of the KPB Code Compliance and they have been working with the owners on a resolution for the issue. The plat clearly shows a 25 foot building setback along Ross Drive with a depiction and label. A depiction of any type of setback was not shown along GL Hollier Street. Staff believes this is due to the spacing in that area and the inability to depict the setback without causing a problem with required information. The plat did have a plat note stating a setback from street frontage was to be 25 feet. The Kenai Peninsula Borough Legal Department reviewed the code that was in place when the plat was approved. The width that was granted did not fit the width for any of the types of roads defined in code. Per the staff report it appears an exception to width was granted. This right-of-way fits the definition of Marginal Access Streets from the 1968 KPB code. The definition states "minor streets which are parallel with and adjacent to arterial streets and highways, and which provide access to abutting properties and protection from through traffic." While this width does not comply with code, the approval of a substandard width would mean that this is a marginal access street and all streets were subject to a 20 foot building setback at that time. The decision was made that the plat did note setbacks were present, code required a minimal 20 foot setback, the plat did not depict a 25 foot setback, the plat note also included 20 foot setbacks on interior lines, and thus we are enforcing a 20 foot setback along GL Hollier Street.

GL Hollier Street is only being used by three lots. One is the lot that the road was created for, the applicant of this petition, and the owner on the west side of the right-of-way. Due to the width and the usage this is a privately maintained right-of-way.

The issues along GL Hollier Street were brought to the attention of the KPB Code Compliance Officer. After discussions with the owners and a field inspections an as-built was ordered by KPB. The as-built did show that new shop was encroaching into the setback. The owners have been working with the KPB Code Compliance Officer for a resolution of the situation.

**Findings:**

1. Lake Estates Subdivision, Plat K-1648, dedicated GL Hollier Street.
2. The Planning Commission allowed the dedication of GL Hollier Street to be only 30 feet wide.
3. GL Hollier Street was created to provide access to a landlocked parcel.

4. Three lots use GL Hollier Street for access.
5. The plat note states building limits from property lines shall be 20 feet from interior lines and 25 feet from street frontage.
6. The code at the time required 20 foot setbacks.
7. Current code requires 20 foot setbacks.
8. Setbacks along GL Hollier Street were not depicted due to lack of room.
9. The owners were not aware of the GL Hollier Street setback due to lack of depiction.
10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
11. There does not appear to be any line of sight issues.
12. The road is constructed by privately maintained.
13. Due to the width of the street, improvements, the location of Sports Lake, it does not appear that this right-of-way will ever serve additional lots.
14. The encroachment is along a straight portion of the right-of-way.
15. There are no terrain issues within the dedication.

**20.10.110. – Building setback encroachment permits.**

E. The following standards shall be considered for all building setback encroachment permit applications:

1. The building setback encroachment may not interfere with road maintenance.

**Findings 10, and 12-15 appear to support this standard.**

2. The building setback encroachment may not interfere with sight lines or distances.

**Findings 10-15 appear to support this standard.**

3. The building setback encroachment may not create a safety hazard.

**Findings 10-15 appear to support this standard.**

F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.

G. The Planning Commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

**KPB department / agency review:**

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	
KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments  B. Habitat Protection Reviewer: Carver, Nancy Habitat Protection District Status: Is NOT within HPD Comments: No comments

	C. State Parks Reviewer: Russell, Pam Comments: No Comments
State of Alaska Fish and Game	No objections
Addressing	Reviewer: Haws, Derek Affected Addresses: 36602 GL HOLLIER ST  Existing Street Names are Correct: Yes  List of Correct Street Names: GL HOLLIER ST ROSS DR  Existing Street Name Corrections Needed:  All New Street Names are Approved: No  List of Approved Street Names:  List of Street Names Denied:  Comments: 36602 GL HOLLIER ST will remain with lot 10.
Code Compliance	Reviewer: Ogren, Eric Comments: Owner is working with KPB Code Compliance to resolve the new construction build into the 20 ft set back of GL Hollier. Code compliance is in agreement to issuing the permit.
Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.  Material Site Comments: There are not any material site issues with this proposed plat.
Assessing	Reviewer: Windsor, Heather Comments: No comment

**RECOMMENDATION:**

Based on the standards to grant a building setback encroachment permit, **staff recommends** to adopt Resolution 2022-46, subject to compliance with KPB 20.10.110 sections F and G.

**NOTE:**

**20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.**

**END OF STAFF REPORT**

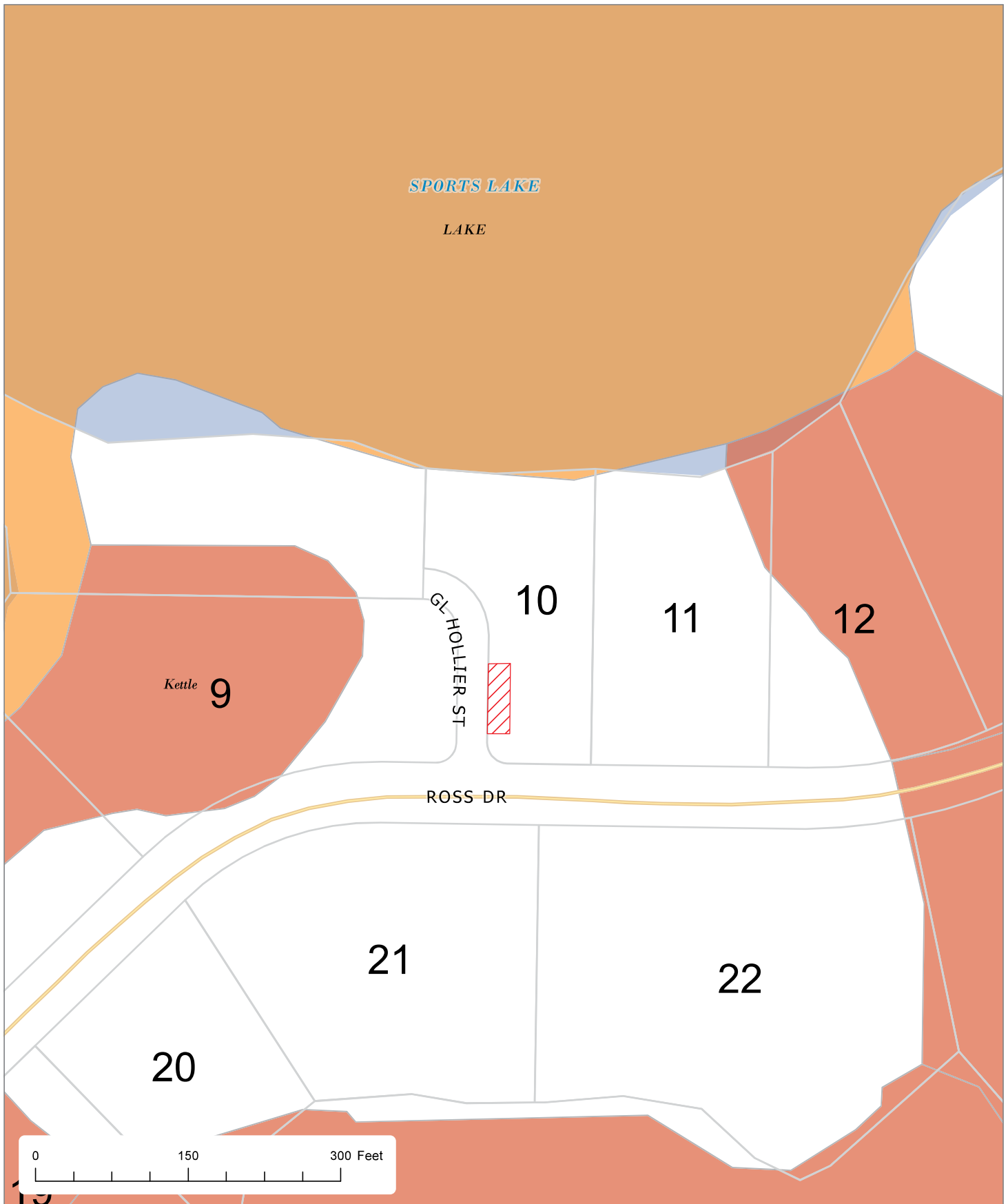


Aerial View





Wetlands









4. The plat must show both the original meanders of USS 1540 and the 1969 meanders of MHW.
5. A heavy line be placed around the subdivision on the plat.

Commissioner Hursh moved, seconded by Commissioner Coyle, to approve this plat subject to the staff's recommendations. Motion unanimously approved.

i. LAKE LSTATES SUBDIVISION (FINAL)

Located on the southeast side of Sports Lake.

Mr. Best reviewed the background on this plat and read the staff report recommending approval of this plat subject to the following:

1. Lot 25 be shown as a lake not a lot and the meanders listed as being 1969 meanders.
2. The corners set within the subdivision should be described.
3. The 30 foot road dedication to the Holliers property would be an exception to the minimum width required by the subdivision; however, since only one parcel of land is to be served, 30 feet of right-of-way should suffice and the exception granted.

Commissioner Hursh moved, seconded by Commissioner English, to approve this plat subject to the staff's recommendations. Motion unanimously approved.

j. SEELY SUBDIVISION (FINAL)

Located off Island Lake Road, North Kenai.

Mr. Best read a letter from the subdivider and the staff report recommending final approval subject to the 30' street dedication to the north being noted on Lots 5, 6, 7 & 8, and a heavy line being drawn around the subdivision on the plat.

Commissioner Hursh moved, seconded by Commissioner English, to approve this plat subject to the staff's recommendations. Motion unanimously approved.

**KENAI PENINSULA BOROUGH PLANNING COMMISSION  
RESOLUTION 2022-46  
KENAI RECORDING DISTRICT**

GRANT A BUILDING SETBACK ENCROACHMENT PERMIT TO A PORTION OF THE 20-FOOT BUILDING SETBACK ADJOINING THE WEST BOUNDARY OF LOT 10, LAKE ESTATES SUBDIVISION (K-1648), GRANTED BY LAKE ESTATES SUBDIVISION (K-1648); IN SE1/4 NE1/4 SECTION 21, TOWNSHIP 5 NORTH, RANGE 10 WEST, SEWARD MERIDIAN, ALASKA, WITHIN THE KENAI PENINSULA BOROUGH. KPB FILE 2022-121.

WHEREAS, per KPB 20.30.240 – Building Setbacks, a minimum 20-foot building setback shall be required for fee simple non-arterial rights-of-way in subdivisions located outside incorporated cities.

WHEREAS, Nancy and David Whitmore of Soldotna, Alaska requested a building setback permit for a portion of a shop located on said lot; and

WHEREAS, per the petition, a shop was recently constructed and is located 9.8 feet for a distance of 49 feet within the 20 foot building setback adjoining GL Hollier Street right-of-way;

WHEREAS, the existing building will not obstruct line of sight for traffic; and

WHEREAS, on October 24, 2022, the Kenai Peninsula Borough Planning Commission considered the background information, all comments received, and recommendations from KPB Planning Department staff regarding the proposed exception; and

WHEREAS, the Planning Commission found that granting the building setback permit will not be detrimental to the public interest; and

WHEREAS, 20.10.110 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to approve building setback permits by Resolution.

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

Section 1. Approved a permit to allow only the encroaching portion of the shop that extends 9.8 feet into the 20 foot building setback adjoining GL Hollier Street right-of-way on the west boundary of Lot 10, Lake Estates Subdivision, granted by Lake Estates Subdivision (K-1648).

Section 2. That any new, replacement and/or additional construction will be subject to the twenty-foot building setback limit.

Section 3. That the twenty-foot building setback shall apply to the remainder of said lot.

Section 4. That an exhibit drawing or as-built survey prepared by a licensed land surveyor, showing the location of the portion of the building setback exception to be granted be attached to and made a part of this Resolution, becoming page 2 of 2.

Section 5. That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.

Section 6. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 24th DAY OF OCTOBER, 2022.

\_\_\_\_\_  
Jeremy Brantley, Chairperson  
Planning Commission

ATTEST:

\_\_\_\_\_  
Ann Shirnberg  
Administrative Assistant

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

# MISCELLANEOUS INFORMATION



# Planning Department

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

Mike Navarre  
Borough Mayor

## KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF BUILDING SETBACK ENCROACHMENT PERMIT

Public notice is hereby given that a building setback encroachment permit application was received on 9/27/2022. You are being sent this notice because you are within 600 feet of the subject parcel and are invited to comment.

The building setback encroachment permit application is for the following property:

Request / Affected Property: Allows a 9.4 feet by 49 feet portion of a shop to remain in the building setback granted on Lake Estates Subdivision K-1648.

KPB File No. 2022-121

Petitioner(s) / Land Owner(s): David and Nancy Whitmore of Soldotna, AK.

Purpose as stated in petition: We are requesting a 20' Building Setback Exception from the KPB Planning and Platting Department because our garage has been built approximately 10' into the setback for GL Hollier St, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115. At our meeting with representatives from the Planning and Platting Department on Friday July 22, 2022, we were told that the KPB had a surveyor currently surveying 3 parcels in this subdivision, and that we could use this survey as the As-Built Survey or Site Survey required for the Application for Building Setback Encroachment Permit. This violation was not intentional; it was a collective error in planning how to use our lot (Lot 10) to meet our objectives of building a detached garage, a home, and on-site well and septic systems. The lot is oddly shaped, with poor soils, having the useable area restricted by both Ross Dr. and GL Hollier St. In discussion with the builder and the excavation company, we were aware of the required 100' separation between well and septic system (including the wells and septic systems of our adjacent neighbors). We were unaware of the 20' road setback for GL Hollier St. as there are no dotted lines to indicate this on the plat: a road setback is shown on the plat for Ross Dr. Our error was in not reading the notes on the plat. It appears that the 48' exception to the road setback will not; 1. not interfere with road maintenance (road is privately maintained). 2. Not interfere with sight lines or distances. 3. Not create a safety hazard. We appreciate your consideration of this matter.

Building setback encroachment permit reviews are conducted in accordance with KPB Subdivision Ordinance.

Public hearing will be held by the Kenai Peninsula Borough Planning Commission on **Monday, October 24, 2022**, commencing at **7:30 p.m.**, or as soon thereafter as business permits. The meeting is being held in person at the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, Alaska and remotely through Zoom.

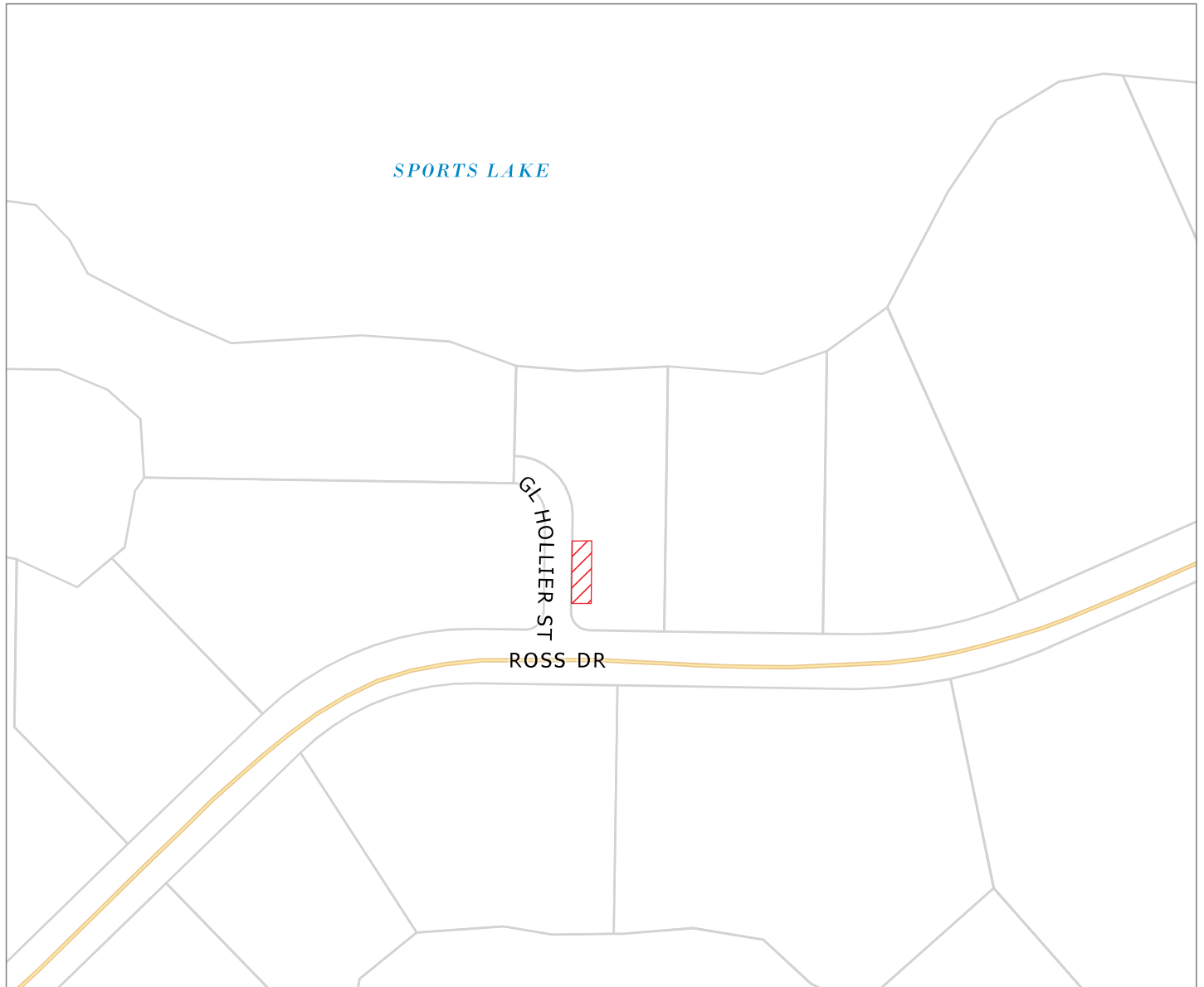
To attend the meeting using Zoom from a computer visit <https://us06web.zoom.us/j9077142200>. You may also connect to Zoom by telephone, call toll free **1-888-788-0099** or **1-877-853-5247**. If calling in you will need the Meeting ID of 907 714 2200. Additional information about connecting to the meeting may be found at <https://www.kpb.us/planning-dept/planning-commission>.

Anyone wishing to testify may attend the meeting in person or through Zoom. Written testimony may be submitted by email to [planning@kpb.us](mailto:planning@kpb.us), or mailed to the attention of Madeleine Quinton, Kenai Peninsula Borough Planning Department, 144 N. Binkley Street, Soldotna, Alaska 99669. [Written comments may also be sent by Fax to 907-714-2378]. All written comments or documents must be submitted by **1:00 PM, Friday, October 21, 2022**. The deadline to submit written comments or documents does not impact the ability to provide verbal testimony at the public hearing.

Additional information such as staff reports and comments are available online. This information is available the Monday prior to the meeting and found at <https://kpb.legistar.com/Calendar.aspx>. Use the search options to find the correct timeframe and committee.

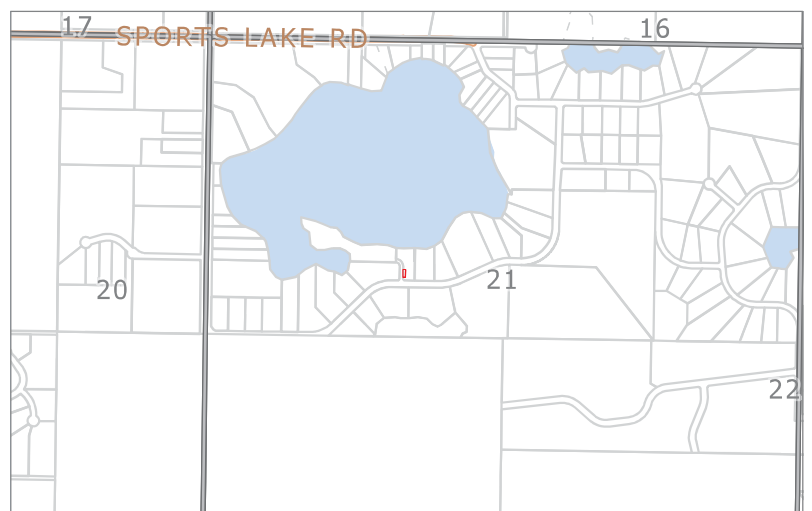
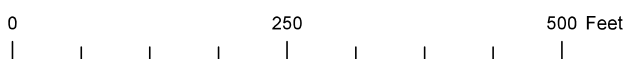
For additional information contact Madeleine Quinton ([mquinton@kpb.us](mailto:mquinton@kpb.us)) or Julie Hindman ([jhindman@kpb.us](mailto:jhindman@kpb.us)), Planning Department, 714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough).

Mailed 10/4/2022

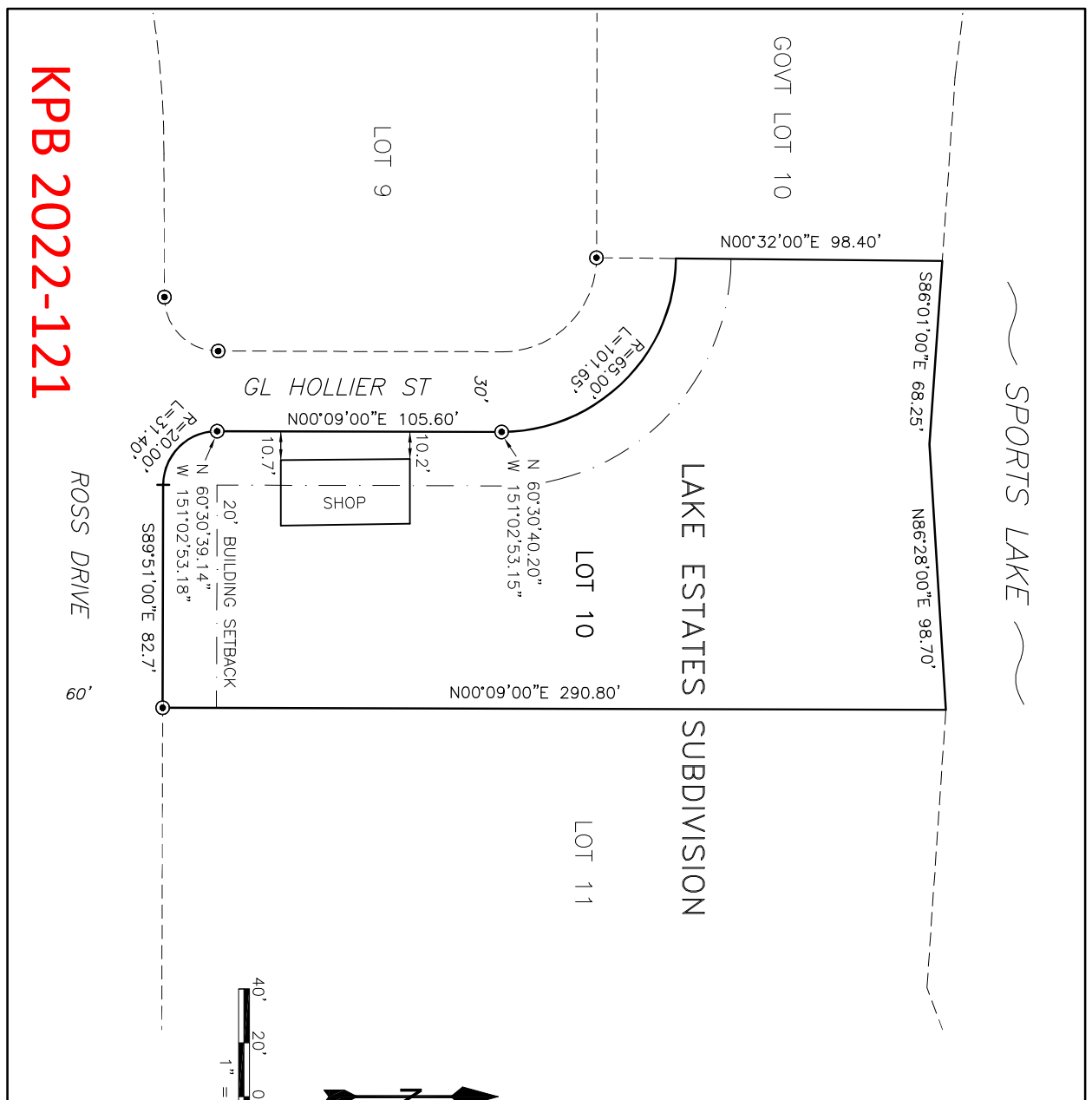


KPB File 2022-121  
T 05N R 10W SEC 21  
Ridgeway

9/28/2022



SPORTS LAKE



KPB 2022-121

ROSS DRIVE 60'

- NOTES**
1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
  2. BUILDING DIMENSIONS ARE TO THE FACE OF THE BUILDING.
  3. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT KN 1648.

**LEGEND**  
 ● FOUND REBAR

**SURVEYOR'S CERTIFICATE**

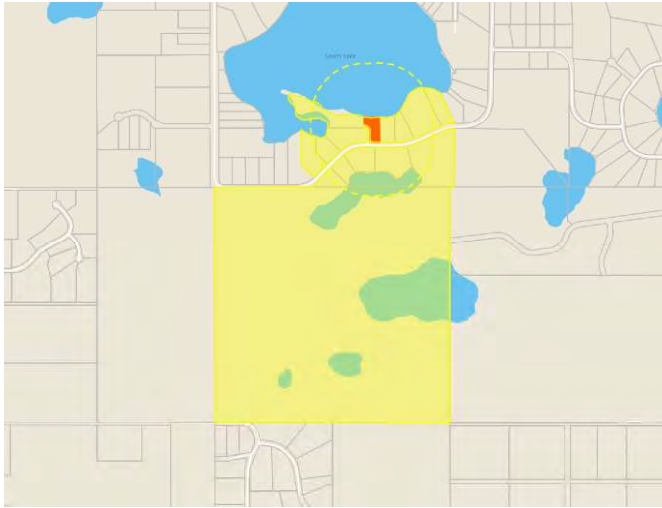
I HEREBY CERTIFY THAT I HAVE PERFORMED AN AS-BUILT SURVEY ON THE PROPERTY SHOWN HEREON, AND THE IMPROVEMENTS EXIST AS SHOWN. FIELD SURVEY ON 09/26/2022.

*Jason L. Schollenberg* 09/27/2022

JASON L. SCHOLLENBERG DATE  
 PLS 14488-S



<b>PENINSULA SURVEYING, LLC</b> 10535 KATRINA BOULEVARD NINILCHIK, AK 99639 (907)306-7065	
AS-BUILT SURVEY LOT 10, LAKE ESTATES SUBDIVISION SECTION 21, T5N, R10W, S.M.	
SCALE: 1" = 40'	DATE: 09/27/2022
DRAWN: JLS	SHEET: 1 OF 1



- Input parcel(s)
- Parcels within 600ft
- Parcels within 300 feet (when applicable).

# Notification Report

Wednesday, September 28, 2022

Report generated for KPB Parcel(s):  
05725001



The following list was created by applying a 600 ft buffer to the parcel or parcels indicated above. Questions or comments can be relayed to [mquainton@kpb.us](mailto:mquainton@kpb.us).

## All Ownership Records

PARCEL_ID	OWNER	ADDRESS	CITY	STATE	ZIP
05704413	INNES DAVID SCOTT	740 E REDOUBT AVE	SOLDOTNA	AK	99669
05704414	MARKHAM ERICA	3374 E VALLEJO CT	GILBERT	AZ	85298
05704414	MARKHAM MICHAEL	3374 E VALLEJO CT	GILBERT	AZ	85298
05704414	MARKHAM MICHELE	3374 E VALLEJO CT	GILBERT	AZ	85298
05704414	MARKHAM ZACHARY	3374 E VALLEJO CT	GILBERT	AZ	85298
05723007	MILLER FRITZ W & CINDY A	43850 ROSS DR	SOLDOTNA	AK	99669
05723008	GIOVANELLI TERRI L	43732 ROSS DR	SOLDOTNA	AK	99669
05723009	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669
05724001	TAYLOR AUTUMN R	43680 ROSS DR	SOLDOTNA	AK	99669
05724001	TAYLOR TROY R	43680 ROSS DR	SOLDOTNA	AK	99669
05724002	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669
05724003	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669
05724004	MARCOTTE TAMAR G	43625 ROSS DR	SOLDOTNA	AK	99669
05724007	RODGERS CHARLES R & JEANETTE K	43725 ROSS DR	SOLDOTNA	AK	99669
05724008	RAWSON JOYCE	43565 ROSS DR	SOLDOTNA	AK	99669
05724008	RAWSON SETH	43565 ROSS DR	SOLDOTNA	AK	99669
05725001	WHITMORE DAVID C	PO BOX 881	SOLDOTNA	AK	99669
05725001	WHITMORE NANCY	PO BOX 881	SOLDOTNA	AK	99669
05725002	WALKER DONALD G	PO BOX 3161	MONTROSE	CO	81402
05725003	HAWKES BRADFORD JAY	43610 ROSS DR	SOLDOTNA	AK	99669
05725003	HAWKES RENAE SALLY	43610 ROSS DR	SOLDOTNA	AK	99669
05725006	IVERSON JAMES P & HEIDI L	43530 ROSS DR	SOLDOTNA	AK	99669
05725011	IVERSON JAMES P & HEIDI L	43530 ROSS DR	SOLDOTNA	AK	99669





KENAI PENINSULA BOROUGH PLANNING COMMISSION  
NOTICE OF PUBLIC HEARING  
Monday, October 24, 2022

The next regularly scheduled Planning Commission meeting will be held Monday, October 24, 2022. The meeting is being held at the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley St., Soldotna, AK. Participation is also available through video conferencing using Zoom. To join the meeting from a computer, visit: <https://us06web.zoom.us/j/9077142200>. 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. 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 of 907 714 2200. Detailed instructions will be posted on the Planning Commission's webpage prior to the meeting:

<https://www.kpb.us/planning-dept/planning-commission>

Anyone wishing to testify may attend in person or via Zoom to give testimony. **Written statements must be submitted by 1:00 PM Friday October 21, 2022.** The deadline to submit written comments does not impact the ability to provide verbal testimony at the public hearing. Written statements may be submitted by email ([planning@kpb.us](mailto:planning@kpb.us)) or fax (907-714-2378). Written comments may also be submitted by hand-delivery or mail (Planning Department, 144 N. Binkley St., Soldotna, AK 99669).

PLAT COMMITTEE – 6:00 PM

1. North 20 Subdivision AHO Replat; KPB File 2022-152; Mullikin Surveys / Kudwa, Whiteberry, Wang; Location: Lulu Court & Pyrenees Way; Fritz Creek Area / Kachemak Bay APC
2. Birch Forest No. 3; KPB File 2022-151; Edge Survey & Design, LLC / Poppin Family Revocable Community Property Trust; Location: Ertwein Road, Ertwein Circle & Shishmaref Drive; Sterling Area
3. R Subdivision; KPB File 2022-091R1; Edge Survey & Design, LLC / Ranguette; Location: Reid Street, Throop Avenue, Reno Street & Steik Avenue; Ninilchik Area
4. Red Boat Subdivision; KPB File 2022-150; Edge Survey & Design, LLC / Red Boat Club, LLC; Location: Rebel Run Road & Big Eddy Road; Ridgeway Area
5. D & J Subdivision Burt Addition 2022 Replat; KPB File 2022-145; Johnson Surveying / MacLean, Gundersen, Brandt; Location: Burt Avenue & Sterling Highway; Kalifornsky Area / Kalifornsky APC
6. Grouse Creek Subdivision 2022 Addition; KPB File 2022-022R1; Johnson Surveying / Ronne Living Trust; Location: Seward Highway & Punkin Avenue; Bear Creek Area
7. K.M.D. Subdivision 2022 Addition; KPB File 2022-146; Johnson Surveying / Kizer; Location: Dog Fish Avenue & Kalifornsky Beach Road; Kalifornsky Area / Kalifornsky APC
8. Waldron-Engle Subdivision; KPB File 2022-147; Johnson Surveying / Waldron, Cooper-Waldron; Location: Approximately MP 127 of Sterling Highway; Ninilchik Area

PLANNING COMMISSION – 7:30 PM

1. Building Setback Encroachment Permit; KPB File 2022-121; Petitioners: David & Nancy Whitmore; Request: Allowing a portion of a shop to remain in the building setback granted on Lake Estates Subdivision, Plat KN-1648; Ridgeway Area
2. Utility Easement Vacation; KPB File 2022-148V; Seabright Surveying / Watson; Request: Vacate the entire 20' wide utility easement granted by plat Seldovia Townsite East Addition 2006 Replat, Plat SL 2007-3; City of Seldovia
3. Resolution 2022-XX, Approving the Acquisition of a Public Access Easement from the State of Alaska for Watermelon Trail.

KPB PLANNING DEPARTMENT  
Ann Shimberg, Administrative Assistant  
Phone: (907) 714-2215 / Fax: (907) 714-2378  
Toll free within the Borough 1-800-478-4441

2680390

# PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,  
STATE OF ALASKA

} SS:

Doug Munn, being first duly sworn, on oath deposes and says:

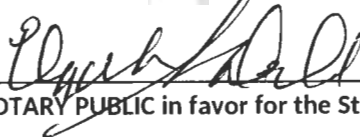
That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Peninsula Clarion, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

PC NPH  
10/20/22

X 

SUBSCRIBED AND SWORN before me on this

14<sup>th</sup> day of November, 2022.

  
NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 3/6/2024.

Elizabeth A. McDonald  
Notary Public, State of Alaska  
Commission #200306009  
My Commission Expires March 6, 2024

**PLANNING COMMISSION  
OCTOBER 24, 2022  
MEETING MINUTES**

**October 24, 2022  
7:30 P.M.  
APPROVED MINUTES**

**AGENDA ITEM A.      CALL TO ORDER**

Chair Brantley called the meeting to order at 7:30 p.m.

**AGENDA ITEM B.      ROLL CALL**

*Commissioners Present*

Jeremy Brantley, District 5 – Sterling/Funny River  
Diane Fikes, City of Kenai  
Pamela Gillham, District 1 – Kalifornsky  
John Hooper, District 3 – Nikiski  
Michael Horton, District 4 – Soldotna  
Virginia Morgan, District 6 – East Peninsula  
Troy Staggs, City of Seward  
Dawson Slaughter, District 9 – South Peninsula  
David Stutzer, District 8 - Homer  
Charlene Tautfest, City of Soldotna  
Franco Venuti, City of Homer

With 11 members of a 12-member seated commission in attendance, a quorum was present.

*Staff Present*

Robert Ruffner, Planning Director  
Walker Steinhage, Deputy Borough Attorney  
Vince Piagentini, Platting Manager  
Julie Hindman, Platting Specialist  
Ann Shirnberg, Planning Administrative Assistant  
Rhonda Foster-Deskins, LMD Administrative Assistant.

**AGENDA ITEM C.      CONSENT & REGULAR AGENDAS**

**\*3.      Plats Granted Administrative Approval**

- a. Arrowhead Estates 2022 Replat; KPB File 2022-001
- b. Bryson Subdivision; KPB File 2020-089
- c. Kinder Subdivision; KPB File 2021-079
- d. Seldovia Townsite East Addn Watson 2021 Replat; KPB File 2021-148
- e. Smurfy Acres 2022 Replat; KPB File 2022-080
- f. The Business Center Subd 2022 Replat; KPB File 2022-039

**\*4.      Plats Granted Final Approval**

- a. Trotter Subdivision Rill River Replat; KPB File 2022-102

**\*6. Commissioner Excused Absences**

- a. Blair Martin – District 2, Kenai
- b. City of Seldovia, Vacant
- c. District 7 – Central, Vacant

**\*7. Minutes**

- a. October 10, 2022 Planning Commission meeting minutes.

Chair Brantley asked Ms. Shirnberg to read the consent agenda items into the record.

Chair Brantley asked if anyone wished to speak to any of the items on the consent agenda.

Hearing no one wishing to comment Chair Brantley brought it back to the commission for a motion.

**MOTION:** Commissioner Venuti moved, seconded by Commissioner Tautfest to approve the regular and consent agendas.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 11	Brantley, Fikes, Gillham, Horton, Hooper, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	
Absent-1	Martin

**AGENDA ITEM E. NEW BUSINESS**

Chair Brantley asked Ms. Shirnberg to read into the record the procedures for public hearings.

**ITEM E1 – BUILDING SETBACK ENCROACHMENT PERMIT  
LOT 10, LAKE ESTATES SUBDIVISION (PLAT K-1648)**

<b>KPB File No.</b>	2022-121
<b>Planning Commission Meeting:</b>	October 24, 2022
<b>Applicant / Owner:</b>	David and Nancy Whitmore of Soldotna, Alaska
<b>Surveyor:</b>	Jason Schollenberg / Peninsula Surveying, LLC
<b>General Location:</b>	GL Hollier Street, Ridgeway area

<b>Parent Parcel No.:</b>	057-250-01
<b>Legal Description:</b>	Lot 10, Lake Estates Subdivision, Plat K-1648, Section 21, Township 5 North, Range 10 West
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted

Staff report given by Platting Manager Vince Piagentini.

Chair Brantley opened the item for public comment.

Nancy Whitmore, Applicant; P.O. Box 881, Soldotna, AK 99669: Ms. Whitmore is one of the applicants. She stated that building into the setback was a mistake and that she was sorry that it had happened. She then made herself available for questions

Commissioner Fikes asked if any of her neighbors have been negatively affected by this mistake. She wondered if the encroachment would negatively affect road maintenance, particularly for the landowner at the end of GL Hollier Road. Ms. Whitmore replied that she did not believe so. The neighbor at the end of GL Hollier Rd. is the one who uses the road the most. She noted that they use their setback to park several

cars in.

Chair Brantley asked who was the general contractor on this project. Ms. Whitmore replied Eric Arneson was the general contractor and Steam On Wheels had done the dirt work.

Commissioner Venuti asked how finished was the shed. Ms. Whitmore replied that it was not a shed but a detached garage/shop. She noted that it was finished on the inside and has power running to it. Commissioner Venuti then asked when was it built and Ms. Whitmore replied that it was built this last summer. Commissioner Venuti asked if there was a mortgage on the property, which would require an as-built, or were they building out of pocket. Ms. Whitmore replied that they were building out of pocket and that no as-build was done. Commissioner Venuti then asked if their contractor did a survey on the property before they began building. Ms. Whitmore replied apparently, they did not. The corners of the property were marked when they purchased the lot.

Troy Taylor; 43680 Ross Drive, Soldotna, AK 99669: Mr. Taylor is a neighboring landowner and spoke in opposition to this permit. He had contacted the borough regarding his concerns. Mr. Taylor stated he believed it was brought to his neighbor's attention, when they put in the concrete slab, that they were building in the right-of-way. They ignored the warning and continued with the building of their shop. He also noted that they also built an additional 3' X 3' slab next to the shop. He believes that the setback rules should be followed.

Nancy Whitmore, Applicant; P.O. Box 881, Soldotna, AK 99669: Ms. Whitmore reiterated that they made a mistake in building in the setback. They were not made aware of the issue until recently. She noted the dirt work was done for the shop over a year ago. Steam On Wheels built the gravel pad for the shop and covered it with foam and wire and it sat there over the winter into the spring, right across the road from Mr. Taylor. Mr. Taylor has never spoken to them directly about his concerns. It was pretty clear where they were planning to build the shop. She wished Mr. Taylor had spoken to them about his concerns. If he had spoken to them, they would have corrected the error. They were concerned about 3' X 3' slab but the electrician has wired their shop in such a way he said that it was the only location for the generator. Their contractor has told him if it was necessary, they could move the location for the generator. She noted that the first time they were made aware of the issue, was when someone from the borough had contacted them. By then the concrete slab had been installed and the walls for the shop had already gone up.

Commissioner Venuti noted that he has been inspecting new construction projects for the last 30 years and it is a rare project that gets built out of whack like this. He wonders why their contractor did not build by the rules, why didn't he conduct a survey before starting the project. It is his responsibility, as well as yours, to make sure that he follows the rules. Ms. Whitmore agreed, they were stunned that both the contractor and their dirt guy didn't catch this error. It appears no one took a hard look at the plat before they began to build. They understand that ultimately it is their responsibility and they are sorry. Commissioner Venuti noted that this is not a new rule, it has been on the books for years. He then stated that he would have a hard time supporting this request.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

**MOTION:** Commissioner Morgan moved, seconded by Commissioner Gillham to adopt PC Resolution 2022-46 granting a building setback encroachment permit to Lot 10, Lake Estates Subdivision, Plat K-1648.

Commissioner Stutzer noted that he has been very vocal in the past about folks not doing their homework before starting construction, which leads to errors like this. It is still his position that errors like this should not occur. In this situation he believes there are a couple of mitigating factors. First, the owners have been very forthright about accepting responsibility for this error. Second, the road that is being talked about here is basically a driveway and only serves three lots. He noted staff has stated that there are no sightline issues. The neighbor that spoke in opposition, stating that he has issues with this request, built his home right on the setback line. They are parking in their setback and have to back on to the road to get away from their house. This road has been designed in such a way that the borough will not take over the maintenance, so he doesn't see any issues there either. This road will be maintained by the neighborhood. He recognizes that this is a sticky situation, and he understands Commissioner Venuti's comments. He then stated that he is inclined to support this petition but he does have concerns as well.

Commissioner Morgan stated that in the end it is the landowner's responsibility to make sure things like this don't happen, but she also noted that landowners have to rely on the expertise of their contractors. She is very disappointed in the contractor's lack of research before starting their work.

Commissioner Gillham stated that she agrees with Commissioner Morgan. She also would place most of the blame in this situation on the contractor. He should have done his homework. She is not concerned with the neighbors parking in their setback, that area is still a part of their property. The setback code relates to construction within the setback. She stated that she is inclined to support this request as she feels that the fault lies mostly with the contractor. The landowners should be able to trust in their expertise.

Chair Brantley noted the testimony from the neighbor inferred that the landowners had built in the right-of-way. That is not correct, the encroachment is into the setback. The shop is still on the landowner's property. He does not see snow removal or road maintenance being affected. He does have some sympathy for this being an older plat and the setback information not being very visible. Contractors do make mistakes. The reason he asked who the contractor was, is that he has been on this commission long enough and likes to see if there is a reoccurring theme with certain contractors that might need to be addressed. He then stated that he will be supporting this request.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 11	Brantley, Fikes, Gillham, Horton, Hooper, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	
Absent-1	Martin

**ITEM E2 – UTILITY EASEMENT ALTERATION  
20-FOOT-WIDE HOMER ELECTRIC ASSOCIATION EASEMENT WITHIN LOTS 2A-1 AND 2B-1 OF  
SELDOVIA TOWNSITE EAST ADDITION 2006 REPLAT**

<b>KPB File No.</b>	2022-148V
<b>Planning Commission Meeting:</b>	October 24, 2022
<b>Applicant / Owner:</b>	Jennifer Watson of Anchorage, Alaska
<b>Surveyor:</b>	
<b>General Location:</b>	City of Seldovia

Staff report given by Platting Manager Vince Piagentini.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

**MOTION:** Commissioner Slaughter moved, seconded by Commissioner Morgan to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 11	Brantley, Fikes, Gillham, Horton, Hooper, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	
Absent-1	Martin

**ITEM E3 – RESOLUTION 2022-054  
A RESOLUTION APPROVING THE ACQUISITION OF A PUBLIC ACCESS  
EASEMENT FROM THE STATE OF ALASKA FOR WATERMELON TRAIL**

Staff report given by Land Management Officer Marcus Mueller.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

**MOTION:** Commissioner Slaughter moved, seconded by Commissioner Gillham to forward to the Assembly a recommendation to adopt Resolution 2022-054, approving the acquisition of a public access easement from the State of Alaska for Watermelon Trail.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 11	Brantley, Fikes, Gillham, Horton, Hooper, Morgan, Slaughter, Staggs, Stutzer, Taufest, Venuti
No - 0	
Absent- 1	Martin

**AGENDA ITEM F. PLAT COMMITTEE REPORT**


Commissioner Gillham reported the plat committee reviewed eight plats, granted preliminary approval to seven and postponed action on one.

**AGENDA ITEM H. PUBLIC COMMENT/PRESENTATIONS**

Chair Brantley asked if there was anyone from the public who would like to comment on anything not appearing on the agenda. No one wished to comment.

**AGENDA ITEM K. ADJOURNMENT**

Commissioner Venuti moved to adjourn the meeting at 8:36 PM.

  
 Ann E. Shirnberg  
 Administrative Assistant



**PLANNING COMMISSION  
OCTOBER 24, 2022  
VERBATIM TRANSCRIPT**

**KENAI PENINSULA BOROUGH PLANNING COMMISSION****LOCATION:**

Betty J. Glick Assembly Chambers  
George A. Navarre Administration Building  
144 North Binkley Street  
Soldotna, Alaska 99669

October 24, 2022  
7:30 p.m.

**TRANSCRIPT OF PROCEEDINGS - EXCERPT**  
Pages 1 - 28, inclusive

**Commissioners Present:**

Jeremy Brantley, District 5 - Sterling/Funny River  
Diane Fikes, City of Kenai  
Pamela Gillham, District 1 - Kalifornsky  
John Hooper, District 3 - Nikiski  
Michael Horton, District 4 - Soldotna  
Virginia Morgan, District 6 - East Peninsula  
Troy Staggs, City of Seward  
David Stutzer, District 8 - Homer  
Dawson Slaughter, District 9 - South Peninsula  
Charlene Tautfest, City of Soldotna  
Franco Venuti, City of Homer

**Staff Present:**

Robert Ruffner, Planning Director  
Walker Steinhage, Deputy Borough Attorney  
Vince Piagentini, Platting Manager  
Julie Hindman, Platting Specialist  
Ann Shirnberg, Planning Administrative Assistant  
Rhonda Foster-Deskins, LMD Administrative Assistant

Transcribed by: Lenny DiPaolo, RPR, CRR, CCP

Page 2

1 PROCEEDINGS  
 2 0:00:00  
 3 (This portion not requested)  
 4 5:06  
 5 CHAIRMAN BRANTLEY: That will bring us  
 6 down to item E-1, which is a building setback  
 7 encroachment permit, KPB File 2022-121. Staff report  
 8 please.  
 9 VINCE PIAGENTINI: Item 1, Building  
 10 Setback Encroachment Permit, Lot 10, Lake Estates  
 11 Subdivision, Plat K-1648, KPB File 2022-121. General  
 12 location is GL Hollier Street in Ridgeway area. The  
 13 parent parcel number is 057-250-01. Again, Lake Lot  
 14 10, Lake Estates Subdivision.  
 15 This is a -- we are requesting a 20-foot  
 16 building setback exception from the KPB planning and  
 17 platting department because our garage has been built  
 18 approximately 10 feet into the setback for GL Hollier  
 19 Street, a substandard road.  
 20 We acknowledge that we are in violation  
 21 of KPB Roads Code 14-40-035 and 14-40-15 -- 115. This  
 22 violation was not intentional. It was a collective  
 23 error in planning, how we used our lot, our objections  
 24 of building a detached garage, a home, and onsite well  
 25 and septic systems. The lot is oddly shaped with poor

Page 3

1 soils, having the usable area restricted to both Ross  
 2 Drive and GL Hollier Street. Excuse me.  
 3 In discussion with the builder and the  
 4 excavation company, we were aware of the required  
 5 100-foot separation between well and septic system,  
 6 including the wells and septic system of our adjacent  
 7 neighbors. We were unaware of the 20-foot road  
 8 setback for GL Hollier Street as there are no dotted  
 9 lines to indicate this on the plat.  
 10 A road setback is shown on the plat for  
 11 Ross Drive. Our error was in not reading the notes on  
 12 the plat. It appears that a 48-foot exception to the  
 13 road setback will not (1) interfere with road  
 14 maintenance, the road is privately maintained; (2) not  
 15 interfere with sight lines or distance; (3) not create  
 16 a safety hazard. We appreciate your consideration in  
 17 this matter.  
 18 On the site investigation, the request  
 19 is to be granted a permit for a 49-foot by 24-foot  
 20 shed along GL Hollier Street. The building encroaches  
 21 9.8 feet for the length of 49 feet, and is slightly  
 22 angled to 9.3 feet at the southwest corner of the  
 23 shed.  
 24 The sight distances do not appear to be  
 25 impacted. GL Hollier Street does have a curve on the

Page 4

1 northern end. The area in question is along a  
 2 straight portion of the right-of-way and located on  
 3 the side with the outside of the curve and should not  
 4 cause any sight issues.  
 5 Staff analysis: Lake Estates  
 6 Subdivision, Plat K-1648 was recorded in 1969. The  
 7 plat dedicated Ross Drive and GL Hollier Street,  
 8 unnamed on the plat. GL Hollier Street was granted as  
 9 a 30-foot-wide right-of-way to provide access to a  
 10 landlocked parcel, Government Lot 10, that was noted  
 11 as being the Hollier property.  
 12 The issues were brought to the attention  
 13 of the KPB code compliance, and they have been working  
 14 with the owners on a resolution for the issue. The  
 15 plat clearly shows a 25-foot building setback along  
 16 Ross Drive and a depiction -- with a depiction and a  
 17 label. A depiction of any type of setback was not  
 18 shown along GL Hollier Street.  
 19 The plat did not have -- did have a plat  
 20 note stating the setback from the street frontage was  
 21 to be 25 feet. The Kenai Peninsula Borough Legal  
 22 Department reviewed the code that was in place when  
 23 the plat was approved. The plat -- the width that was  
 24 granted did not fit that -- the width for any of the  
 25 types of roads defined in code. For the staff report,

Page 5

1 it appears an exception to width was granted.  
 2 This right-of-way fits the dedication of  
 3 marginal access streets from the 1968 KPB code. The  
 4 definition as states: Minor streets, which are  
 5 parallel with and adjacent to arterial streets and  
 6 highways, and which provide access to abutting  
 7 properties and protection from through traffic.  
 8 While this width does not comply with  
 9 code, the approval of a substandard width would mean  
 10 that this is a marginal access street, and all streets  
 11 were subject to a 20-foot building setback at that  
 12 time. The dedication was made that the plat did note  
 13 setbacks were present. Code required a minimal  
 14 20-foot setback.  
 15 The plat did not depict a 25-foot  
 16 setback. The plat note also indicated 20-foot  
 17 setbacks on interior lines, and thus we are enforcing  
 18 a 20-foot setback along GL Hollier Street.  
 19 GL Hollier Street is only being used by  
 20 three lots. One is the lot that the road was created  
 21 for, the applicant of this petition, and the owner on  
 22 the west side of the right-of-way. Due to the width  
 23 and the usage, this is a privately maintained  
 24 right-of-way.  
 25 The issues along GL Hollier Street were

Page 6

1 brought to the attention of the KPB code compliance  
 2 officer. The as-built did show that the new shop was  
 3 encroached into the setback. The owners have been  
 4 working with the KPB code compliance officer for a  
 5 resolution of the situation. There were some findings  
 6 listed, and findings 10, 12 through 15 appear to  
 7 support the standards.

8 So the recommendation is based on the  
 9 standards to grant a building setback encroachment  
 10 permit. Staff recommends to adopt Resolution 2022-46,  
 11 subject to compliance with KPB Code 20.10.110,  
 12 sections F and G.

13 End of staff report.

14 **CHAIRMAN BRANTLEY:** Thank you. Is the  
 15 petitioner or applicant here to speak on this matter?  
 16 Okay. Can you just come forward to the mike -- and  
 17 we'll turn it on for you -- and state your name and  
 18 address for the record, please.

19 **NANCY WHITMORE:** My name is Nancy  
 20 Whitmore. This is Craig. Our address is 36602 GL  
 21 Hollier. We have a home under construction there, and  
 22 I just came to see if you had any questions that I  
 23 could answer.

24 **CHAIRMAN BRANTLEY:** Are there any  
 25 questions for the applicant?

Page 7

1 **COMMISSIONER FIKES:** This is one of  
 2 three homes that are accessed off of GL Hollier. Are  
 3 you aware of how your other neighbors -- are they  
 4 related or unrelated? Is this going to impact them in  
 5 any way?

6 **NANCY WHITMORE:** I don't believe it  
 7 would impact them. The neighbor who was landlocked is  
 8 at the end of the road. There's a curve, and they use  
 9 the road the most to get to their property. The  
 10 neighbor across the street from us has -- they have  
 11 their 20-foot setback, and they park -- they park this  
 12 way in it, and they have quite a few vehicles. So  
 13 they use their --

14 **COMMISSIONER FIKES:** So my concern is  
 15 that's really tight, and it's not to code, and so it's  
 16 also not maintained, so I would be concerned about  
 17 snow removal if that setback is already going to be  
 18 encroached 10 feet.

19 Is that loss of road maintenance area,  
 20 is that going to be impacting the person's access to  
 21 the back land lock?

22 **NANCY WHITMORE:** I don't think so. I  
 23 would think the snow being pushed would probably be  
 24 pushed from the farthest point of the road out toward  
 25 Ross and maybe even across Ross. I don't -- I mean, I

Page 8

1 don't know. We haven't been there for a winter, but  
 2 it seems pretty wide with their 20-foot setback and  
 3 our 10-foot setback and the 30 feet of road.

4 And, again, it's just the three -- the  
 5 three homes.

6 **COMMISSIONER FIKES:** Okay. Thanks.

7 **CHAIRMAN BRANTLEY:** Is there any more  
 8 questions for the applicant? I had one.  
 9 Who was the general contractor?

10 **COMMISSIONER VENUTI:** Mr. Chair. I have  
 11 questions.

12 **CHAIRMAN BRANTLEY:** Okay. We'll get  
 13 right to you, Commissioner Venuti.

14 Oh, yeah, who were the general  
 15 contractors?

16 **COMMISSIONER VENUTI:** I said I have a  
 17 question.

18 **NANCY WHITMORE:** Who was the general  
 19 contractor?

20 **CHAIRMAN BRANTLEY:** Yeah.

21 **NANCY WHITMORE:** It's Eric Arneson.

22 **CHAIRMAN BRANTLEY:** Okay.

23 **NANCY WHITMORE:** And we had the dirt  
 24 work done by Steam On Wheels.

25 **CHAIRMAN BRANTLEY:** Okay. Commissioner

Page 9

1 Venuti, go ahead.

2 **COMMISSIONER VENUTI:** Yes, I have a  
 3 question for the applicant.

4 This is referred to as a shed. How  
 5 finished is it on the inside?

6 **NANCY WHITMORE:** It's not a shed. It's  
 7 a detached garage-shop, and it's finished on the  
 8 inside with OSB and painted with a primer. It has  
 9 power.

10 **COMMISSIONER VENUTI:** And when was this  
 11 built?

12 **NANCY WHITMORE:** It --

13 **COMMISSIONER VENUTI:** And when was this  
 14 built?

15 **NANCY WHITMORE:** It was built this  
 16 summer.

17 **COMMISSIONER VENUTI:** Did you say this  
 18 summer?

19 **NANCY WHITMORE:** Yeah, this summer.

20 **COMMISSIONER VENUTI:** Is this part of a  
 21 mortgage, or did you guys build this out of pocket?

22 **NANCY WHITMORE:** We built it out of  
 23 pocket.

24 **COMMISSIONER VENUTI:** So there was no  
 25 requirement that you produce an as-built when you were

Page 10

1 done?  
 2 **NANCY WHITMORE:** Correct.  
 3 **COMMISSIONER VENUTI:** Thank you.  
 4 **CHAIRMAN BRANTLEY:** Commissioner  
 5 Stutzer, go ahead.  
 6 **COMMISSIONER STUTZER:** Yeah, thank you.  
 7 I have a question.  
 8 So is this the first building on the  
 9 property, and you're going to build a house?  
 10 **NANCY WHITMORE:** There's -- a house has  
 11 been -- being built also during the summer, and it's  
 12 just now getting what I refer to as buttoned up.  
 13 **COMMISSIONER STUTZER:** On Lot 10?  
 14 **NANCY WHITMORE:** On Lot 10.  
 15 **COMMISSIONER STUTZER:** Yeah. So -- and  
 16 maybe you can answer this, but our photo, the  
 17 satellite photo shows there's -- from the Lot 11  
 18 there's some buildings or something, I can't tell what  
 19 they are, that are actually on Lot 10. And, I don't  
 20 know, maybe that's just a poor satellite picture, but  
 21 I was just curious.  
 22 So you're building on Lot 10? That was  
 23 my question.  
 24 **NANCY WHITMORE:** Yes, we're building on  
 25 Lot 10. And as you can see, it's a very oddly shaped

Page 11

1 lot.  
 2 **COMMISSIONER STUTZER:** Yes.  
 3 **NANCY WHITMORE:** It's very narrow at the  
 4 front and much wider at the other end.  
 5 **COMMISSIONER STUTZER:** And where is the  
 6 house going to be? I mean, where is it -- you said  
 7 it's already --  
 8 **NANCY WHITMORE:** Yeah. The house is  
 9 where the -- if you have the same map I have, where it  
 10 says "Lot 10," that's about where the house is.  
 11 **COMMISSIONER STUTZER:** About -- okay.  
 12 Where the "10" is, okay. Okay, very good.  
 13 **NANCY WHITMORE:** Yeah. We wanted -- we  
 14 wanted the house to be closer -- farther away from  
 15 Ross, but there's a -- it's sort of wet down there,  
 16 and it's a slope, and so we ended up kind of putting  
 17 it in the middle.  
 18 **COMMISSIONER STUTZER:** Yeah, gotcha.  
 19 Okay, thank you.  
 20 **NANCY WHITMORE:** Uh-huh.  
 21 **CHAIRMAN BRANTLEY:** Any more  
 22 commissioner questions for the applicant?  
 23 **UNIDENTIFIED SPEAKER:** So is your  
 24 driveway --  
 25 **COMMISSIONER VENUTI:** Yes.

Page 12

1 **UNIDENTIFIED SPEAKER:** --- going to be  
 2 accessed off of Hollier?  
 3 **NANCY WHITMORE:** We -- the garage-shop  
 4 has a garage door on the Ross side, and it has a  
 5 garage door at the end -- at the -- on the GL Hollier  
 6 side for a smaller vehicle. So we're trying to access  
 7 that building from the side off GL Hollier and from  
 8 the end off Ross.  
 9 **UNIDENTIFIED SPEAKER:** So if your home  
 10 is being constructed underneath the "10" on our maps,  
 11 you're going to be coming into your home off of Ross?  
 12 **NANCY WHITMORE:** Yeah, we do. A lot of  
 13 the traffic goes in off of Ross. That's all been  
 14 cleared and hardened up there to the right of the  
 15 shop.  
 16 **CHAIRMAN BRANTLEY:** Yeah, Commissioner  
 17 Venuti, go ahead.  
 18 **COMMISSIONER VENUTI:** Yes, another  
 19 question for the applicant. Are you building this out  
 20 of pocket, or do you have a contractor working with  
 21 you?  
 22 **NANCY WHITMORE:** We have a contractor,  
 23 and we are so far building it out of pocket.  
 24 **COMMISSIONER VENUTI:** Did the contractor  
 25 survey the lot before he started?

Page 13

1 **NANCY WHITMORE:** Apparently not. We had  
 2 the corners marked when we purchased the lot, and that  
 3 was the extent of any survey before we started the  
 4 process.  
 5 **COMMISSIONER VENUTI:** Thank you.  
 6 **CHAIRMAN BRANTLEY:** Are there any more  
 7 questions? All righty. Thank you very much.  
 8 **NANCY WHITMORE:** Thank you.  
 9 **CHAIRMAN BRANTLEY:** Are there any public  
 10 comments on this matter?  
 11 **TROY TAYLOR:** Yeah, hi, this is Troy  
 12 Taylor. Can you hear me?  
 13 **CHAIRMAN BRANTLEY:** Sorry. Yeah, go  
 14 ahead and state your name and your address for the  
 15 record, please.  
 16 **TROY TAYLOR:** Yeah, my name is Troy  
 17 Taylor. Address is 43680 Ross Drive. We are located  
 18 across the street on GL Hollier. We are one of the  
 19 three residents on GL Hollier.  
 20 Yeah, we have actually had many concerns  
 21 with this. And it's been brought up to the  
 22 attention -- as soon as this build was being done, we  
 23 brought it to the attention of the borough, because we  
 24 had a pretty good idea that they were overbuilt over  
 25 the line when they first started building that shop.

Page 14

1 So we brought it to the attention.  
 2 The borough had come out, and under our  
 3 understanding, this job was postponed for a couple  
 4 days. It was pretty much stopped, and then they  
 5 started building again where at this point all they  
 6 had was a concrete slab. There was no walls up or  
 7 nothing. And then they continued to build knowing  
 8 that they were over the line.  
 9 And now that the shop is completely  
 10 built, since then they have also built a concrete slab  
 11 off the side of the shop. I would estimate it about a  
 12 3-foot-by-5-foot concrete slab on the GL Hollier side  
 13 for a generator as well. So the building is 9.4 feet  
 14 with an addition to another 3 feet added onto that  
 15 that is actually out in the right-of-way as well.  
 16 Clearing the snow down through there --  
 17 like, it is not -- yes, it's not a borough-maintained  
 18 road, which 75 percent of the snow clearing on this  
 19 road I do myself, and we are not going to -- it was  
 20 stated of possibly pushing snow across Ross Drive.  
 21 Well, as we know, we're not supposed to push snow  
 22 across a borough-maintained road and fill up the road  
 23 and leave it up to the borough maintenance to take  
 24 care of. The snow is supposed to be cleared off to  
 25 the sides and not pushing snow across traffic and

Page 15

1 impeding traffic as well. So this does limit room for  
 2 snow removal as well with them being 10 feet --  
 3 approximately 10 to 12 feet with that pad off the side  
 4 of the shop.  
 5 Us -- and when we built -- I understand  
 6 when they're building impeding traffic on GL Hollier,  
 7 I did not have a problem with it at the time, but it  
 8 has also limited us as far as backing out away from  
 9 our house. And especially when vehicles are parked  
 10 alongside the shop, which over time there has been  
 11 times where I've had to go out and ask people to move  
 12 their vehicles because I cannot even turn around in  
 13 front of my house. I would have to back out into live  
 14 traffic of Ross Drive.  
 15 So I think there was other ways of  
 16 accomplishing what they wanted built over there  
 17 without impeding into the right-of-way. For one, a  
 18 smaller shop could have been done. The house could  
 19 have been built a little closer to the lake. The shop  
 20 could have been pushed back off the line and still had  
 21 plenty of room.  
 22 I have also upgraded that GL Hollier  
 23 Road out of my own pocket, put material on it, put rap  
 24 on it to keep dust and everything down, which I have  
 25 been in contact with the builder and with Steam On

Page 16

1 Wheels about repairing that, since all this  
 2 construction has been done, to put it back the way  
 3 that it was since I did pay for it out of my own  
 4 pocket.  
 5 I believe that, you know, all these  
 6 rules and regulations for setbacks and covenants, all  
 7 that other stuff, are set for people to follow, you  
 8 know. We just built our house approximately four  
 9 years ago. February it will be four years that we've  
 10 been in that house, and we did our surveying. We did  
 11 our homework. We did everything that we were supposed  
 12 to do to make sure that we were off of that 20-foot  
 13 setback, and we are.  
 14 So, you know, I think it's just a matter  
 15 of overbuilding on the lot. And like I said, they  
 16 were very well aware of it before they completed this  
 17 build of this shop, and they continued to proceed. We  
 18 had made plenty of phone calls to the borough. I've  
 19 talked to numerous --  
 20 **CHAIRMAN BRANTLEY:** I'm sorry. Your  
 21 time limit has gone up. So if you could just  
 22 finish --  
 23 **TROY TAYLOR:** Okay. Well --  
 24 **CHAIRMAN BRANTLEY:** -- your sentence  
 25 here.

Page 17

1 **MR. TAYLOR:** I appreciate everybody's  
 2 time. And I just believe that there was other ways of  
 3 accomplishing what they needed, what they wanted over  
 4 there. And that's all I have. Thank you.  
 5 **CHAIRMAN BRANTLEY:** Thank you. Are  
 6 there any questions for the testifier?  
 7 All right. I don't see any hands  
 8 raised, so thank you.  
 9 **TROY TAYLOR:** Thank you.  
 10 **CHAIRMAN BRANTLEY:** Is there anyone else  
 11 from the general public wishing to comment on this?  
 12 Okay. Seeing none, we will close public comment.  
 13 The petitioner and applicant, you do  
 14 have the opportunity to speak again if you'd like to.  
 15 **UNIDENTIFIED SPEAKER:** Just push the  
 16 button on the (indiscernible).  
 17 **NANCY WHITMORE:** Thanks, whoever. Thank  
 18 you.  
 19 Like we said in our comment that we  
 20 wrote, it was inadvertent. We didn't know about it.  
 21 We had that -- a lot of the dirt work was done a year  
 22 ago in the fall, and we had marked out the area for  
 23 the shop with stakes. And Steam On Wheels had built  
 24 the pad, the dirt pad, the gravel pad, and we had  
 25 covered it with foam and wire, and it had sat there

Page 18

1 all winter across the road from the neighbors who  
 2 apparently now are -- have never expressed a concern  
 3 to us personally about this.  
 4 And so they -- they were -- they were  
 5 aware of where we were planning to pour the slab and  
 6 build the garage through the whole course of the  
 7 winter and into the spring when the snow melted.  
 8 So I really wish they would have  
 9 approached us and said something, because we certainly  
 10 would have made it right. You know, we're not --  
 11 we're not trying to violate anything. We're trying to  
 12 just use that shape of that oddly shaped lot with the  
 13 limitations we have for the neighboring wells and  
 14 septic and our well and septic. We're trying to put  
 15 three of those systems along that area of Ross there  
 16 and very -- and our area is very small. So it  
 17 certainly wasn't on purpose.  
 18 We have no intention of parking on the  
 19 GL Hollier side of our shop. I do know that some of  
 20 our construction workers have parked there, and we've  
 21 encouraged them not to do that. I also know that our  
 22 neighbors has guests who park there, which we're not  
 23 thrilled about, but we haven't done anything or said  
 24 anything about that. Like I said, it's not our  
 25 intention. We won't be putting things out there.

Page 19

1 The additional 3-by-5-foot concrete pad  
 2 that went there was a concern to us, and the issue is  
 3 that our electrician had wired the shop for that  
 4 generator to be there, and we expressed concern about  
 5 that location for this reason. And we were told by  
 6 our contractor that they can -- well, the electrician  
 7 said that he needed to put it there to start, and the  
 8 contractor said if we need to move it, he can. It's a  
 9 small enough concrete pad he can pick it up with his  
 10 forklift and move it to the -- around the corner to  
 11 the other side of the shop.  
 12 So that was sort of done, again, with  
 13 our contractor and our electrician and not really with  
 14 our permission, I guess, is what I want to say.  
 15 Obviously, we feel really badly about  
 16 this and wish we could go back in time and make it  
 17 right.  
 18 The initial concern that we were too  
 19 close when the slab was poured and the walls were  
 20 under construction, the walls were up when we got a  
 21 phone call from the borough, someone at the borough  
 22 saying that this was an issue. We were actually in  
 23 Haines Junction coming up the highway and, you know,  
 24 had to wait until we could get to a place with cell  
 25 reception and asked if we needed to stop work, and

Page 20

1 were told that at that point in time there wasn't  
 2 really enough information to have us do that, and so  
 3 we -- our contractor continued on with the building.  
 4 I'm not sure what we would have done at  
 5 that point, but -- I don't really know what else to  
 6 say. I'm sorry the neighbors aren't happy. They, you  
 7 know, they use their 20-foot setback to park multiple  
 8 vehicles and recreational equipment along there so,  
 9 you know, it's -- that's -- I don't know what to say  
 10 about that other than we're not going to use the 10  
 11 feet that we have left, but we have taken the 10 feet  
 12 with our building, not intentionally.  
 13 But I guess at this point, I mean, it is  
 14 what it is. So I don't know what else to say about  
 15 that. Are there -- anyone else have questions?  
 16 **CHAIRMAN BRANTLEY:** Commissioner Venuti,  
 17 go ahead.  
 18 If you're speaking, we can't hear you.  
 19 **COMMISSIONER VENUTI:** Excuse me, I  
 20 was -- excuse me, I was muted.  
 21 I understand how a person can make a  
 22 mistake, but understand I'm looking at this from the  
 23 viewpoint of somebody who's been a -- I've been  
 24 inspecting new construction projects for the last 30  
 25 years. And it's a very rare project that gets built

Page 21

1 out of whack like this.  
 2 I understand you have -- you had a  
 3 contractor do this, but why didn't the contractor pay  
 4 attention to the rules? It's his responsibility as  
 5 well as yours.  
 6 **NANCY WHITMORE:** Well, you know, our  
 7 first reaction was, wow, there's a contractor and a  
 8 dirt guy. And, you know, I think everyone took a look  
 9 at the plat, but without the dotted line there to say  
 10 this is a setback, no one -- you know, no one really  
 11 took a hard enough look at it. And, you know, we  
 12 were -- it was suggested that we bring them along with  
 13 us tonight, but ultimately it's our responsibility.  
 14 So I don't know what else to say.  
 15 **COMMISSIONER VENUTI:** Well, it's not a  
 16 brand new road. It's been on the books for quite a  
 17 while. It would be really hard for me to support  
 18 this.  
 19 **CHAIRMAN BRANTLEY:** Any more questions  
 20 for the testifier?  
 21 All right. At this point, I'll close  
 22 public testimony and bring it back to the commission  
 23 for a motion.  
 24 **COMMISSIONER MORGAN:** I move to adopt PC  
 25 Resolution 2022-46 -- is that correct, Dan -- granting

Page 22

1 a building setback encroachment permit to Lot 10, Lake  
 2 Estates Subdivision, Plat K-1648.  
 3 **COMMISSIONER GILLHAM:** Second that  
 4 motion.  
 5 **CHAIRMAN BRANTLEY:** We have a motion and  
 6 a second. Is there any discussion? Okay.  
 7 Commissioner Stutzer, go ahead.  
 8 **COMMISSIONER STUTZER:** Yes, thank you.  
 9 So in the past on this board, or this  
 10 commission, I'm usually very vocal about being  
 11 against, you know, not doing their homework and that  
 12 kind of thing, which is basically my -- still my  
 13 position, but there's a couple, well, for me,  
 14 mitigating factors.  
 15 One, I mean, they're very forthright.  
 16 They made a mistake. They're -- you know, they're  
 17 fairly early on in the project, granted, that the shop  
 18 is built.  
 19 But the road that we're talking about is  
 20 basically a driveway, right? And my inclination is to  
 21 say yeah. And there's no sight lines, as staff said,  
 22 sight lines being disturbed. It only accesses three  
 23 lots.  
 24 The one testifier, the neighbor, said,  
 25 you know, he has a problem with it, but they built

Page 23

1 their house, it looks like by the map, right on the  
 2 20-foot setback line. So basically they're parking in  
 3 their setback, and they have to back into the driveway  
 4 just to get out of -- away from their house.  
 5 So, you know, I don't have a lot of  
 6 sympathy for them, because they kind of built the  
 7 house that way. So -- and, yeah, you've got a  
 8 neighbor now and a building there and snow removal is  
 9 a problem, but, you know, the road is always going to  
 10 be -- was designed not -- that the borough is not  
 11 going to take it over. So it's going to be a  
 12 neighborhood snowplow operation, and you'll just have  
 13 to figure out where you're going to push the snow.  
 14 I mean, there's -- to me, by the map, it  
 15 looks like you can push it on the neighbor's property  
 16 further up around the curve. You know, I mean,  
 17 granted, you know, I don't want to design solutions  
 18 for you.  
 19 But I don't know, it's a sticky  
 20 situation. I'm inclined to -- I mean, I hear what  
 21 Franco is saying. I'm inclined to approve this  
 22 petition, but I do have some concerns. So thank you.  
 23 **CHAIRMAN BRANTLEY:** Thank you,  
 24 Commissioner Stutzer. Any more discussion?  
 25 **UNIDENTIFIED SPEAKER:** I was thinking if

Page 24

1 there is a -- if there's a problem with snow removal,  
 2 could they put a cul-de-sac shared between all three  
 3 of the lots to gain the -- to gain the dimensions? Go  
 4 to the northwest lot that -- I don't have a number on  
 5 it here, but we got 9, 10, and the northwest lot, and  
 6 if they all three was to make a cul-de-sac there, then  
 7 that would give them maybe somewhere to put the snow  
 8 if it's needed, if that's their concern, I suppose.  
 9 And, yeah, just as he had said, the  
 10 people parking in the -- they're parking in the  
 11 setback, so, like, that's the same thing. They can't  
 12 really complain about it. That's all I had.  
 13 **CHAIRMAN BRANTLEY:** Thank you.  
 14 Commissioner Morgan.  
 15 **COMMISSIONER MORGAN:** I am also inclined  
 16 to support this. I think I have a bigger frustration  
 17 with two contractors in the area who should know all  
 18 of this. It is a homeowner's job to do research, but  
 19 we also depend on our contractors to know their  
 20 business. And so I'm kind of disappointed in their  
 21 lack of researching before they started the work and  
 22 not getting good information to the homeowners.  
 23 **COMMISSIONER GILLHAM:** I would have to  
 24 concur with Commissioner Morgan in that I would put  
 25 most of the blame on the contractor who should have a

Page 25

1 little bit more knowledge on this than the homeowner.  
 2 I'm not too concerned about parking in  
 3 the setback. That's still part of the property  
 4 owner's property. The setback is for building, not  
 5 parking. So that -- they should be able to pretty  
 6 much do with that whatever they choose as long as  
 7 they're not building in it.  
 8 But I am inclined to vote in favor of  
 9 this, mostly because I feel that this is more due to  
 10 the contractor's fault rather than the property  
 11 owner's fault.  
 12 **CHAIRMAN BRANTLEY:** Any more discussion  
 13 before we take a vote?  
 14 Well, I'll just say during some of the  
 15 testimony I think some terms got jumbled, and just to  
 16 remind the commissioners that it was inferred that  
 17 they were building into the right-of-way. I think one  
 18 of the -- the neighbor testified to that. And just to  
 19 remind you, this is not -- they are still on their  
 20 property by 10 feet or so.  
 21 They are not out in the right-of-way at  
 22 all, so I don't see how snow removal would be affected  
 23 anyway since they're not encroaching in the  
 24 right-of-way at all, just in the setback.  
 25 I do have some sympathy with the plat,



1 an older plat and it not being very visible.  
2 Contractors make mistakes. The only reason I asked  
3 for the name was just to -- we've been on this  
4 commission long enough that I kind of like to know who  
5 did it, because there might be a recurring theme that  
6 develops over time that could be addressed, but I  
7 do -- these things do happen, and I will be voting in  
8 favor to support this.

9 So if there's no more testimony, Ann --  
10 or no more discussion -- we'll take a vote.

- 11 **MS. SHIRNBERG:** Gillham?
- 12 **COMMISSIONER GILLHAM:** Yes.
- 13 **MS. SHIRNBERG:** Hooper?
- 14 **COMMISSIONER HOOPER:** Yes.
- 15 **MS. SHIRNBERG:** Stutzer?
- 16 **COMMISSIONER STUTZER:** Yes.
- 17 **MS. SHIRNBERG:** Staggs?
- 18 **COMMISSIONER STAGGS:** Yes.
- 19 **MS. SHIRNBERG:** Slaughter?
- 20 **COMMISSIONER SLAUGHTER:** Yes.
- 21 **MS. SHIRNBERG:** Fikes?
- 22 **COMMISSIONER FIKES:** Yes.
- 23 **MS. SHIRNBERG:** Morgan?
- 24 **COMMISSIONER MORGAN:** Yes.
- 25 **MS. SHIRNBERG:** Horton?

- 1 **COMMISSIONER HORTON:** Yes.
- 2 **MS. SHIRNBERG:** Tautfest?
- 3 **COMMISSIONER TAUTFEST:** Yes.
- 4 **MS. SHIRNBERG:** Venuti?
- 5 **COMMISSIONER VENUTI:** I'll say this very  
6 slowly. Yes.
- 7 **MS. SHIRNBERG:** Brantley?
- 8 **CHAIRMAN BRANTLEY:** Yes.
- 9 The motion passes unanimously.

10 39:17  
11 (This portion not requested)  
12 1:09:36

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CERTIFICATE

1  
2 I, LEONARD J. DiPAOLO, Registered Professional  
3 Reporter, Certified Realtime Reporter, Certified CART  
4 Provider, and Notary Public in and for the State of  
5 Alaska, do hereby certify:

6 That the tape recording, PC 102422 Audio was  
7 transcribed under my direction by computer  
8 transcription; that the foregoing is a true record of  
9 the testimony and proceedings taken at that time to the  
10 best of my ability; and that I am not a party to nor  
11 have I any interest in the outcome of the action herein  
12 contained.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand and affixed my seal this 24th day of November,  
15 2022.

22 \_\_\_\_\_  
23 LEONARD J. DiPAOLO, RPR, CRR, CCP  
24 Notary Public for Alaska  
25 My Commission Expires: 2-3-2024

<b>A</b>	<b>Apparently (2)</b> 13:1;18:2	<b>Borough (8)</b> 4:21;13:23;14:2,23; 16:18;19:21,21;23:10	19:24 <b>certainly (2)</b> 18:9,17	7:14;18:2;19:2,4,18; 24:8
<b>able (1)</b> 25:5	<b>appear (2)</b> 3:24;6:6	<b>borough-maintained (2)</b> 14:17,22	<b>Chair (1)</b> 8:10	<b>concerned (2)</b> 7:16;25:2
<b>abutting (1)</b> 5:6	<b>appears (2)</b> 3:12;5:1	<b>both (1)</b> 3:1	<b>CHAIRMAN (25)</b> 2:5;6:14,24;8:7,12, 20,22,25;10:4;11:21; 12:16;13:6,9,13;16:20, 24;17:5,10;20:16; 21:19;22:5;23:23; 24:13;25:12;27:8	<b>concerns (2)</b> 13:20;23:22
<b>access (6)</b> 4:9;5:3,6,10;7:20; 12:6	<b>applicant (8)</b> 5:21;6:15,25;8:8; 9:3;11:22;12:19;17:13	<b>brand (1)</b> 21:16	<b>BRANTLEY (26)</b> 2:5;6:14,24;8:7,12, 20,22,25;10:4;11:21; 12:16;13:6,9,13;16:20, 24;17:5,10;20:16; 21:19;22:5;23:23; 24:13;25:12;27:8	<b>concrete (5)</b> 14:6,10,12;19:1,9
<b>accessed (2)</b> 7:2;12:2	<b>appreciate (2)</b> 3:16;17:1	<b>bring (3)</b> 2:5;21:12,22	<b>choose (1)</b> 25:6	<b>concur (1)</b> 24:24
<b>accesses (1)</b> 22:22	<b>approached (1)</b> 18:9	<b>brought (5)</b> 4:12;6:1;13:21,23; 14:1	<b>cleared (2)</b> 12:14;14:24	<b>consideration (1)</b> 3:16
<b>accomplishing (2)</b> 15:16;17:3	<b>approval (1)</b> 5:9	<b>builder (2)</b> 3:3;15:25	<b>clearing (2)</b> 14:16,18	<b>constructed (1)</b> 12:10
<b>acknowledge (1)</b> 2:20	<b>approve (1)</b> 23:21	<b>building (25)</b> 2:6,9,16,24;3:20; 4:15;5:11;6:9;10:8,22, 24;12:7,19,23;13:25; 14:5,13;15:6;20:3,12; 22:1;23:8;25:4,7,17	<b>clearly (1)</b> 4:15	<b>construction (5)</b> 6:21;16:2;18:20; 19:20;20:24
<b>across (7)</b> 7:10,25;13:18; 14:20,22,25;18:1	<b>approved (1)</b> 4:23	<b>buildings (1)</b> 10:18	<b>close (3)</b> 17:12;19:19;21:21	<b>contact (1)</b> 15:25
<b>actually (4)</b> 10:19;13:20;14:15; 19:22	<b>approximately (3)</b> 2:18;15:3;16:8	<b>built (17)</b> 2:17;9:11,14,15,22; 10:11;14:10,10;15:5, 16,19;16:8;17:23; 20:25;22:18,25;23:6	<b>closer (2)</b> 11:14;15:19	<b>continued (3)</b> 14:7;16:17;20:3
<b>added (1)</b> 14:14	<b>area (8)</b> 2:12;3:1;4:1;7:19; 17:22;18:15,16;24:17	<b>business (1)</b> 24:20	<b>code (11)</b> 2:21;4:13,22,25;5:3, 9,13;6:1,4,11;7:15	<b>contractor (13)</b> 8:9,19;12:20,22,24; 19:6,8,13;20:3;21:3,3, 7;24:25
<b>addition (1)</b> 14:14	<b>Arneson (1)</b> 8:21	<b>button (1)</b> 17:16	<b>collective (1)</b> 2:22	<b>contractors (4)</b> 8:15;24:17,19;26:2
<b>additional (1)</b> 19:1	<b>around (3)</b> 15:12;19:10;23:16	<b>buttoned (1)</b> 10:12	<b>coming (2)</b> 12:11;19:23	<b>contractor's (1)</b> 25:10
<b>address (4)</b> 6:18,20;13:14,17	<b>arterial (1)</b> 5:5	<b>call (1)</b> 19:21	<b>comment (3)</b> 17:11,12,19	<b>corner (2)</b> 3:22;19:10
<b>addressed (1)</b> 26:6	<b>as-built (2)</b> 6:2;9:25	<b>calls (1)</b> 16:18	<b>comments (1)</b> 13:10	<b>corners (1)</b> 13:2
<b>adjacent (2)</b> 3:6;5:5	<b>attention (6)</b> 4:12;6:1;13:22,23; 14:1;21:4	<b>came (1)</b> 6:22	<b>commission (4)</b> 21:22;22:10;23:24; 26:4	<b>couple (2)</b> 14:3;22:13
<b>adopt (2)</b> 6:10;21:24	<b>aware (4)</b> 3:4;7:3;16:16;18:5	<b>Can (9)</b> 6:16;10:16,25; 13:12;19:6,8,9;20:21; 23:15	<b>COMMISSIONER (49)</b> 7:1,14;8:6,10,13,16, 25;9:2,10,13,17,20,24; 10:3,4,6,13,15;11:2,5, 11,18,22,25;12:16,18, 24;13:5;20:16,19; 21:15,24;22:3,7,8; 24:14,15,23,24;26:12, 14,16,18,20,22,24; 27:1,3,5	<b>course (1)</b> 18:6
<b>affected (1)</b> 25:22	<b>away (3)</b> 11:14;15:8;23:4	<b>care (1)</b> 14:24	<b>COMMISSIONER (49)</b> 7:1,14;8:6,10,13,16, 25;9:2,10,13,17,20,24; 10:3,4,6,13,15;11:2,5, 11,18,22,25;12:16,18, 24;13:5;20:16,19; 21:15,24;22:3,7,8; 24:14,15,23,24;26:12, 14,16,18,20,22,24; 27:1,3,5	<b>covenants (1)</b> 16:6
<b>Again (5)</b> 2:13;8:4;14:5;17:14; 19:12	<b>back (7)</b> 7:21;15:13,20;16:2; 19:16;21:22;23:3	<b>cause (1)</b> 4:4	<b>cell (1)</b>	<b>covered (1)</b> 17:25
<b>against (1)</b> 22:11	<b>backing (1)</b> 15:8	<b>cell (1)</b>	<b>commissioners (1)</b> 25:16	<b>Craig (1)</b> 6:20
<b>ago (2)</b> 16:9;17:22	<b>badly (1)</b> 19:15	<b>call (1)</b> 19:21	<b>company (1)</b> 3:4	<b>create (1)</b> 3:15
<b>ahead (6)</b> 9:1;10:5;12:17; 13:14;20:17;22:7	<b>based (1)</b> 6:8	<b>calls (1)</b> 16:18	<b>complain (1)</b> 24:12	<b>created (1)</b> 5:20
<b>along (9)</b> 3:20;4:1,15,18;5:18, 25;18:15;20:8;21:12	<b>basically (3)</b> 22:12,20;23:2	<b>came (1)</b> 6:22	<b>completed (1)</b> 16:16	<b>cul-de-sac (2)</b> 24:2,6
<b>alongside (1)</b> 15:10	<b>bigger (1)</b> 24:16	<b>Can (9)</b> 6:16;10:16,25; 13:12;19:6,8,9;20:21; 23:15	<b>completely (1)</b> 14:9	<b>curious (1)</b> 10:21
<b>always (1)</b> 23:9	<b>bit (1)</b> 25:1	<b>care (1)</b> 14:24	<b>compliance (4)</b> 4:13;6:1,4,11	<b>curve (4)</b> 3:25;4:3;7:8;23:16
<b>analysis (1)</b> 4:5	<b>blame (1)</b> 24:25	<b>cause (1)</b> 4:4	<b>comply (1)</b> 5:8	<b>dedicated (1)</b> 4:7
<b>angled (1)</b> 3:22	<b>board (1)</b> 22:9	<b>cell (1)</b>	<b>concern (6)</b>	<b>dedication (2)</b>
<b>Ann (1)</b> 26:9	<b>books (1)</b> 21:16			
	<b>B</b>	<b>C</b>		<b>D</b>

5:2,12 <b>defined (1)</b> 4:25 <b>definition (1)</b> 5:4 <b>department (2)</b> 2:17;4:22 <b>depend (1)</b> 24:19 <b>depict (1)</b> 5:15 <b>depiction (3)</b> 4:16,16,17 <b>design (1)</b> 23:17 <b>designed (1)</b> 23:10 <b>detached (2)</b> 2:24;9:7 <b>develops (1)</b> 26:6 <b>dimensions (1)</b> 24:3 <b>dirt (4)</b> 8:23;17:21,24;21:8 <b>disappointed (1)</b> 24:20 <b>discussion (5)</b> 3:3;22:6;23:24; 25:12;26:10 <b>distance (1)</b> 3:15 <b>distances (1)</b> 3:24 <b>disturbed (1)</b> 22:22 <b>done (9)</b> 8:24;10:1;13:22; 15:18;16:2;17:21; 18:23;19:12;20:4 <b>door (2)</b> 12:4,5 <b>dotted (2)</b> 3:8;21:9 <b>down (4)</b> 2:6;11:15;14:16; 15:24 <b>Drive (7)</b> 3:2,11;4:7,16;13:17; 14:20;15:14 <b>driveway (3)</b> 11:24;22:20;23:3 <b>Due (2)</b> 5:22;25:9 <b>during (2)</b> 10:11;25:14 <b>dust (1)</b> 15:24	<b>early (1)</b> 22:17 <b>electrician (3)</b> 19:3,6,13 <b>else (5)</b> 17:10;20:5,14,15; 21:14 <b>encouraged (1)</b> 18:21 <b>encroached (2)</b> 6:3;7:18 <b>encroaches (1)</b> 3:20 <b>encroaching (1)</b> 25:23 <b>encroachment (4)</b> 2:7,10;6:9;22:1 <b>end (6)</b> 4:1;6:13;7:8;11:4; 12:5,8 <b>ended (1)</b> 11:16 <b>enforcing (1)</b> 5:17 <b>enough (4)</b> 19:9;20:2;21:11; 26:4 <b>equipment (1)</b> 20:8 <b>Eric (1)</b> 8:21 <b>error (2)</b> 2:23;3:11 <b>especially (1)</b> 15:9 <b>Estates (4)</b> 2:10,14;4:5;22:2 <b>estimate (1)</b> 14:11 <b>even (2)</b> 7:25;15:12 <b>everybody's (1)</b> 17:1 <b>everyone (1)</b> 21:8 <b>excavation (1)</b> 3:4 <b>exception (3)</b> 2:16;3:12;5:1 <b>Excuse (3)</b> 3:2;20:19,20 <b>expressed (2)</b> 18:2;19:4 <b>extent (1)</b> 13:3	17:22 <b>far (2)</b> 12:23;15:8 <b>farther (1)</b> 11:14 <b>farthest (1)</b> 7:24 <b>fault (2)</b> 25:10,11 <b>favor (2)</b> 25:8;26:8 <b>February (1)</b> 16:9 <b>feel (2)</b> 19:15;25:9 <b>feet (14)</b> 2:18;3:21,21,22; 4:21;7:18;8:3;14:13, 14;15:2,3;20:11,11; 25:20 <b>few (1)</b> 7:12 <b>figure (1)</b> 23:13 <b>FIKES (5)</b> 7:1,14;8:6;26:21,22 <b>File (2)</b> 2:7,11 <b>fill (1)</b> 14:22 <b>findings (2)</b> 6:5,6 <b>finish (1)</b> 16:22 <b>finished (2)</b> 9:5,7 <b>first (3)</b> 10:8;13:25;21:7 <b>fit (1)</b> 4:24 <b>fits (1)</b> 5:2 <b>foam (1)</b> 17:25 <b>follow (1)</b> 16:7 <b>forklift (1)</b> 19:10 <b>forthright (1)</b> 22:15 <b>forward (1)</b> 6:16 <b>four (2)</b> 16:8,9 <b>Franco (1)</b> 23:21 <b>front (2)</b> 11:4;15:13 <b>frontage (1)</b> 4:20 <b>frustration (1)</b> 24:16 <b>further (1)</b>	23:16  <b>G</b>  <b>gain (2)</b> 24:3,3 <b>garage (5)</b> 2:17,24;12:4,5;18:6 <b>garage-shop (2)</b> 9:7;12:3 <b>General (5)</b> 2:11;8:9,14,18; 17:11 <b>generator (2)</b> 14:13;19:4 <b>gets (1)</b> 20:25 <b>GILLHAM (4)</b> 22:3;24:23;26:11,12 <b>GL (22)</b> 2:12,18;3:2,8,20,25; 4:7,8,18;5:18,19,25; 6:20;7:2;12:5,7;13:18, 19;14:12;15:6,22; 18:19 <b>goes (1)</b> 12:13 <b>good (3)</b> 11:12;13:24;24:22 <b>gotcha (1)</b> 11:18 <b>Government (1)</b> 4:10 <b>grant (1)</b> 6:9 <b>granted (6)</b> 3:19;4:8,24;5:1; 22:17;23:17 <b>granting (1)</b> 21:25 <b>gravel (1)</b> 17:24 <b>guess (2)</b> 19:14;20:13 <b>guests (1)</b> 18:22 <b>guy (1)</b> 21:8 <b>guys (1)</b> 9:21	<b>hardened (1)</b> 12:14 <b>hazard (1)</b> 3:16 <b>hear (3)</b> 13:12;20:18;23:20 <b>hi (1)</b> 13:11 <b>highway (1)</b> 19:23 <b>highways (1)</b> 5:6 <b>Hollier (24)</b> 2:12,18;3:2,8,20,25; 4:7,8,11,18;5:18,19, 25;6:21;7:2;12:2,5,7; 13:18,19;14:12;15:6, 22;18:19 <b>home (4)</b> 2:24;6:21;12:9,11 <b>homeowner (1)</b> 25:1 <b>homeowners (1)</b> 24:22 <b>homeowner's (1)</b> 24:18 <b>homes (2)</b> 7:2;8:5 <b>homework (2)</b> 16:11;22:11 <b>Hooper (2)</b> 26:13,14 <b>Horton (2)</b> 26:25;27:1 <b>house (14)</b> 10:9,10;11:6,8,10, 14;15:9,13,18;16:8,10; 23:1,4,7
<b>E</b>	<b>F</b>	<b>H</b>	<b>I</b>	
<b>E-1 (1)</b> 2:6	<b>factors (1)</b> 22:14 <b>fairly (1)</b> 22:17 <b>fall (1)</b>	<b>Haines (1)</b> 19:23 <b>hands (1)</b> 17:7 <b>happen (1)</b> 26:7 <b>happy (1)</b> 20:6 <b>hard (2)</b> 21:11,17	<b>idea (1)</b> 13:24 <b>impact (2)</b> 7:4,7 <b>impacted (1)</b> 3:25 <b>impacting (1)</b> 7:20 <b>impeding (3)</b> 15:1,6,17 <b>inadvertent (1)</b> 17:20 <b>inclination (1)</b> 22:20 <b>inclined (4)</b> 23:20,21;24:15;25:8 <b>including (1)</b> 3:6 <b>indicate (1)</b> 3:9 <b>indicated (1)</b> 5:16	

<p><b>indiscernible (1)</b> 17:16 <b>inferred (1)</b> 25:16 <b>information (2)</b> 20:2;24:22 <b>initial (1)</b> 19:18 <b>inside (2)</b> 9:5,8 <b>inspecting (1)</b> 20:24 <b>intention (2)</b> 18:18,25 <b>intentional (1)</b> 2:22 <b>intentionally (1)</b> 20:12 <b>interfere (2)</b> 3:13,15 <b>interior (1)</b> 5:17 <b>into (8)</b> 2:18;6:3;12:11; 15:13,17;18:7;23:3; 25:17 <b>investigation (1)</b> 3:18 <b>issue (3)</b> 4:14;19:2,22 <b>issues (3)</b> 4:4,12;5:25 <b>item (2)</b> 2:6,9</p>	<p style="text-align: center;"><b>L</b></p> <p><b>label (1)</b> 4:17 <b>lack (1)</b> 24:21 <b>Lake (6)</b> 2:10,13,14;4:5; 15:19;22:1 <b>land (1)</b> 7:21 <b>landlocked (2)</b> 4:10;7:7 <b>last (1)</b> 20:24 <b>leave (1)</b> 14:23 <b>left (1)</b> 20:11 <b>Legal (1)</b> 4:21 <b>length (1)</b> 3:21 <b>limit (2)</b> 15:1;16:21 <b>limitations (1)</b> 18:13 <b>limited (1)</b> 15:8 <b>line (5)</b> 13:25;14:8;15:20; 21:9;23:2 <b>lines (5)</b> 3:9,15;5:17;22:21, 22</p>	<p>18:12;22:1;23:5;24:4, 5 <b>lots (3)</b> 5:20;22:23;24:3</p>	<p>21:23;22:4,5;27:9 <b>move (4)</b> 15:11;19:8,10;21:24 <b>much (4)</b> 11:4;13:7;14:4;25:6 <b>multiple (1)</b> 20:7 <b>muted (1)</b> 20:20 <b>myself (1)</b> 14:19</p>	<p><b>Obviously (1)</b> 19:15 <b>oddly (3)</b> 2:25;10:25;18:12 <b>off (11)</b> 7:2;12:2,7,8,11,13; 14:11,24;15:3,20; 16:12 <b>officer (2)</b> 6:2,4 <b>older (1)</b> 26:1 <b>One (10)</b> 5:20;7:1;8:8;13:18; 15:17;21:10,10;22:15, 24;25:17 <b>only (3)</b> 5:19;22:22;26:2 <b>onsite (1)</b> 2:24 <b>onto (1)</b> 14:14 <b>operation (1)</b> 23:12 <b>opportunity (1)</b> 17:14 <b>OSB (1)</b> 9:8 <b>out (18)</b> 7:24;9:21,22;12:19, 23;14:2,15;15:8,11,13, 23;16:3;17:22;18:25; 21:1;23:4,13;25:21 <b>outside (1)</b> 4:3 <b>over (7)</b> 13:24;14:8;15:10, 16;17:3;23:11;26:6 <b>overbuilding (1)</b> 16:15 <b>overbuilt (1)</b> 13:24 <b>own (2)</b> 15:23;16:3 <b>owner (1)</b> 5:21 <b>owners (2)</b> 4:14;6:3 <b>owner's (2)</b> 25:4,11</p>
<p style="text-align: center;"><b>J</b></p> <p><b>job (2)</b> 14:3;24:18 <b>jumbled (1)</b> 25:15 <b>Junction (1)</b> 19:23</p>	<p><b>listed (1)</b> 6:6 <b>little (2)</b> 15:19;25:1 <b>live (1)</b> 15:13 <b>located (2)</b> 4:2;13:17 <b>location (2)</b> 2:12;19:5 <b>lock (1)</b> 7:21 <b>long (2)</b> 25:6;26:4 <b>look (2)</b> 21:8,11 <b>looking (1)</b> 20:22 <b>looks (2)</b> 23:1,15 <b>loss (1)</b> 7:19 <b>Lot (24)</b> 2:10,13,23,25;4:10; 5:20;10:13,14,17,19, 22,25;11:1,10;12:12, 25;13:2;16:15;17:21;</p>	<p style="text-align: center;"><b>M</b></p> <p><b>maintained (3)</b> 3:14;5:23;7:16 <b>maintenance (3)</b> 3:14;7:19;14:23 <b>many (1)</b> 13:20 <b>map (3)</b> 11:9;23:1,14 <b>maps (1)</b> 12:10 <b>marginal (2)</b> 5:3,10 <b>marked (2)</b> 13:2;17:22 <b>material (1)</b> 15:23 <b>matter (4)</b> 3:17;6:15;13:10; 16:14 <b>maybe (4)</b> 7:25;10:16,20;24:7 <b>mean (8)</b> 5:9;7:25;11:6;20:13; 22:15;23:14,16,20 <b>melted (1)</b> 18:7 <b>middle (1)</b> 11:17 <b>might (1)</b> 26:5 <b>mike (1)</b> 6:16 <b>minimal (1)</b> 5:13 <b>Minor (1)</b> 5:4 <b>mistake (2)</b> 20:22;22:16 <b>mistakes (1)</b> 26:2 <b>mitigating (1)</b> 22:14 <b>more (10)</b> 8:7;11:21;13:6; 21:19;23:24;25:1,9,12; 26:9,10 <b>MORGAN (6)</b> 21:24;24:14,15,24; 26:23,24 <b>mortgage (1)</b> 9:21 <b>most (2)</b> 7:9;24:25 <b>mostly (1)</b> 25:9 <b>motion (4)</b></p>	<p style="text-align: center;"><b>N</b></p> <p><b>name (5)</b> 6:17,19;13:14,16; 26:3 <b>Nancy (27)</b> 6:19,19;7:6,22;8:18, 21,23;9:6,12,15,19,22; 10:2,10,14,24;11:3,8, 13,20;12:3,12,22;13:1, 8;17:17;21:6 <b>narrow (1)</b> 11:3 <b>need (1)</b> 19:8 <b>needed (4)</b> 17:3;19:7,25;24:8 <b>neighbor (5)</b> 7:7,10;22:24;23:8; 25:18 <b>neighborhood (1)</b> 23:12 <b>neighboring (1)</b> 18:13 <b>neighbors (5)</b> 3:7;7:3;18:1,22;20:6 <b>neighbor's (1)</b> 23:15 <b>new (3)</b> 6:2;20:24;21:16 <b>none (1)</b> 17:12 <b>northern (1)</b> 4:1 <b>northwest (2)</b> 24:4,5 <b>note (3)</b> 4:20;5:12,16 <b>noted (1)</b> 4:10 <b>notes (1)</b> 3:11 <b>number (2)</b> 2:13;24:4 <b>numerous (1)</b> 16:19</p>	<p><b>name (5)</b> 6:17,19;13:14,16; 26:3 <b>Nancy (27)</b> 6:19,19;7:6,22;8:18, 21,23;9:6,12,15,19,22; 10:2,10,14,24;11:3,8, 13,20;12:3,12,22;13:1, 8;17:17;21:6 <b>narrow (1)</b> 11:3 <b>need (1)</b> 19:8 <b>needed (4)</b> 17:3;19:7,25;24:8 <b>neighbor (5)</b> 7:7,10;22:24;23:8; 25:18 <b>neighborhood (1)</b> 23:12 <b>neighboring (1)</b> 18:13 <b>neighbors (5)</b> 3:7;7:3;18:1,22;20:6 <b>neighbor's (1)</b> 23:15 <b>new (3)</b> 6:2;20:24;21:16 <b>none (1)</b> 17:12 <b>northern (1)</b> 4:1 <b>northwest (2)</b> 24:4,5 <b>note (3)</b> 4:20;5:12,16 <b>noted (1)</b> 4:10 <b>notes (1)</b> 3:11 <b>number (2)</b> 2:13;24:4 <b>numerous (1)</b> 16:19</p>
<p style="text-align: center;"><b>K</b></p> <p><b>K-1648 (3)</b> 2:11;4:6;22:2 <b>keep (1)</b> 15:24 <b>Kenai (1)</b> 4:21 <b>kind (5)</b> 11:16;22:12;23:6; 24:20;26:4 <b>knowing (1)</b> 14:7 <b>knowledge (1)</b> 25:1 <b>KPB (9)</b> 2:7,11,16,21;4:13; 5:3;6:1,4,11</p>	<p><b>listed (1)</b> 6:6 <b>little (2)</b> 15:19;25:1 <b>live (1)</b> 15:13 <b>located (2)</b> 4:2;13:17 <b>location (2)</b> 2:12;19:5 <b>lock (1)</b> 7:21 <b>long (2)</b> 25:6;26:4 <b>look (2)</b> 21:8,11 <b>looking (1)</b> 20:22 <b>looks (2)</b> 23:1,15 <b>loss (1)</b> 7:19 <b>Lot (24)</b> 2:10,13,23,25;4:10; 5:20;10:13,14,17,19, 22,25;11:1,10;12:12, 25;13:2;16:15;17:21;</p>	<p style="text-align: center;"><b>O</b></p> <p><b>objections (1)</b> 2:23</p>	<p style="text-align: center;"><b>P</b></p> <p><b>pad (6)</b> 15:3;17:24,24,24; 19:1,9 <b>painted (1)</b> 9:8 <b>parallel (1)</b> 5:5 <b>parcel (2)</b> 2:13;4:10 <b>parent (1)</b></p>	

<p>2:13 <b>park (4)</b> 7:11,11;18:22;20:7 <b>parked (2)</b> 15:9;18:20 <b>parking (6)</b> 18:18;23:2;24:10, 10:25;2:5 <b>part (2)</b> 9:20;25:3 <b>passes (1)</b> 27:9 <b>past (1)</b> 22:9 <b>pay (2)</b> 16:3;21:3 <b>PC (1)</b> 21:24 <b>Peninsula (1)</b> 4:21 <b>people (3)</b> 15:11;16:7;24:10 <b>percent (1)</b> 14:18 <b>permission (1)</b> 19:14 <b>permit (5)</b> 2:7,10;3:19;6:10; 22:1 <b>person (1)</b> 20:21 <b>personally (1)</b> 18:3 <b>person's (1)</b> 7:20 <b>petition (2)</b> 5:21;23:22 <b>petitioner (2)</b> 6:15;17:13 <b>phone (2)</b> 16:18;19:21 <b>photo (2)</b> 10:16,17 <b>PIAGENTINI (1)</b> 2:9 <b>pick (1)</b> 19:9 <b>picture (1)</b> 10:20 <b>place (2)</b> 4:22;19:24 <b>planning (3)</b> 2:16,23;18:5 <b>Plat (19)</b> 2:11;3:9,10,12;4:6,7, 8,15,19,19,23,23;5:12, 15,16;21:9;22:2; 25:25;26:1 <b>platting (1)</b> 2:17 <b>please (3)</b> 2:8;6:18;13:15 <b>plenty (2)</b></p>	<p>15:21;16:18 <b>pocket (6)</b> 9:21,23;12:20,23; 15:23;16:4 <b>point (6)</b> 7:24;14:5;20:1,5,13; 21:21 <b>poor (2)</b> 2:25;10:20 <b>portion (3)</b> 2:3;4:2;27:11 <b>position (1)</b> 22:13 <b>possibly (1)</b> 14:20 <b>postponed (1)</b> 14:3 <b>pour (1)</b> 18:5 <b>poured (1)</b> 19:19 <b>power (1)</b> 9:9 <b>present (1)</b> 5:13 <b>pretty (4)</b> 8:2;13:24;14:4;25:5 <b>primer (1)</b> 9:8 <b>privately (2)</b> 3:14;5:23 <b>probably (1)</b> 7:23 <b>problem (4)</b> 15:7;22:25;23:9; 24:1 <b>proceed (1)</b> 16:17 <b>process (1)</b> 13:4 <b>produce (1)</b> 9:25 <b>project (2)</b> 20:25;22:17 <b>projects (1)</b> 20:24 <b>properties (1)</b> 5:7 <b>property (8)</b> 4:11;7:9;10:9;23:15; 25:3,4,10,20 <b>protection (1)</b> 5:7 <b>provide (2)</b> 4:9;5:6 <b>public (4)</b> 13:9;17:11,12;21:22 <b>purchased (1)</b> 13:2 <b>purpose (1)</b> 18:17 <b>push (4)</b> 14:21;17:15;23:13,</p>	<p>15 <b>pushed (3)</b> 7:23,24;15:20 <b>pushing (2)</b> 14:20,25 <b>put (8)</b> 15:23,23;16:2; 18:14;19:7;24:2,7,24 <b>putting (2)</b> 11:16;18:25</p> <p style="text-align: center;"><b>Q</b></p> <p><b>quite (2)</b> 7:12;21:16</p> <p style="text-align: center;"><b>R</b></p> <p><b>raised (1)</b> 17:8 <b>rap (1)</b> 15:23 <b>rare (1)</b> 20:25 <b>rather (1)</b> 25:10 <b>reaction (1)</b> 21:7 <b>reading (1)</b> 3:11 <b>really (9)</b> 7:15;18:8;19:13,15; 20:2,5;21:10,17;24:12 <b>reason (2)</b> 19:5;26:2 <b>reception (1)</b> 19:25 <b>recommendation (1)</b> 6:8 <b>recommends (1)</b> 6:10 <b>record (2)</b> 6:18;13:15 <b>recorded (1)</b> 4:6 <b>recreational (1)</b> 20:8 <b>recurring (1)</b> 26:5 <b>refer (1)</b> 10:12 <b>referred (1)</b> 9:4 <b>regulations (1)</b> 16:6 <b>related (1)</b> 7:4 <b>remind (2)</b> 25:16,19 <b>removal (5)</b> 7:17;15:2;23:8;24:1; 25:22 <b>repairing (1)</b></p>	<p>16:1 <b>report (3)</b> 2:7;4:25;6:13 <b>request (1)</b> 3:18 <b>requested (2)</b> 2:3;27:11 <b>requesting (1)</b> 2:15 <b>required (2)</b> 3:4;5:13 <b>requirement (1)</b> 9:25 <b>research (1)</b> 24:18 <b>researching (1)</b> 24:21 <b>residents (1)</b> 13:19 <b>resolution (4)</b> 4:14;6:5,10;21:25 <b>responsibility (2)</b> 21:4,13 <b>restricted (1)</b> 3:1 <b>reviewed (1)</b> 4:22 <b>Ridgeway (1)</b> 2:12 <b>right (8)</b> 8:13;12:14;17:7; 18:10;19:17;21:21; 22:20;23:1 <b>right-of-way (10)</b> 4:2,9;5:2,22,24; 14:15;15:17;25:17,21, 24 <b>rightly (1)</b> 13:7 <b>road (21)</b> 2:19;3:7,10,13,13, 14;5:20;7:8,9,19,24; 8:3;14:18,19,22,22; 15:23;18:1;21:16; 22:19;23:9 <b>Roads (2)</b> 2:21;4:25 <b>room (2)</b> 15:1,21 <b>Ross (15)</b> 3:1,11;4:7,16;7:25, 25;11:15;12:4,8,11,13; 13:17;14:20;15:14; 18:15 <b>rules (2)</b> 16:6;21:4</p> <p style="text-align: center;"><b>S</b></p> <p><b>safety (1)</b> 3:16 <b>same (2)</b> 11:9;24:11</p>	<p><b>sat (1)</b> 17:25 <b>satellite (2)</b> 10:17,20 <b>saying (2)</b> 19:22;23:21 <b>Second (2)</b> 22:3,6 <b>sections (1)</b> 6:12 <b>Seeing (1)</b> 17:12 <b>seems (1)</b> 8:2 <b>sentence (1)</b> 16:24 <b>separation (1)</b> 3:5 <b>septic (4)</b> 2:25;3:5,6;18:14 <b>septics (1)</b> 18:14 <b>set (1)</b> 16:7 <b>setback (30)</b> 2:6,10,16,18;3:8,10, 13;4:15,17,20;5:11,14, 16,18;6:3,9;7:11,17; 8:2,3;16:13;20:7; 21:10;22:1;23:2,3; 24:11;25:3,4,24 <b>setbacks (3)</b> 5:13,17;16:6 <b>shape (1)</b> 18:12 <b>shaped (3)</b> 2:25;10:25;18:12 <b>shared (1)</b> 24:2 <b>shed (4)</b> 3:20,23;9:4,6 <b>SHIRNBERG (11)</b> 26:11,13,15,17,19, 21,23,25;27:2,4,7 <b>shop (15)</b> 6:2;12:15;13:25; 14:9,11;15:4,10,18,19; 16:17;17:23;18:19; 19:3,11;22:17 <b>show (2)</b> 6:2;14:20 <b>shown (2)</b> 3:10;4:18 <b>shows (2)</b> 4:15;10:17 <b>side (10)</b> 4:3;5:22;12:4,6,7; 14:11,12;15:3;18:19; 19:11 <b>sides (1)</b> 14:25 <b>sight (5)</b> 3:15,24;4:4;22:21,</p>
--	---	--	---	--

22 <b>site (1)</b> 3:18 <b>situation (2)</b> 6:5;23:20 <b>slab (5)</b> 14:6,10,12;18:5; 19:19 <b>Slaughter (2)</b> 26:19,20 <b>slightly (1)</b> 3:21 <b>slope (1)</b> 11:16 <b>slowly (1)</b> 27:6 <b>small (2)</b> 18:16;19:9 <b>smaller (2)</b> 12:6;15:18 <b>snow (14)</b> 7:17,23;14:16,18,21, 24,25;15:2;18:7;23:8, 13;24:1,7;25:22 <b>snowplow (1)</b> 23:12 <b>soils (1)</b> 3:1 <b>solutions (1)</b> 23:17 <b>somebody (1)</b> 20:23 <b>someone (1)</b> 19:21 <b>somewhere (1)</b> 24:7 <b>soon (1)</b> 13:22 <b>Sorry (3)</b> 13:13;16:20;20:6 <b>sort (2)</b> 11:15;19:12 <b>southwest (1)</b> 3:22 <b>speak (2)</b> 6:15;17:14 <b>SPEAKER (5)</b> 11:23;12:1,9;17:15; 23:25 <b>speaking (1)</b> 20:18 <b>spring (1)</b> 18:7 <b>Staff (6)</b> 2:7;4:5,25;6:10,13; 22:21 <b>Staggs (2)</b> 26:17,18 <b>stakes (1)</b> 17:23 <b>standards (2)</b> 6:7,9 <b>start (1)</b>	19:7 <b>started (5)</b> 12:25;13:3,25;14:5; 24:21 <b>state (2)</b> 6:17;13:14 <b>stated (1)</b> 14:20 <b>states (1)</b> 5:4 <b>stating (1)</b> 4:20 <b>Steam (3)</b> 8:24;15:25;17:23 <b>sticky (1)</b> 23:19 <b>still (4)</b> 15:20;22:12;25:3,19 <b>stop (1)</b> 19:25 <b>stopped (1)</b> 14:4 <b>straight (1)</b> 4:2 <b>Street (16)</b> 2:12,19;3:2,8,20,25; 4:7,8,18,20;5:10,18,19, 25;7:10;13:18 <b>streets (4)</b> 5:3,4,5,10 <b>stuff (1)</b> 16:7 <b>Stutzer (13)</b> 10:5,6,13,15;11:2,5, 11,18;22:7,8;23:24; 26:15,16 <b>Subdivision (4)</b> 2:11,14;4:6;22:2 <b>subject (2)</b> 5:11;6:11 <b>substandard (2)</b> 2:19;5:9 <b>suggested (1)</b> 21:12 <b>summer (4)</b> 9:16,18,19;10:11 <b>support (4)</b> 6:7;21:17;24:16; 26:8 <b>suppose (1)</b> 24:8 <b>supposed (3)</b> 14:21,24;16:11 <b>sure (2)</b> 16:12;20:4 <b>survey (2)</b> 12:25;13:3 <b>surveying (1)</b> 16:10 <b>sympathy (2)</b> 23:6;25:25 <b>system (2)</b> 3:5,6	<b>systems (2)</b> 2:25;18:15  <b>T</b>  <b>talked (1)</b> 16:19 <b>talking (1)</b> 22:19 <b>Taufest (2)</b> 27:2,3 <b>TAYLOR (7)</b> 13:11,12,16,17; 16:23;17:1,9 <b>terms (1)</b> 25:15 <b>testified (1)</b> 25:18 <b>testifier (3)</b> 17:6;21:20;22:24 <b>testimony (3)</b> 21:22;25:15;26:9 <b>Thanks (2)</b> 8:6;17:17 <b>theme (1)</b> 26:5 <b>thinking (1)</b> 23:25 <b>three (9)</b> 5:20;7:2;8:4,5; 13:19;18:15;22:22; 24:2,6 <b>thrilled (1)</b> 18:23 <b>thus (1)</b> 5:17 <b>tight (1)</b> 7:15 <b>times (1)</b> 15:11 <b>told (2)</b> 19:5;20:1 <b>tonight (1)</b> 21:13 <b>took (2)</b> 21:8,11 <b>toward (1)</b> 7:24 <b>traffic (6)</b> 5:7;12:13;14:25; 15:1,6,14 <b>Troy (6)</b> 13:11,11,16,16; 16:23;17:9 <b>trying (4)</b> 12:6;18:11,11,14 <b>turn (2)</b> 6:17;15:12 <b>two (1)</b> 24:17 <b>type (1)</b> 4:17 <b>types (1)</b>	4:25  <b>U</b>  <b>ultimately (1)</b> 21:13 <b>unanimously (1)</b> 27:9 <b>unaware (1)</b> 3:7 <b>under (3)</b> 6:21;14:2;19:20 <b>underneath (1)</b> 12:10 <b>UNIDENTIFIED (5)</b> 11:23;12:1,9;17:15; 23:25 <b>unnamed (1)</b> 4:8 <b>unrelated (1)</b> 7:4 <b>up (12)</b> 10:12;11:16;12:14; 13:21;14:6,22,23; 16:21;19:9,20,23; 23:16 <b>upgraded (1)</b> 15:22 <b>usable (1)</b> 3:1 <b>usage (1)</b> 5:23 <b>use (5)</b> 7:8,13;18:12;20:7, 10 <b>used (2)</b> 2:23;5:19 <b>usually (1)</b> 22:10  <b>V</b>  <b>vehicle (1)</b> 12:6 <b>vehicles (4)</b> 7:12;15:9,12;20:8 <b>VENUTI (21)</b> 8:10,13,16;9:1,2,10, 13,17,20,24;10:3; 11:25;12:17,18,24; 13:5;20:16,19;21:15; 27:4,5 <b>viewpoint (1)</b> 20:23 <b>VINCE (1)</b> 2:9 <b>violate (1)</b> 18:11 <b>violation (2)</b> 2:20,22 <b>visible (1)</b> 26:1 <b>vocal (1)</b>	22:10 <b>vote (3)</b> 25:8,13;26:10 <b>voting (1)</b> 26:7  <b>W</b>  <b>wait (1)</b> 19:24 <b>walls (3)</b> 14:6;19:19,20 <b>way (4)</b> 7:5,12;16:2;23:7 <b>ways (2)</b> 15:15;17:2 <b>wells (2)</b> 3:6;18:13 <b>west (1)</b> 5:22 <b>wet (1)</b> 11:15 <b>whack (1)</b> 21:1 <b>Wheels (3)</b> 8:24;16:1;17:23 <b>WHITMORE (27)</b> 6:19,20;7:6,22;8:18, 21,23;9:6,12,15,19,22; 10:2,10,14,24;11:3,8, 13,20;12:3,12,22;13:1, 8;17:17;21:6 <b>whole (1)</b> 18:6 <b>who's (1)</b> 20:23 <b>wide (1)</b> 8:2 <b>wider (1)</b> 11:4 <b>width (6)</b> 4:23,24;5:1,8,9,22 <b>winter (3)</b> 8:1;18:1,7 <b>wire (1)</b> 17:25 <b>wired (1)</b> 19:3 <b>wish (2)</b> 18:8;19:16 <b>wishing (1)</b> 17:11 <b>without (2)</b> 15:17;21:9 <b>work (4)</b> 8:24;17:21;19:25; 24:21 <b>workers (1)</b> 18:20 <b>working (3)</b> 4:13;6:4;12:20 <b>wow (1)</b> 21:7
---	---	---	--	--

wrote (1) 17:20	20:7;23:2			
<b>Y</b>	<b>24-foot (1)</b> 3:19			
year (1) 17:21	<b>25 (1)</b> 4:21			
years (3) 16:9,9;20:25	<b>25-foot (2)</b> 4:15;5:15			
<b>0</b>	<b>3</b>			
<b>0:00:00 (1)</b> 2:2	<b>3 (2)</b> 3:15;14:14			
<b>057-250-01 (1)</b> 2:13	<b>30 (2)</b> 8:3;20:24			
<b>1</b>	<b>30-foot-wide (1)</b> 4:9			
<b>1 (2)</b> 2:9;3:13	<b>36602 (1)</b> 6:20			
<b>1:09:36 (1)</b> 27:12	<b>39:17 (1)</b> 27:10			
<b>10 (21)</b> 2:10,14,18;4:10;6:6; 7:18;10:13,14,19,22, 25;11:10,12;12:10; 15:2,3;20:10,11;22:1; 24:5;25:20	<b>3-by-5-foot (1)</b> 19:1			
<b>100-foot (1)</b> 3:5	<b>3-foot-by-5-foot (1)</b> 14:12			
<b>10-foot (1)</b> 8:3	<b>4</b>			
<b>11 (1)</b> 10:17	<b>43680 (1)</b> 13:17			
<b>115 (1)</b> 2:21	<b>48-foot (1)</b> 3:12			
<b>12 (2)</b> 6:6;15:3	<b>49 (1)</b> 3:21			
<b>14-40-035 (1)</b> 2:21	<b>49-foot (1)</b> 3:19			
<b>14-40-15 (1)</b> 2:21	<b>5</b>			
<b>15 (1)</b> 6:6	<b>5:06 (1)</b> 2:4			
<b>1968 (1)</b> 5:3	<b>7</b>			
<b>1969 (1)</b> 4:6	<b>75 (1)</b> 14:18			
<b>2</b>	<b>9</b>			
<b>2 (1)</b> 3:14	<b>9 (1)</b> 24:5			
<b>20.10.110 (1)</b> 6:11	<b>9.3 (1)</b> 3:22			
<b>2022-121 (2)</b> 2:7,11	<b>9.4 (1)</b> 14:13			
<b>2022-46 (2)</b> 6:10;21:25	<b>9.8 (1)</b> 3:21			
<b>20-foot (11)</b> 2:15;3:7;5:11,14,16, 18;7:11;8:2;16:12;				

# **ADDENDUM TO THE RECORD**



## ADDENDUM INDEX

<b>Record Page #</b>	<b>Document</b>
R-34 to R-35	Submittal
R-36	Justification
R-37 to R-38	Email 07-19-22 (2)
R-39 to R-41	Email 07-19-22
R-42 to R-42	Email 07-26-22
R-43	Application
R-44 to R-45	Email 07-28-22
R-46 to R-51	Email 09-27-22
R-52	Asbuilt Lot 10 – 36602 GL Hollier St.
R-53 to R-54	Email 10-07-22
R-55 to R-58	Public Notice
R-59	Asbuilt for Recording
R-60 To R-83	Ordinance 68-62



# Planning Department

KPB PLANNING DEPT.

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

## APPLICATION FOR BUILDING SETBACK ENCROACHMENT PERMIT

### PUBLIC HEARING REQUIRED

- NAME: Nancy S. + David Craig Whitmore
- ADDRESS: 36602 GL Hollier St. Soldotna AK
- PHONE NO.: 907-299-7717, 907-299-5352
- EMAIL ADDRESS: nancywhitmore@gmail.com  
dcwhitmore@gmail.com
- LEGAL DESCRIPTION OF PROPERTY FOR WHICH THE BUILDING SETBACK PERMIT IS BEING REQUESTED: Lake Estates Sub Lot 10
- JUSTIFICATION FOR REQUESTING THE BUILDING SETBACK PERMIT (ATTACH SEPARATE PAGES IF NECESSARY):

*See attached*

- APPLICATION FEE ATTACHED:
- RECORDING FEE
  - ATTACHED (CONTACT KPB PLANNING DEPT. FOR THE RECORDING FEE AMOUNT)
  - I WILL PAY THE RECORDING FEE AFTER THE PLANNING COMMISSION TAKES ACTION ON THE PERMIT REQUEST
- AS-BUILT SURVEY OR SITE SURVEY PREPARED BY A LICENSED LAND SURVEYOR  
*To be provided by KPB*

Nancy S. Whitmore  
PROPERTY OWNER SIGNATURE

7-25-22  
DATE

David Craig Whitmore  
PROPERTY OWNER SIGNATURE

7/25/2022  
DATE

FOR OFFICE USE ONLY

RECEIVED BY \_\_\_\_\_

DATE SUBMITTED \_\_\_\_\_

KPB FILE # \_\_\_\_\_

**20.10.110. Building setback encroachment permits.**

- A. Unless otherwise regulated by city zoning ordinances of properties within its boundaries, any person desiring to construct, or cause, an encroachment within a building setback shall apply for a building setback encroachment permit to the planning department. Failure to obtain an encroachment permit is subject to remedies set forth in KPB 20.10.030.
- B. A permit fee shall be charged for building setback encroachment permit as provided in the current approved Kenai Peninsula Borough Schedule of Rates, Charges and Fees. A person who fails to apply for, and obtain, a building setback encroachment permit prior to an enforcement notice being issued pursuant to KPB 21.50.100 is subject to enforcement.
- C. All building setback encroachments, including those that pre-date the effective date of this ordinance, must apply for a building setback encroachment permit. Permits for building setback encroachments that existed prior to the effective date of this ordinance shall pay the same permit fee as applies to permits received prior to placement or construction of the encroachment.
- D. When the building setback encroachment permit application is complete, it will be scheduled for the next available planning commission meeting.
- E. The following standards shall be considered for all building setback encroachment permit applications:
  - 1. The building setback encroachment may not interfere with road maintenance.
  - 2. The building setback encroachment may not interfere with sight lines or distances.
  - 3. The building setback encroachment may not create a safety hazard.
- F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.
- G. The planning commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.
- H. A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 21.20.210, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

July 25, 2022

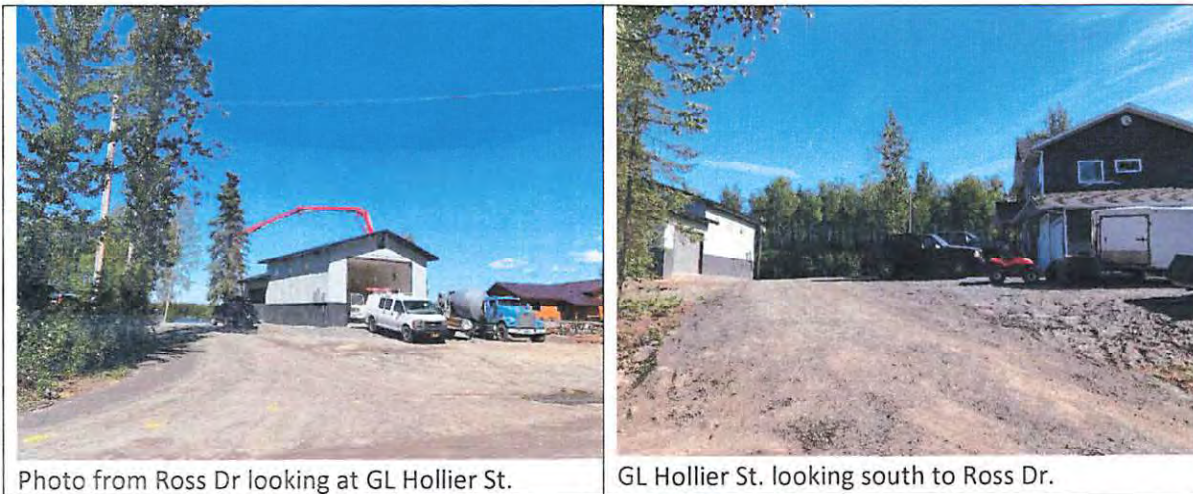
We are requesting a 20' Building Setback Exception from the KPB Planning and Platting Department because our garage has been built approximately 10' into the setback for GL Hollier St, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115.

At our meeting with representatives from the Planning and Platting Department on Friday July 22, 2022, we were told that the KPB had a surveyor currently surveying 3 parcels in this subdivision, and that we could use this survey as the As-Built Survey or Site Survey required for the *Application for Building Setback Encroachment Permit*.

This violation was not intentional; it was a collective error in planning how to use our lot (Lot 10) to meet our objectives of building a detached garage, a home, and on-site well and septic systems. The lot is oddly shaped, with poor soils, having the useable area restricted by both Ross Dr. and GL Hollier St.

In discussion with the builder and the excavation company, we were aware of the required 100' separation between well and septic system (including the wells and septic systems of our adjacent neighbors). We were unaware of the 20' road setback for GL Hollier St. as there are no dotted lines to indicate this on the plat: a road setback is shown on the plat for Ross Dr. Our error was in not reading the notes on the plat.

Several photos are included to illustrate the situation.



It appears that the 48' exception to the road setback will not;

1. not interfere with road maintenance (road is privately maintained).
2. not interfere with sight lines or distances.
3. not create a safety hazard.

We appreciate your consideration of this matter.

## Hindman, Julie

---

**From:** Hindman, Julie  
**Sent:** Tuesday, February 28, 2023 3:00 PM  
**To:** Hindman, Julie  
**Subject:** FW: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

---

**From:** Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)>  
**Sent:** Tuesday, July 19, 2022 10:59 AM  
**To:** 'Nancy Whitmore' <[nancywhitmore@gmail.com](mailto:nancywhitmore@gmail.com)>  
**Cc:** Hindman, Julie <[jhindman@kpb.us](mailto:jhindman@kpb.us)>; Quainton, Madeleine <[mquainton@kpb.us](mailto:mquainton@kpb.us)>  
**Subject:** RE: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

Hello Nancy,

Email is a good method to communicate for me as well. We can meet and I can include the platting staff as well, as they are the experts. Do you have a date and time in mind, to meet?

**Eric D. Ogren**  
Code Compliance Officer  
Ph: (907) 714-2209  
Fx: (907) 714-2378

**KENAI PENINSULA BOROUGH**  
144 North Binkley Street  
Soldotna, Alaska 99669



---

**From:** Nancy Whitmore <[nancywhitmore@gmail.com](mailto:nancywhitmore@gmail.com)>  
**Sent:** Tuesday, July 19, 2022 9:35 AM  
**To:** Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>Questions re application for variance - Whitmore

CAUTION: This email originated from outside of the KPBB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Are you able to meet with us in person to discuss this application for variance? We want to make sure that we do it correctly.--

We are very poor cell reception where we are currently staying, so it is probably best to respond via email.

Thank you.

Nancy and Craig, Whitmore

P.O. Box 1984  
Homer, AK 99603

907-299-7717  
907-299-5352

## Hindman, Julie

---

**From:** Hindman, Julie  
**Sent:** Tuesday, February 28, 2023 2:59 PM  
**To:** Hindman, Julie  
**Subject:** FW: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

---

**From:** Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)>  
**Sent:** Tuesday, July 19, 2022 11:32 AM  
**To:** 'Nancy Whitmore' <[nancywhitmore@gmail.com](mailto:nancywhitmore@gmail.com)>  
**Cc:** Piagentini, Vincent <[vpiagentini@kpb.us](mailto:vpiagentini@kpb.us)>; Quainton, Madeleine <[mquainton@kpb.us](mailto:mquainton@kpb.us)>  
**Subject:** RE: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

Hello Nancy,

Most have on open schedule for Friday at 10:00 am, is that fit with your schedule?

**Eric D. Ogren**  
Code Compliance Officer  
Ph: (907) 714-2209  
Fx: (907) 714-2378

**KENAI PENINSULA BOROUGH**  
144 North Binkley Street  
Soldotna, Alaska 99669



---

**From:** Nancy Whitmore <[nancywhitmore@gmail.com](mailto:nancywhitmore@gmail.com)>  
**Sent:** Tuesday, July 19, 2022 11:25 AM  
**To:** Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)>  
**Subject:** Re: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

We are very flexible after Thursday. We will work with whatever schedule you can set up for a meeting.

We look forward to having our questions answered.

Thank you!

On Tue, Jul 19, 2022 at 10:58 AM Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)> wrote:

Hello Nancy,

Email is a good method to communicate for me as well. We can meet and I can include the platting staff as well, as they are the experts. Do you have a date and time in mind, to meet?

**Eric D. Ogren**

Code Compliance Officer

Ph: (907) 714-2209

Fx: (907) 714-2378

**KENAI PENINSULA BOROUGH**  
344 North Sinkyay Street  
Soldotna, Alaska 99649



---

**From:** Nancy Whitmore <[nancywhitmore@gmail.com](mailto:nancywhitmore@gmail.com)>  
**Sent:** Tuesday, July 19, 2022 9:35 AM  
**To:** Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>Questions re application for variance - Whitmore

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Are you able to meet with us in person to discuss this application for variance? We want to make sure that we do it correctly.--

We are very poor cell reception where we are currently staying, so it is probably best to respond via email.

Thank you.

Nancy and Craig. Whitmore



P.O. Box 1984

Homer, AK 99603

907-299-7717

907-299-5352

--

Nancy S. Whitmore  
Whitmore Appraisal Services

P.O. Box 1984  
Homer, AK 99603

907-299-7717

## Hindman, Julie

---

**From:** Quainton, Madeleine  
**Sent:** Thursday, February 23, 2023 11:25 AM  
**To:** Hindman, Julie  
**Subject:** FW: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception  
**Attachments:** Application for 20' Setback Exception KPB July 2022.pdf

Madeleine

---

**From:** Nancy Whitmore <nancywhitmore@gmail.com>  
**Sent:** Tuesday, July 26, 2022 10:58 AM  
**To:** Quainton, Madeleine <mquainton@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Thank you for meeting with us last Friday. We are grateful for the information provided as we navigate this process.

Attached please find our comments / justification. Please include this with our application.

Let me know if there is anything else we need to do.

--

Nancy S. Whitmore

P.O. Box 881  
Soldotna, AK 99669

907-299-7717

July 25, 2022

We are requesting a 20' Building Setback Exception from the KPB Planning and Platting Department because our garage has been built approximately 10' into the setback for GL Hollier St, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115.

At our meeting with representatives from the Planning and Platting Department on Friday July 22, 2022, we were told that the KPB had a surveyor currently surveying 3 parcels in this subdivision, and that we could use this survey as the As-Built Survey or Site Survey required for the *Application for Building Setback Encroachment Permit*.

This violation was not intentional; it was a collective error in planning how to use our lot (Lot 10) to meet our objectives of building a detached garage, a home, and on-site well and septic systems. The lot is oddly shaped, with poor soils, having the useable area restricted by both Ross Dr. and GL Hollier St.

In discussion with the builder and the excavation company, we were aware of the required 100' separation between well and septic system (including the wells and septic systems of our adjacent neighbors). We were unaware of the 20' road setback for GL Hollier St. as there are no dotted lines to indicate this on the plat: a road setback is shown on the plat for Ross Dr. Our error was in not reading the notes on the plat.

Several photos are included to illustrate the situation.



Photo from Ross Dr looking at GL Hollier St.



GL Hollier St. looking south to Ross Dr.

It appears that the 48' exception to the road setback will not;

1. not interfere with road maintenance (road is privately maintained).
2. not interfere with sight lines or distances.
3. not create a safety hazard.

We appreciate your consideration of this matter.

## Hindman, Julie

---

**From:** Quainton, Madeleine  
**Sent:** Thursday, February 23, 2023 11:25 AM  
**To:** Hindman, Julie  
**Subject:** FW: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

Madeleine

---

**From:** Quainton, Madeleine  
**Sent:** Thursday, July 28, 2022 8:11 AM  
**To:** 'Nancy Whitmore' <nancywhitmore@gmail.com>  
**Subject:** RE: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

Hello Nancy,

Thank for you sending this on. Eric Ogren has sent the as built job out for bid to local surveyors. I have asked him to let me know when the as built is complete and then I can get you guys on the calendar for the next available meeting.

Thank you,

Madeleine

---

**From:** Nancy Whitmore <nancywhitmore@gmail.com>  
**Sent:** Tuesday, July 26, 2022 10:58 AM  
**To:** Quainton, Madeleine <mquainton@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

CAUTION:This email originated from outside of the KPb system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Thank you for meeting with us last Friday. We are grateful for the information provided as we navigate this process.

Attached please find our comments / justification. Please include this with our application.

Let me know if there is anything else we need to do.

--

Nancy S. Whitmore

P.O. Box 881  
Soldotna, AK 99669

907-299-7717

## Hindman, Julie

---

**From:** Quainton, Madeleine  
**Sent:** Thursday, February 23, 2023 11:24 AM  
**To:** Hindman, Julie  
**Subject:** FW: <EXTERNAL-SENDER>Encroachment Survey - Ross Drive and GL Hollier St  
**Attachments:** Asbuilt Lot 10 - 36602 GL Hollier St.pdf

Madeleine

---

**From:** Ogren, Eric <eogren@kpb.us>  
**Sent:** Tuesday, September 27, 2022 9:40 AM  
**To:** Piagentini, Vincent <vpiagentini@kpb.us>; Hindman, Julie <jhindman@kpb.us>; Quainton, Madeleine <mquainton@kpb.us>  
**Cc:** Ruffner, Robert <RRuffner@kpb.us>  
**Subject:** FW: <EXTERNAL-SENDER>Encroachment Survey - Ross Drive and GL Hollier St

Hello All,

The attached is the As-built for the 20ft building setback for David and Nancy Whitmore Exception application. Madeleine please set for the next available meeting

**Eric D. Ogren**  
Code Compliance Officer  
Ph: (907) 714-2209  
Fx: (907) 714-2378

**KENAI PENINSULA BOROUGH**  
144 North Sinkley Street  
Soldotna, Alaska 99669



---

**From:** JASON SCHOLLENBERG <[jason@peninsulasurveying.com](mailto:jason@peninsulasurveying.com)>  
**Sent:** Tuesday, September 27, 2022 8:33 AM  
**To:** Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)>  
**Subject:** Re: <EXTERNAL-SENDER>Encroachment Survey - Ross Drive and GL Hollier St

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Eric,  
I don't think there is a need to track down the legal document at this time.

Here is the asbuilt for Lot 10. The structures in Lot 9 and Lot 12 are outside of the 20' setback. Let me know if you need anything else for those.

Thanks

**Jason Schollenberg, PLS**

Peninsula Surveying, LLC  
10535 Katrina Blvd  
Ninilchik, AK 99639

Phone: (907)306-7065  
Fax: (907) 567-1017

On Tue, Sep 27, 2022 at 8:00 AM Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)> wrote:

Good Morning Jason,

I had the same question and have received a decision from the KPB legal dept. It is to be considered a 20ft Building set back based on 1969 planning commission decision. If you need the documentation, I will see if A. Walker Steinhage, Deputy Borough Attorney will allow the release of his findings.

**Eric D. Ogren**

Code Compliance Officer

Ph: (907) 714-2209

Fx: (907) 714-2378

**KENAI PENINSULA BOROUGH**  
**144 North Sinkley Street**  
**Seldotna, Alaska 99669**



---

**From:** JASON SCHOLLENBERG <[jason@peninsulasurveying.com](mailto:jason@peninsulasurveying.com)>  
**Sent:** Monday, September 26, 2022 4:52 PM  
**To:** Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)>  
**Subject:** Re: <EXTERNAL-SENDER>Encroachment Survey - Ross Drive and GL Hollier St

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Eric,

Do you have any updated documentation about the building setbacks along GL Hollier St? The plat notes say that the setback along the ROW should be 25ft. I'm wondering if you want to stick with the 25ft, or if there is something else stating that we are going with the standard 20ft? I'm asking because the house on lot 9 is 24.2ft from the ROW.

Thank You

**Jason Schollenberg, PLS**

Peninsula Surveying, LLC

10535 Katrina Blvd

Ninilchik, AK 99639

Phone: (907)306-7065

Fax: (907) 567-1017

On Mon, Sep 26, 2022 at 7:23 AM JASON SCHOLLENBERG <[jason@peninsulasurveying.com](mailto:jason@peninsulasurveying.com)> wrote:

Eric,

I'll get them finished up in the next day or two. Thanks for your patience.



**Jason Schollenberg, PLS**

Peninsula Surveying, LLC

10535 Katrina Blvd

Ninilchik, AK 99639

Phone: (907)306-7065

Fax: (907) 567-1017

On Tue, Sep 20, 2022 at 12:08 PM Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)> wrote:

Hello Jason,

How are you doing? Have you had an opportunity to make the As-builts for the GL Hollier and Ross surveys? One of the land owners has applied for the building setback variance, all ready, and is wanting to get the meeting scheduled. Please let me know, thank you

**Eric D. Ogren**

Code Compliance Officer

Ph: (907) 714-2209

Fx: (907) 714-2378

**KENAI PENINSULA BOROUGH**  
144 North Sinkley Street  
Soldotna, Alaska 99669



---

**From:** JASON SCHOLLENBERG <[jason@peninsulasurveying.com](mailto:jason@peninsulasurveying.com)>  
**Sent:** Saturday, September 10, 2022 3:20 PM  
**To:** Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)>  
**Subject:** Re: <EXTERNAL-SENDER>Encroachment Survey - Ross Drive and GL Hollier St

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

I didn't get them, but I can go back out and pick them up. I'll put together an asbuilt drawing for anything in the setbacks.

**Jason Schollenberg, PLS**

Peninsula Surveying, LLC

10535 Katrina Blvd

Ninilchik, AK 99639

Phone: (907)306-7065

Fax: (907) 567-1017

On Sat, Sep 10, 2022 at 1:35 PM Ogren, Eric <[eogren@kpb.us](mailto:eogren@kpb.us)> wrote:

Hello Jason

There is building set backs along Ross and GL Hollier and the buildings are believed to be too close to the ROW within the 20ft Setback. Do you have the measurements from the ROW to show if the structures are or are not in the setback. Thanks

Sent from my iPhone

On Sep 10, 2022, at 11:44 AM, JASON SCHOLLENBERG  
<[jason@peninsulasurveying.com](mailto:jason@peninsulasurveying.com)> wrote:

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Eric,

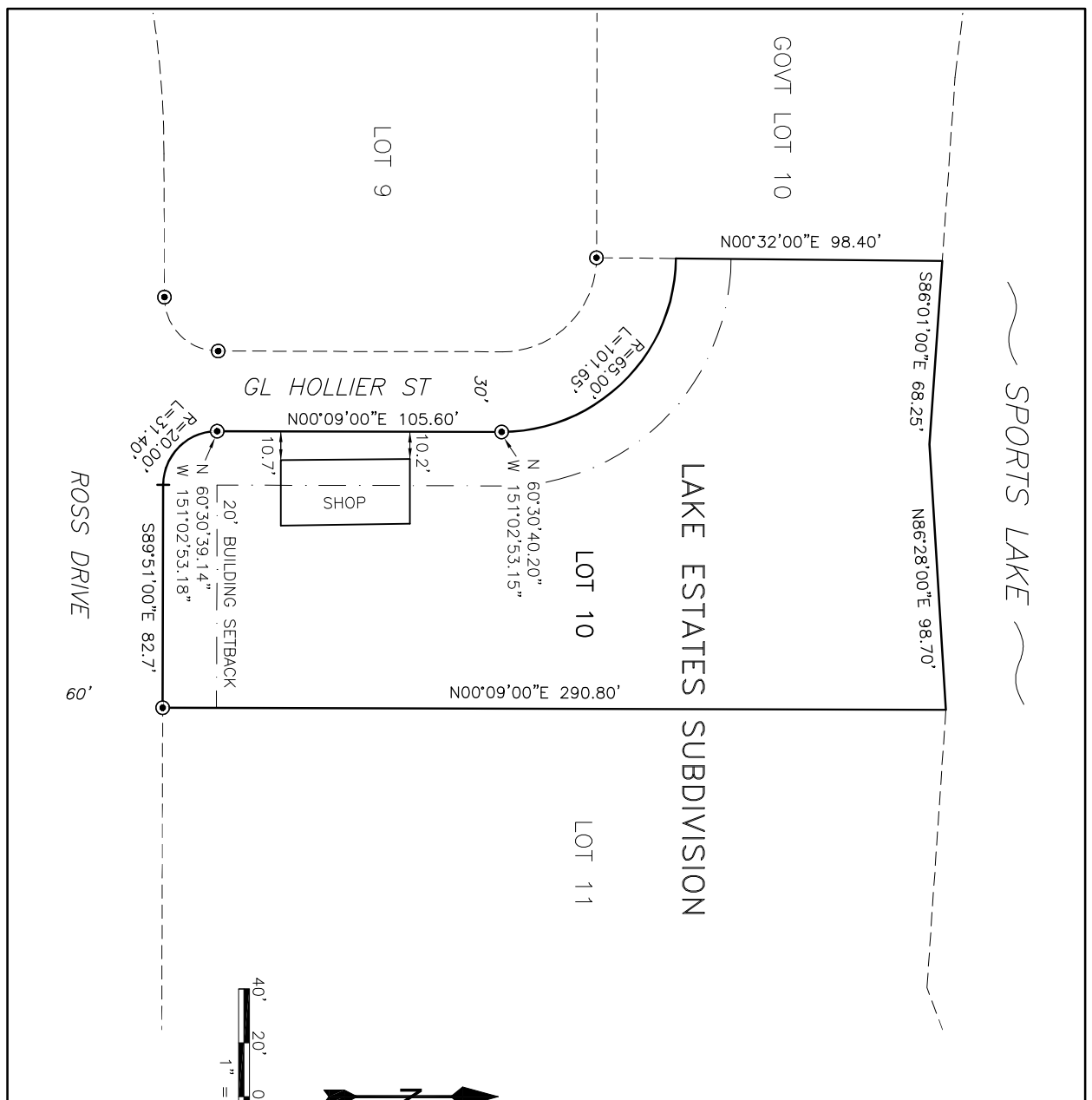
I surveyed lots 9,10, and 12 on Ross Drive. There weren't any encroachments on Ross Drive or GL Hollier St. I flagged up the ROW and took a few pictures. I'm not planning on doing a drawing, as it won't show anything but lot lines.

Thank You

Jason Schollenberg, PLS  
Peninsula Surveying, LLC  
10535 Katrina Blvd  
Ninilchik, AK 99639

Phone: (907)306-7065  
Fax: (907) 567-1017

SPORTS LAKE



NOTES

1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
2. BUILDING DIMENSIONS ARE TO THE FACE OF THE BUILDING.
3. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT KN 1648.

LEGEND

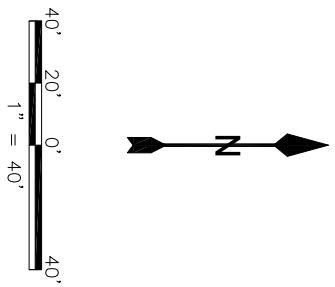
○ FOUND REBAR

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE PERFORMED AN AS-BUILT SURVEY ON THE PROPERTY SHOWN HEREON, AND THE IMPROVEMENTS EXIST AS SHOWN. FIELD SURVEY ON 09/26/2022.

*Jason L. Schollenberg* 09/27/2022

JASON L. SCHOLLENBERG DATE  
PLS 14488-S



<p>PENINSULA SURVEYING, LLC 10535 KATRINA BOULEVARD NINILCHIK, AK 99639 (907)306-7065</p>	
<p>AS-BUILT SURVEY LOT 10, LAKE ESTATES SUBDIVISION SECTION 21, T5N, R10W, S.M.</p>	
SCALE: 1" = 40'	DATE: 09/27/2022
DRAWN: JLS	SHEET: 1 OF 1

## Hindman, Julie

---

**From:** Quainton, Madeleine  
**Sent:** Thursday, February 23, 2023 11:22 AM  
**To:** Hindman, Julie  
**Subject:** FW: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception  
**Attachments:** Notice Public.pdf

Madeleine

---

**From:** Quainton, Madeleine  
**Sent:** Friday, October 7, 2022 12:05 PM  
**To:** 'Nancy Whitmore' <nancywhitmore@gmail.com>  
**Subject:** RE: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

Hi Nancy,

Craig left a message for Eric asking if the meeting date had been scheduled for your building setback permit yet and it has. I sent a letter out on Monday so you should see that in the mail very soon. I have attached a copy to this email as well. The meeting will be October 24<sup>th</sup> at 7:30 and you can attend in person or by ZOOM.

Thank you,

Madeleine

---

**From:** Quainton, Madeleine  
**Sent:** Thursday, July 28, 2022 8:11 AM  
**To:** 'Nancy Whitmore' <[nancywhitmore@gmail.com](mailto:nancywhitmore@gmail.com)>  
**Subject:** RE: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

Hello Nancy,

Thank for you sending this on. Eric Ogren has sent the as built job out for bid to local surveyors. I have asked him to let me know when the as built is complete and then I can get you guys on the calendar for the next available meeting.

Thank you,

Madeleine

---

**From:** Nancy Whitmore <[nancywhitmore@gmail.com](mailto:nancywhitmore@gmail.com)>  
**Sent:** Tuesday, July 26, 2022 10:58 AM

To: Quainton, Madeleine <[mquainton@kpb.us](mailto:mquainton@kpb.us)>

Subject: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

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Thank you for meeting with us last Friday. We are grateful for the information provided as we navigate this process.

Attached please find our comments / justification. Please include this with our application.

Let me know if there is anything else we need to do.

--

Nancy S. Whitmore

P.O. Box 881  
Soldotna, AK 99669

907-299-7717



# Planning Department

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

Mike Navarre  
Borough Mayor

## KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF BUILDING SETBACK ENCROACHMENT PERMIT

Public notice is hereby given that a building setback encroachment permit application was received on 9/27/2022. You are being sent this notice because you are within 600 feet of the subject parcel and are invited to comment.

The building setback encroachment permit application is for the following property:

Request / Affected Property: Allows a 9.4 feet by 49 feet portion of a shop to remain in the building setback granted on Lake Estates Subdivision K-1648.

KPB File No. 2022-121

Petitioner(s) / Land Owner(s): David and Nancy Whitmore of Soldotna, AK.

Purpose as stated in petition: We are requesting a 20' Building Setback Exception from the KPB Planning and Platting Department because our garage has been built approximately 10' into the setback for GL Hollier St, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115. At our meeting with representatives from the Planning and Platting Department on Friday July 22, 2022, we were told that the KPB had a surveyor currently surveying 3 parcels in this subdivision, and that we could use this survey as the As-Built Survey or Site Survey required for the Application for Building Setback Encroachment Permit. This violation was not intentional; it was a collective error in planning how to use our lot (Lot 10) to meet our objectives of building a detached garage, a home, and on-site well and septic systems. The lot is oddly shaped, with poor soils, having the useable area restricted by both Ross Dr. and GL Hollier St. In discussion with the builder and the excavation company, we were aware of the required 100' separation between well and septic system (including the wells and septic systems of our adjacent neighbors). We were unaware of the 20' road setback for GL Hollier St. as there are no dotted lines to indicate this on the plat: a road setback is shown on the plat for Ross Dr. Our error was in not reading the notes on the plat. It appears that the 48' exception to the road setback will not; 1. not interfere with road maintenance (road is privately maintained). 2. Not interfere with sight lines or distances. 3. Not create a safety hazard. We appreciate your consideration of this matter.

Building setback encroachment permit reviews are conducted in accordance with KPB Subdivision Ordinance.

Public hearing will be held by the Kenai Peninsula Borough Planning Commission on **Monday, October 24, 2022**, commencing at **7:30 p.m.**, or as soon thereafter as business permits. The meeting is being held in person at the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, Alaska and remotely through Zoom.

To attend the meeting using Zoom from a computer visit <https://us06web.zoom.us/j9077142200>. You may also connect to Zoom by telephone, call toll free **1-888-788-0099** or **1-877-853-5247**. If calling in you will need the Meeting ID of 907 714 2200. Additional information about connecting to the meeting may be found at <https://www.kpb.us/planning-dept/planning-commission>.

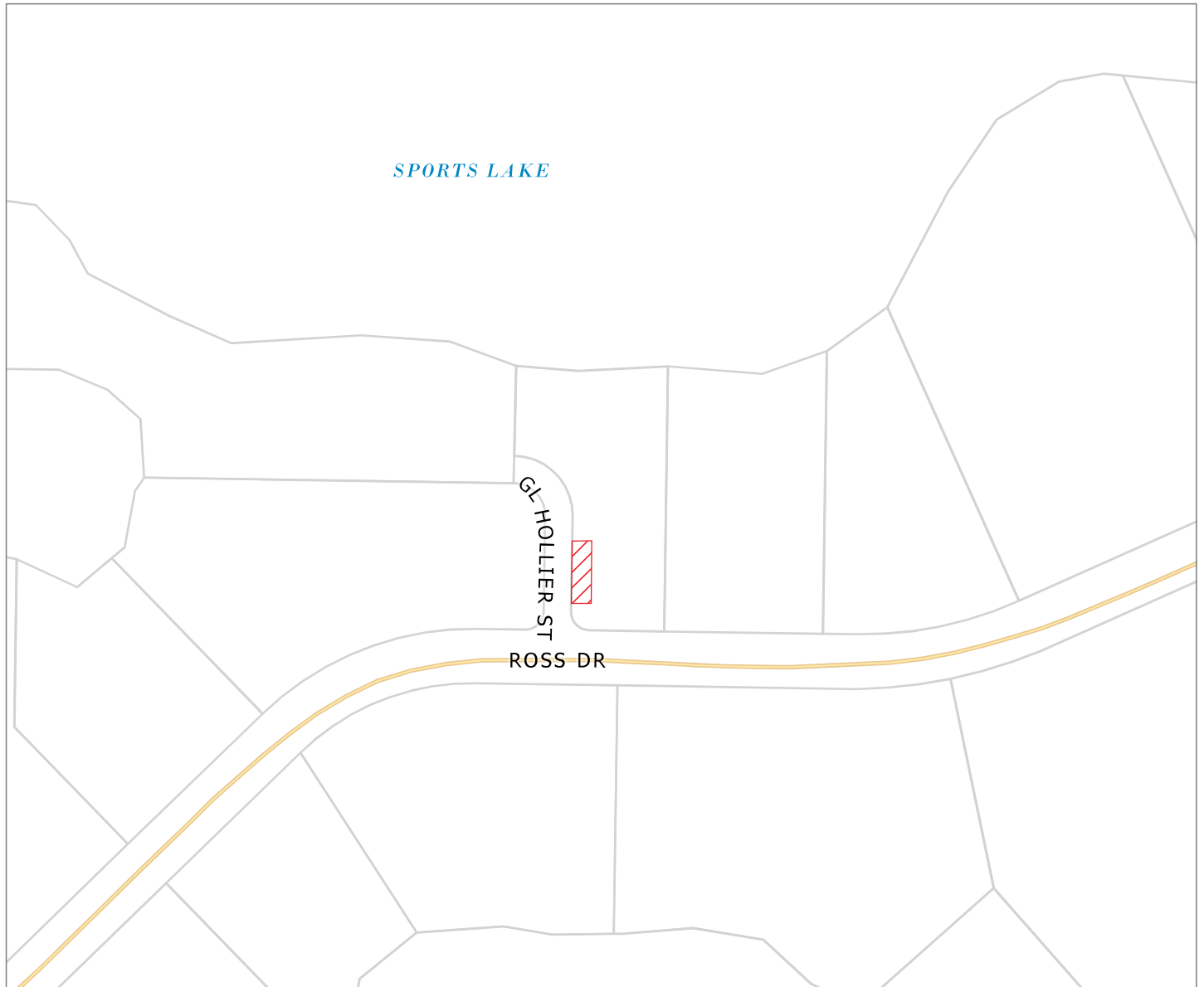
Anyone wishing to testify may attend the meeting in person or through Zoom. Written testimony may be submitted by email to [planning@kpb.us](mailto:planning@kpb.us), or mailed to the attention of Madeleine Quinton, Kenai Peninsula Borough Planning Department, 144 N. Binkley Street, Soldotna, Alaska 99669. [Written comments may also be sent by Fax to 907-714-2378]. All written comments or documents must be submitted by **1:00 PM, Friday, October 21, 2022**. The deadline to submit written comments or documents does not impact the ability to provide verbal testimony at the public hearing.

Additional information such as staff reports and comments are available online. This information is available the Monday prior to the meeting and found at <https://kpb.legistar.com/Calendar.aspx>. Use the search options to find the correct timeframe and committee.

For additional information contact Madeleine Quinton ([mquinton@kpb.us](mailto:mquinton@kpb.us)) or Julie Hindman ([jhindman@kpb.us](mailto:jhindman@kpb.us)), Planning Department, 714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough).

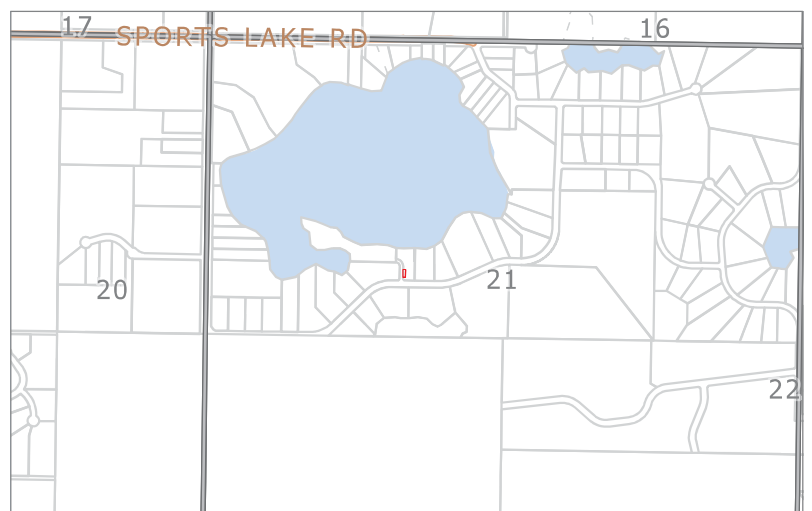
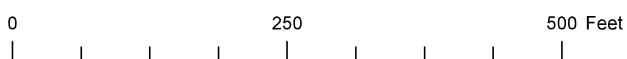
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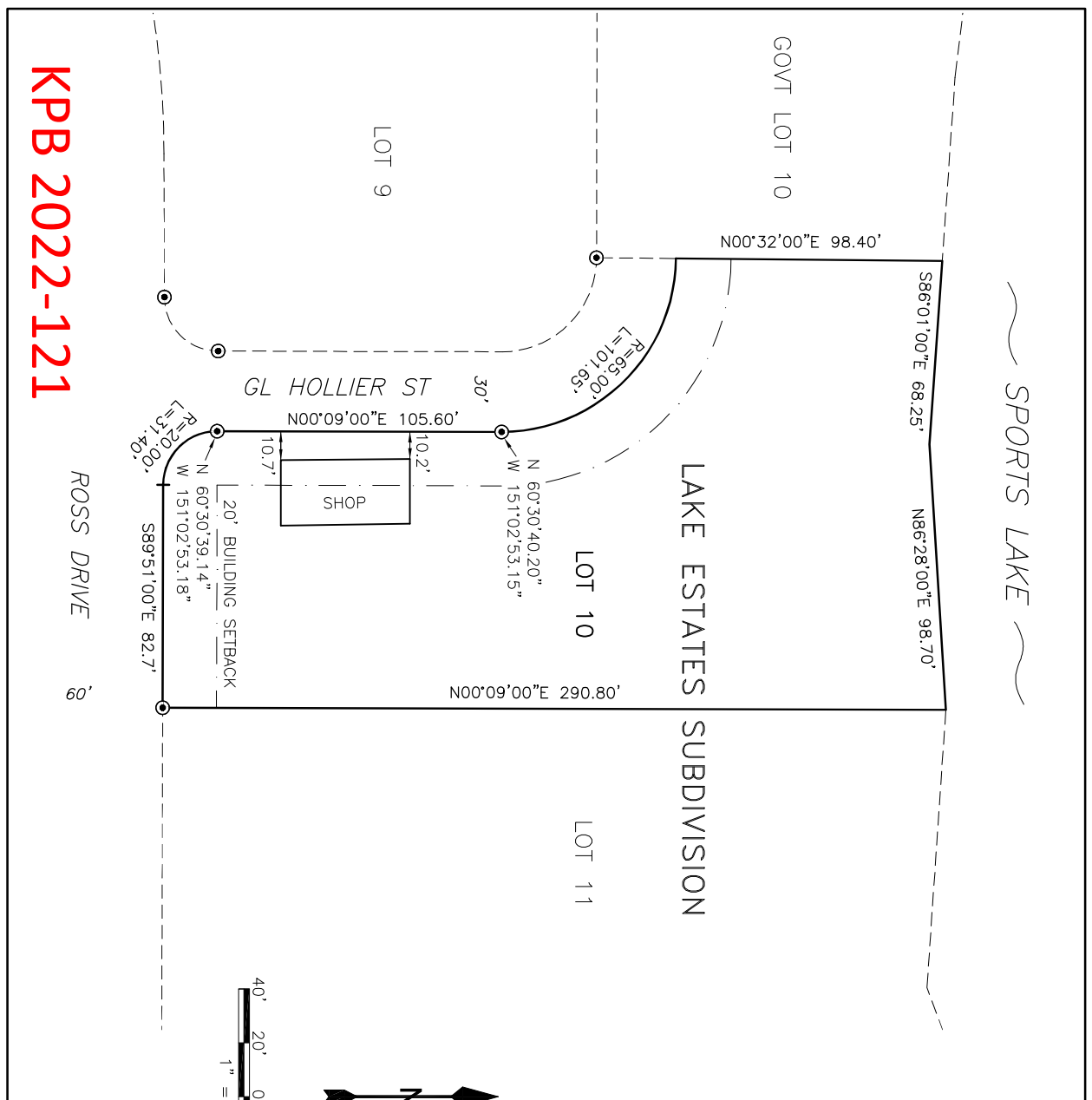


KPB File 2022-121  
 T 05N R 10W SEC 21  
 Ridgeway

9/28/2022



SPORTS LAKE



KPB 2022-121

ROSS DRIVE 60'

- NOTES**
1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
  2. BUILDING DIMENSIONS ARE TO THE FACE OF THE BUILDING.
  3. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT KN 1648.

**LEGEND**  
 ● FOUND REBAR

**SURVEYOR'S CERTIFICATE**

I HEREBY CERTIFY THAT I HAVE PERFORMED AN AS-BUILT SURVEY ON THE PROPERTY SHOWN HEREON, AND THE IMPROVEMENTS EXIST AS SHOWN. FIELD SURVEY ON 09/26/2022.

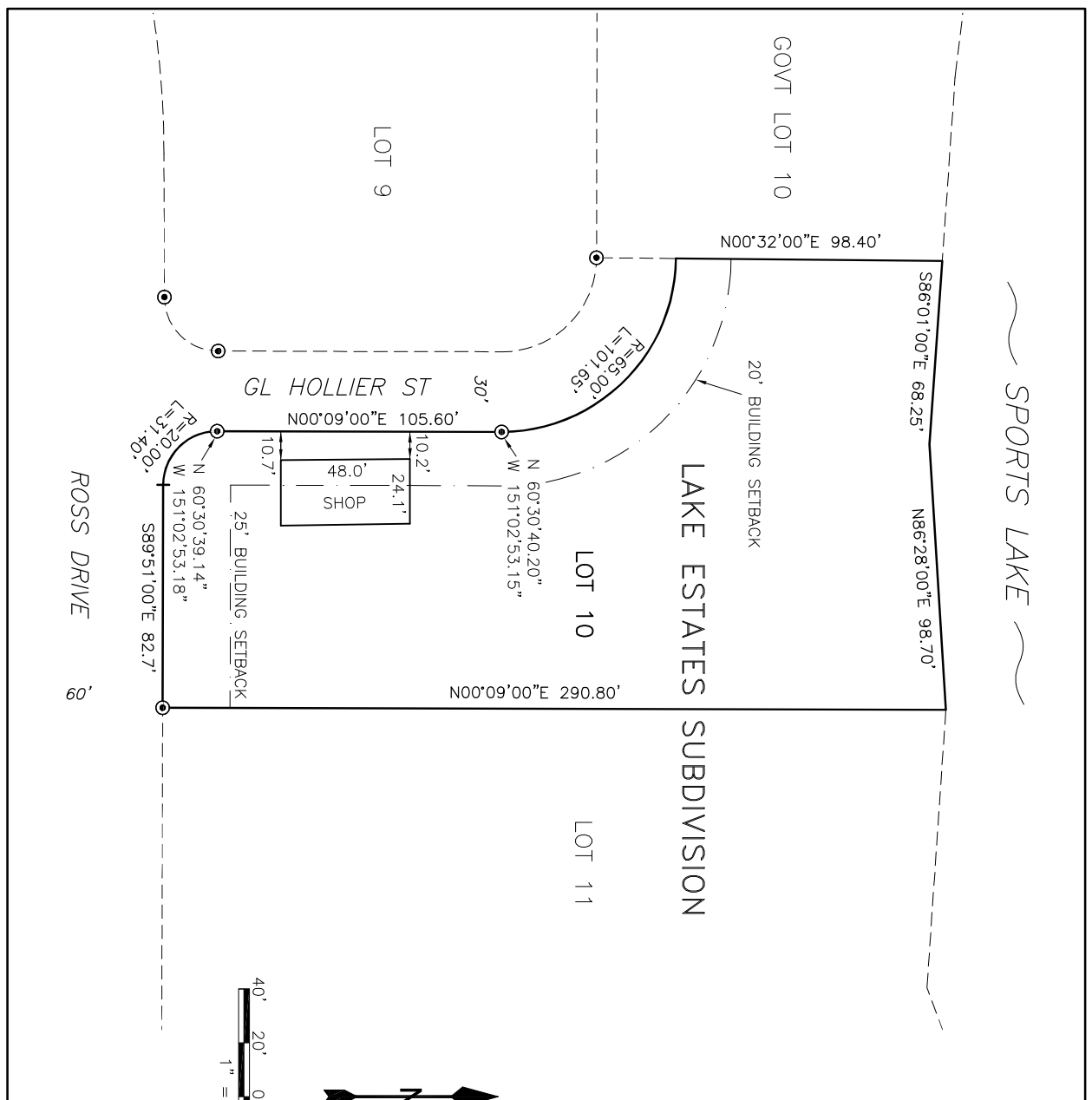
*Jason L. Schollenberg* 09/27/2022

JASON L. SCHOLLENBERG DATE  
 PLS 14488-S



<b>PENINSULA SURVEYING, LLC</b> 10535 KATRINA BOULEVARD NINILCHIK, AK 99639 (907)306-7065	
AS-BUILT SURVEY LOT 10, LAKE ESTATES SUBDIVISION SECTION 21, T5N, R10W, S.M.	
SCALE: 1" = 40'	DATE: 09/27/2022
DRAWN: JLS	SHEET: 1 OF 1

SPORTS LAKE



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KENAI PENINSULA BOROUGH

ORDINANCE NO. 26

AN ORDINANCE RELATING TO SUBDIVISION PLATS AND PLATTING.

BE IT ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH;

Section 1. Title 20 of the Kenai Peninsula Borough Code of Ordinances is amended by adding a new chapter to read;

CHAPTER 15. PLATTING

ARTICLE I - GENERAL PROVISIONS

20.15.010 Purpose. The purpose of this chapter is to promote an adequate and efficient street and road system, to prevent congestion on streets and promote traffic safety, to secure desirable public spaces, to insure the proper distribution of population, to provide for adequate utilities and public improvements, to insure the accurate survey and proper preparation of plats, and to protect and improve the health, safety and general welfare of the people.

20.15.015 Authority. This chapter is adopted under the authority of AS 07.15.340 and AS 40.15.

20.15.020 Jurisdiction. This chapter shall govern subdivision of all land within the Kenai Peninsula Borough. No subdivision plat requiring commission approval may be recorded unless approved by the commission.

20.15.025 Plats required. No subdivision shall be approved by the commission except upon the submission of a plat prepared in accordance with section .035 - .070 of this chapter, provided;

(1) Subdivisions of land outside the limits of first class cities into aliquot parts no one of which is less than 40 acres hereby approved and no submission to the commission is required.

(2) Plats of subdivisions of lands outside the limits of first class cities into aliquot parts no one of which is less than 10 acres are not required to comply with the survey and monumentation provisions of Sec. .065.

(3) Subdivisions containing six or less parcels may be submitted, at the option of the subdivider, on a final plat omitting the preliminary plat required by sections .040 - .050.

20.15.030 Definitions. In this chapter unless otherwise provided or the context otherwise requires:

(1) "aliquot part" means a 1/2, 1/4, 1/8, 1/16, 1/32, or 1/64th rectangular portion of a regular section, or regular part of a section, excluding fractional lots.

(2) "alley" means a public secondary access and utilities right-of-way.

(3) "block" means a piece or parcel of land entirely surrounded by public streets, streams, railroads, right-of-ways, and parks, etc., or a combination thereof.

(4) "commission" means Kenai Peninsula Borough Planning Commission.

(5) "cul-de-dac" means a short dead end street having a vehicular turn-around.

(6) "lot" means a portion of a subdivision intended as a unit for transfer of ownership or for building development.

(7) "lot depth" means the average distance from street right-of-way to the rear lot line, which is the lot line opposite and most distant from said street right-of-way.

(8) "lot width" means the distance between straight lines connecting front and rear lot lines at each side of the lot, measured between the mid-points of such lines.

(9) "Major street" means a street shown as a major street on the major street plan or comprehensive plan adopted by the Kenai Peninsula Borough.

(10) "planting strip" means a strip of land between the roadway and the sidewalk or sidewalk site.

(11) "roadway" means the portion of a street designate for vehicular traffic. Where curbs are laid it is the portion between curbs.

(12) "sidewalk" means the portion of a street or crosswalk intended for pedestrian use only.

(13) "street" is a general term used to describe a right-of-way serving as a means of vehicular and pedestrian travel, also furnishing spaces for sewers, public utilities and shade trees; includes avenues, boulevards, roads, lanes and other ways. Streets are classified as follows:

(A) Primary Arterial Streets (Highways) move through traffic to major traffic generators and from community to community.

(B) Community Arterial Streets collect and distribute traffic from higher type arterial highways to less important streets, or directly to traffic destinations and serve secondary traffic generators and traffic

from neighborhood to neighborhood within a community.  
(To serve a maximum of 1500 lots or units.)

(C) Neighborhood Collector Streets collect and distribute traffic from higher-type arterial streets, to access streets, or directly to traffic destinations or serve neighborhood traffic generators. (To serve a maximum of 350 lots or units.)

(D) Commercial Access Streets provide access to commercial properties in business, commercial, and industrial areas.

(E) Residential Access Streets provide access to residential property. (To serve a maximum of 100 lots or units.)

(F) Marginal Access Streets are minor streets which are parallel with and adjacent to arterial streets and highways, and which provide access to abutting properties and protection from through traffic.

(14) "subdivider" means any person, group, corporation or other entity acting as a unit, or any agent thereof, dividing or proposing to divide lands so as to constitute a subdivision as defined herein.

(15) "subdivision" means the division of a tract or parcel of land into two or more lots, sites or other divisions for the purpose, whether immediate or future, of sale or building development, and includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or areas subdivided.

## ARTICLE II. APPROVAL OF PLATS

20.15.035 Preliminary discussion. The subdivider is strongly urged to discuss informally his preliminary studies and layout with the commission in order to facilitate the preparation of the required plans and plats in accordance with this chapter and to avoid unnecessary delay and expense.

20.15.040 Preliminary plat.

(a) A subdivider shall prepare a preliminary plat of his proposed subdivision which shall comply with the requirements of sec. .045 and other pertinent provisions of this chapter except as provided in sec. .025.

(b) Six black or blue line prints or the preliminary plat shall be submitted to the commission.

(c) The fee established by the commission shall accompany the submission of the preliminary plat, except in the case of a final plat submitted under sec. .025 (3), the fee shall accompany the final plat.

(d) Upon submission of a plat subdividing land within a first class city the commission shall transmit three prints of the plat to the City Advisory Planning Commission for its review.

20.15.045 Preliminary plat - Form.

(a) The preliminary plat shall be drawn to scale of sufficient size to be clearly legible and shall show the following:

(1) Name of the subdivision. (The name shall not be the same as an existing city, town, tract or subdivision of land in the borough, of which a map or plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion.)



(2) Legal description, location, and total area in acres of the proposed subdivision.

(3) Name and address of owner, subdivider and engineer or land surveyor.

(4) Date and north point.

(5) The location, width and name of existing or platted streets and public ways within 300 feet of the subdivision, railroad rights-of-way and other important features such as section lines, political subdivision or municipal corporation boundaries.

(6) A vicinity map showing location of proposed subdivision in relation to surrounding countryside.

(7) All parcels of land intended to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision, together with the purposes, conditions or limitations of such reservations.

(8) Block and lot numbers and approximate dimensions and total numbers of proposed lots.

(9) The names and widths of public streets and alleys and easemental, existing and proposed, within the subdivision.

(10) Location of existing sewers, water mains, culverts, and other utilities within the subdivision and immediately adjacent thereto.

(11) Space for approval of this commission.

(12) A statement of proposed land uses.

(13) The names of adjacent subdivisions and plotted lots and streets or an indication that the adjacent land is not subdivided.

(14) Sufficient spot elevations or contours to determine the general slope of the land may be required by the commission.

(15) Approximate locations of areas subject to inundation or storm water overflow; the location, width, and direction of the flow of water courses; and if adjacent to tidewater, the line of higher high water

(b) Information which can not be practicably shown on the plat shall be presented in a written statement together with the following information:

(1) Proposed drainage and flood control measures.

(2) Information on proposed water supply. If such water supply is to be provided by:

(A) A public utility; a letter from the public utility should be submitted showing its ability to serve the proposed subdivision and evidence indicating that a satisfactory agreement has been entered into for such service.

(B) A mutual system, the subdivider shall give such guarantee or shall post such bond as deemed necessary to insure the installation of such system.

(3) Information on proposed sewage disposal system. If such system is to be provided by:

(A) A public utility, a letter from the public utility should be submitted showing its ability to serve the proposed subdivision;

(B) A mutual system, the subdivider shall give such guarantee or shall post such bond as deemed necessary to insure the installation of such system.

(4) Justification and reasons for any exception to the provisions of these rules and regulation.

20.15.050. Approval (a) Within 30 days after filing the commission shall determine whether the preliminary plat complies with the provisions of law and this chapter, and shall approve, conditionally approve, or disapprove it and notify the subdivider of its action. The commission's action shall be noted on two copies of the plat and one copy shall be returned to the subdivider.

(b) Approval of a preliminary plat shall not constitute approval of the final plat, but shall be deemed an expression of approval of the preliminary plat as a guide to the preparation of the final plat. Approval of the preliminary plat shall expire after one year unless a final plat is submitted to the commission for approval or the commission extends the time.

### ARTICLE III. Final Plats

20.15.055. Filing: The final plat shall be prepared in accordance with Secs. 060 and .065 and the preliminary plat as

approved. The final plat may constitute only that portion of the preliminary plat which the subdivider proposes to record and develop at the time.

(b) The subdivider shall file the final plat together with four blue or black line prints having all required signatures affixed. The original and all copies shall be signed. If the subdivision is located within a first class city the subdivider shall also file a certificate of approval from the city that required improvements have been provided for.

(c) A certificate of the borough tax collector stating that all taxes levied upon the property within the subdivision have been paid shall be submitted with the final plat.

20.15.060 Form.

(a) The final subdivision plat shall be clearly and legibly drawn to scale upon tracing cloth, or on good quality polyester film ( equal to Dupont Mylar). All lines, letters, figures, certifications, acknowledgments and signatures shall be made in permanent ink. The plat shall be so made, and shall be in such condition when filed, that legible prints and negatives can be made therefrom. Sheets shall be one of five sizes: 8 1/2" x 14"; 18" x 24"; 24" x 36"; 31 1/2" x 14" or 36" x 42". When more than one sheet is required an index sheet shall be filed showing the entire subdivision, indicating the portion contained on each sheet and each sheet showing the total number (e.g. sheet 1 of 3). When more than one sheet is submitted, all

sheets shall be the same size.

(b) The index sheet shall contain the name of the subdivision.

(c) Plats filed for the purpose of reverting subdivided land to acreage shall be conspicuously designated "THE PURPOSE OF THIS PLAT IS A REVISION TO ACREAGE".

(d) Sufficient data must be shown to determine readily the bearing and length of every lot line, block line, and boundary line. Dimensions of lots shall be given as net dimensions to the boundaries of adjoining streets and shall be shown in feet. No ditto marks shall be used. Bearings and distances of straight lines, and radii and arc length for all curves as may be necessary to determine the location of the centers of curves shall be shown.

(e) All linear measurements shall be shown to the nearest 1/10th foot, meaning plus or minus .05 feet. Minimum angle accuracy shall be the nearest minute, meaning plus or minus .5 minutes.

(f) All areas shall be shown to the nearest ten square feet or to the nearest one-thousandth of total acres.

(g) The map shall show the line of higher high water in case the subdivision is adjacent to tidewater and the areas subject to periodic inundation by flood water.

(h) The boundary of the tract shall be designated by a wider border and shall not interfere with the legibility of figures or other data.

(i) In tracts containing more than one block, blocks

shall be numbered in numerical order commencing with the numeral "1" with no omissions or duplications. Lot numbers shall begin with the number "1" in each block and shall continue consecutively with no omissions or duplication. If possible, each block should be shown entirely on one sheet; each lot shall be shown entirely on one sheet.

(j) The plats shall show the side lines of all streets, the total width of all streets, the width of the portion being dedicated, the width of existing dedications, and the width of any railroad right-of-way appearing on the plat.

(k) The plat shall show the side lines of all easements to which the lots are subject. The easement must be clearly labeled and identified and if already of record, the recorded reference given. If any easement is not definitely located of record, a statement of such easement must appear on the title sheet. Easements for storm drain sewers and other purposes shall be indicated by dotted lines of the same width as the lines denoting street boundaries. Distances and bearings on the side lines of lots which are cut by an easement; must be arrowed or so shown that the map will indicate clearly the actual lengths of the lot lines. The width of the easement and sufficient lengths and bearings of the lines thereof to definitely locate the easement with respect to the lot lines must be shown. If easements are being dedicated by the plat

they shall be properly set out in the owner's certification of dedication.

(l) In order to avoid duplication, names to be used for new streets shall be subject to the approval of the commission.

(m) The plat shall show all other data that is or may be required by law.

(n) The final plat shall particularly define and delineate all lots intended for sale or reserved for private purposes, all parcels offered for dedication for any purpose, with all dimensions, boundaries and courses clearly shown and defined in every case.

(o) The following certificates and acknowledgements shall appear on the final plat, such certificates may be combined where appropriate.

(1) A certificate signed and acknowledged by all parties having any interest of record in the land subdivided, consenting to the preparation and recordation of said plat provided, however, that the signatures of parties owing the following types of interests may be omitted if their names and the nature of their interests are endorsed on the plat.

(A) Rights-of-way, easements or other interests, none of which can ripen into a fee.

(B) Rights-of-way, easements or reversions, which by reason of changed conditions, long disuse or laches appear to be no longer of practical use or value and which signatur

it is impossible or impractical to obtain. In this case, a reasonable statement of the circumstances preventing the procurement of the signatures shall be endorsed on the plat (C) Dedication certificate; A certificate signed and acknowledged offering for dedication for public use those certain parcels of land which said parties are required to dedicate. Example;

CERTIFICATE OF OWNERSHIP AND DEDICATION

I (We) hereby certify that I am (we are) the owner (s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision, and dedicate all streets, alleys, walks, parks, utility easements, and other open spaces to public use.

Date \_\_\_\_\_, 19\_\_\_\_.

Owner \_\_\_\_\_

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public for the State of Alaska, personally appeared \_\_\_\_\_ to me known to be the person described in and who executed the foregoing certificate of ownership and dedication, and acknowledged to me that he executed the same as his free and voluntary act.

Witness my hand and official seal the day, month and year hereinabove written.



Notary Public for Alaska  
My commission expires \_\_\_\_\_

(4) Engineer's Certificate: The final plat shall show the surveyor's seal and signature of the civil engineer or licensed surveyor responsible for the survey and final map.

(p) The following form of certification shall be printed on the final plat by the person preparing the plat, to be filled in after approval by the commission

PLAT APPROVAL

Plat approved by the commission this \_\_\_\_\_ day of --  
\_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

20.15.065 Survey & Monumentation.

(a) All subdivisions shall be surveyed except as provided in sec. .025.

(b) The subdivision of sections into aliquot parts and the restoration of lost corners shall be performed in accordance with the U.S. Bureau of Land Management 1947 Manual of Surveying Instructions. All section subdivisions details executed as part of the surveyor's work shall be shown on the plat. A minimum survey accuracy of 1:5000 is required.

(c) All corners of aliquot parts over twenty (20) acres shall be capped monuments.

(d) All monuments shall be stamped with the date the identification of the monument and the registered number of the surveyor.

(e) All corners found and set shall be shown and described on the plat.

(f) Where monuments are set in untraveled areas the brass cap shall be two to six inches above the ground.

All monuments found and set shall be protected by a guard post of durable material. In traveled areas monuments shall be set 6" below the surface. Control points in roadways or traveled area need only be a two foot iron rod driven below the surface with at least two brass cap reference monuments on the adjacent property line.

(g) Every subdivision shall contain at least two intervisible monuments as a base line, but in the case of a resubdivision, the commission may waive additional monument installation if sufficient monuments already exist. As used in this particular paragraph, the words "monument" and "marker" shall be synonymous.

It is desirable that monuments be set at all exterior angle points in a subdivision. A three-quarter inch by thirty inch galvanized iron pipe shall be set in a manner similar to that described above at all exterior angle points which are not monumented. The distance and bearings between monuments shall be shown. The distance between required monuments shall be further than 1320' +/- . No part of any subdivision shall be

further than 1320' +/- from a monument. All monuments shall be tied to the subdivision lines. All lot corners shall be marked in a professional manner.

(h) True bearings and distances to the nearest established street lines and official GLO or BLM MONUMENTS shall be accurately described and delineated on the plat.

20.15.070 Approval.

(a) The commission shall approve or disapprove the plat of subdivision or dedication within 30 days after the filing thereof, or shall return such plat to the applicant for modification or correction within 30 days from the filing thereof; otherwise, such plat shall be deemed to have been approved and a certificate to the effect shall be issued by the commission on demand; provided, however, that the applicant for plat approval may consent to the extension of such period. The grounds of disapproval of any plat shall be stated upon the record of the commission and the applicant shall be advised of the commission's disapproval in writing.

(b) When the final plat has been approved by the commission, one copy shall be returned to the subdivider with the approval of the commission certified thereon. One copy shall be filed with the District Recorder by the commission within 10 days after approval unless the subdivider requests postponement. The original tracing containing the certification by the

commission will be retained by the commission. Plats will be furnished at cost.

#### ARTICLE IV. DESIGN REQUIREMENTS

20.15.075 Standards. In its consideration of subdivision plats the commission shall apply the following standards:

(1) Basic Considerations. The general requirements of the community, the particular requirements of the neighborhood, and the best use of the land to be subdivided. Particular attention shall be given to specific requirements for parks, playgrounds, school sites, public building sites, major streets, the adequacy of street connections and the suitability of the land for development.

(2) Large Lots. Subdivisions containing larger parcels than ordinary building lots may be required to allow for the opening of future streets and logical further subdivision.

(3) Reserved Strips. There shall be no reserve strips controlling access to land dedicated or intended to be dedicated to public use, except when the control and disposition of land comprising such strips is placed within the jurisdiction of the borough under conditions specified by the commission and attached to the final plat.

(4) The proposed street layout shall be made according to good land planning practice for the type development proposed and shall be co-ordinated with the street systems of the surrounding areas. All streets must provide for the continuation or appropriate projection of principal streets in surrounding areas and provide reasonable means of ingress

for surrounding acreage tracts.

(5) Restriction of Access to Major Streets. Residential lots fronting on major streets shall be provided with interior or frontage access unless, because of size, topography or other physical characteristics substantial hardship would result.

(6) Discouragement of Traffic. Residential access streets shall be so laid out that their use by through traffic will be discouraged.

(7) Partial Subdivision. Where the subdivision includes only a part of the subdivider's tract, street and utility system shall be considered in the light of proposed plans for the entire area.

(8) Intersections. There shall be a minimum number of intersections of residential streets with arterial or major streets.

(9) Alleys. Alleys shall be provided to the rear of all lots used for business purposes and shall not be provided in residential blocks, except where the subdivider produces evidence satisfactory to the commission and the advisory planning commission of the desirability of alleys. Where two alleys intersect, 10 foot radius corner cutoffs measured on the property lines from the point of intersection shall be required.

(10) Street Grades. Grades on arterial streets shall not exceed six percent. Grades on other streets shall not exceed ten percent. To assure that this provision is satisfied, the commission may require spot elevation within proposed street right-of-ways.

(11) Cul-de-sacs. Streets designed to have one end permanently closed shall be not more than 600 feet long and shall be provided at the closed end with a suitable turn-around with a minimum radius of 50 feet to the property line.

(12) Half Streets. Where a dedicated half street or alley is adjacent to the tract to be subdivided, the other half of the street or alley shall be dedicated.

(13) Alignment and Visibility. Clear visibility, measured along the center line shall be provided for at least 600 feet on the community arterial streets; 400 feet on neighborhood collector streets; and 200 feet on all other streets.

(14) Street Widths. The minimum right-of-way width of streets shall be as follows:

Primary arterial street	100'
Community arterial street	80'
Neighborhood collector street	70'
Commercial access street	60'
Residential access street	50'
Cul-de-sacs	50'
Marginal access street	40'
Alleys	20'

(15) Curves

(15) Curves. Where a deflection angle of more than ten degrees in the alignment of a street occurs, a curve of reasonable radius shall be introduced. On streets 60 feet or more in width, the center line radius of curvature shall be not less than 300 feet; on other streets not less than 100 feet.

(16) Reverse Curve. Between reversed curves on all streets there should be a tangent at least 100 feet long.

(17) Street Intersection. Street intersections shall

be as nearly at right angles as possible, and no intersection shall be at an angle of less than 60 degrees.

(18) Grade at Intersections. Flat grades are preferred from 50 to 100 feet away from an intersection, but in no case shall grades exceed four percent for a distance of at least 100 feet from all intersections.

(19) Temporary Dead End Streets. Streets which are stub streets designed to provide future connection with adjoining areas must provide some type of temporary turnaround at the stub end.

(20) Street Names. Streets shall be named in such manner as to conform to adjacent areas and to avoid duplication.

(21) Layout. The length, width, and shapes of blocks shall be determined with due regard to the special needs of the types of use contemplated; to needs for convenient access and circulation; to topography; and to the conservation of building sites.

(22) Long Blocks. Long blocks shall be provided adjacent to main thoroughfares for the purpose of reducing the number of intersections; however, blocks shall not be less than 300 feet or more than 1400 feet in length unless existing conditions justify a variation from this requirement.

(23) Block Width. Blocks shall be wide enough to allow two tiers of lots of minimum depth, except when fronted on major streets, prevented by topographical conditions or size of the property, or other particular conditions.

(24) Business. Blocks planned for commercial use shall not be more than 600 feet or less than 300 feet in length.

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

(26) Block Corners. At street intersections block corners may be required to be rounded at the property lines by a radius of not less than 20 feet.

(27) Lot Dimensions. The size and shape of lots shall be such as proper for the locality in which the subdivision is located and in conformance with the requirements of any zoning ordinance effective for the area in which the proposed subdivision is located. In no case shall lot lines be less than 60 feet on the building line, nor the depth less than that necessary to provide 6,000 sq. ft., nor shall the depth be less than 85 feet not greater than three times the width, provided, however, that the commission may grant exception thereto where lots are located on, or adjacent to steep hillsides, lakes, rivers or creeks or where property is to be used for business or industrial purposes.

(28) Minimum Lot Size. Lots must contain a minimum of:

(A) 6,000 square feet if served by public water and sewer service,

(B) 9,600 square feet if the lots must have either



their own well or sewer disposal.

(C) 12,000 square feet if both the well and sewer disposal are to be provided on the lot.

In those cases where a subdivider wishes to provide lots smaller than 12,000 square feet but not less than 9,600 square feet, with each lot to be served by individual water and sewer disposal systems, the commission may allow such provided:

(A) Only every other lot may be built upon until a state approved community water or sewer system is funded. Those lots which may be built upon shall be determined by the commission through conference with the developer. Lots approved for building shall be so noted on the final plat, or

(B) The subdivider secures the approval of the State Health Department.

In those cases where a subdivider wishes to provide lots smaller than 9,600 square feet but not less than 7,200 square feet, with each lot to be served by individual water and sewer disposal systems, the commission may allow such provided:

(A) Only every other lot may be built upon until a state approved community water and sewer system is funded. Those lots which may be built upon shall be determined by the commission through conference with the developer. Said buildable lots shall be so noted on the final plat, or

(B) The subdivider secures the approval of the State Health Department.

(29) Access to Street. Each lot shall abut on a dedicated street.

(30) Corner Lots. A corner lot shall be at least 65 feet in width.

(31) Side Lot Lines. Side lines of lots shall be approximately at right angles or radial to the street line.

(32) Through Lots. Double frontage lots, with depths less than 250 feet will not be approved except where necessitated by topographic or other physical conditions.

(33) Building Set Back Lines. The commission shall require a minimum 20 foot building set back line for all residential lots, said set back to be maintained on all street frontages on corner lots.

#### ARTICLE V. IMPROVEMENTS & EXCEPTIONS

20.15.080 Improvements. No final plat of a subdivision located within a first class city shall be approved unless the subdivider has an agreement with the city providing for installation of all required improvements and evidence of such agreement shall have been filed with the commission.

20.15.085 Exceptions.

(a) The commission may authorize exceptions to any of the requirements set forth in these regulations. Application for any such exception shall be made by a verified petition of the subdivider, stating fully the grounds of the application and the facts relied upon. Such petition shall be filed with the preliminary plat of the subdivider. The commission shall

find the following facts before granting any exceptions:

(1) That special circumstances or conditions affect the property.

(2) That the exception is necessary for the preservation and enjoyment of a substantial property right of the petitioner.

(3) That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.

(b) The commission shall set forth any exception fully and specifically and may require such conditions as are necessary to preserve the intent of this chapter as to light, air, public health, safety, welfare and convenience. The commission may impose such restrictions necessary to insure that the exceptions and conditions are complied with.

Section 2. This ordinance shall become effective 30 days after enactment.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7th DAY OF MAY, 1968

/s/ Bob Ross  
Assembly President

ATTEST:

/s/ Frances Brymer  
Assembly Clerk

# DESK PACKET

(MATERIALS SUBMITTED AFTER MEETING PACKET PUBLICATION)

## G. OTHER

1. Remand Hearing  
Building Setback Encroachment; KPB File 2022-121  
Lot 10, Lake Estates Subdivision, Plat KN 1648  
Applicants: David & Nancy Whitmore  
General Location: GL Hollier Street  
Ridgeway Area  
(First Heard At October 24, 2022 PC Meeting)

**MEMORANDUM**

**TO:** Jeremy Brantley, Chair  
Members, Kenai Peninsula Borough Planning Commission

**FROM:** A. Walker Steinhage, Deputy Borough Attorney

**CC:** Robert Ruffner, Director of Planning

**DATE:** September 25, 2023

**SUBJECT:** Setting the Remand Hearing Date in ITMO: Setback Encroachment Permit Along  
GL Hollier Street

---

**The purpose of this scheduling discussion is for the Planning Commission to set a date to consider this matter consistent with the Office of Administrative Hearings’s (“OAH”) *Decision*. The Commission should not discuss the merits during the scheduling discussion.**

On May 22, 2023, OAH Administrative Law Judge Lisa M. Toussaint issued her *Decision After Reconsideration* in the matter of the Commission’s decision through Commission Resolution 2022-46 to approve Lot 10, Lake Estates Subdivision building setback encroachment permit located on GL Hollier Street, OAH No. 22-0925-MUN (the “OAH *Decision*”). The OAH *Decision* is attached. An excerpt from pages 17 through 20 of the OAH *Decision* is provided to highlight direction and guidance from OAH:

In deciding how to proceed on remand, the Borough is advised that the record developed before the Planning Commission to date is exceedingly sparse as to information relevant to *each* of the three criteria in KPB 20.10.110(E). The Commission should be mindful that issuing a building setback encroachment permit is an exception to the rule prohibiting such encroachments. The Commission may only approve such an encroachment permit if there is substantial evidence showing that each of the three criteria is met – i.e., that the encroaching shop will not interfere with road maintenance, it will not interfere with sight lines or distances, and it will not create a safety hazard. If this threshold is not met as to any of the three criteria, the permit may not be issued. These are affirmative findings, and the applicant has the burden to demonstrate with substantial evidence that they are true. It is immaterial whether there is substantial evidence showing the opposite conclusion (that the shop will interfere with road maintenance, will interfere with sight lines or distances, and will create a safety hazard), because that is not the applicable standard. I caution the Commission against trying to do the required analysis under KPB 20.10.110(E) with an extremely thin record.

Further, the Commission should be cognizant that it must apply each of the three criteria in KPB 20.10.110(E). There is evidence that at least some Commissioners may have applied a different standard, rather than

those in KPB 20.10.110(E), in voting to approve the permit. Comments by Commissioner Morgan and Commissioner Gillham during the October 24, 2022 public hearing suggest they may have felt compelled to approve the permit because they believed the Whitmores' contractor was to blame for the shop encroaching into the setback.

...

But whether the contractor or the homeowner failed to determine that the shop would be an encroachment into the building setback is not relevant to the analysis under KPB 20.10.110(E). Thus, it cannot be used as an independent basis for the Commissioners to approve the permit.

I also am concerned that some Commissioners may have misunderstood how to evaluate whether road maintenance will be impacted by the present of the shop on Lot 10. A comment by Commissioner Stutzer suggests that the fact that the road is privately, rather than publicly, maintained may have influenced his vote on the permit[.]

...

But as Judge Sullivan correctly pointed out in the April 18, 2023 decision, it is immaterial for the analysis whether the road is privately or publicly maintained. The Planning Commissioner was required to determine whether the shop will interfere with road maintenance, irrespective of whether the road is publicly or privately maintained.

Finally, a comment by Commissioner Brantley suggests that he voted in favor of the permit because the encroachment was into the building setback, which is the Whitmores' private property, rather than into the public right-of-way.... But as explained previously, whether the encroachment is into the right-of-way is not the end of the analysis. Said another way, just because the property within the setback is the Whitmores' private property, it is not a foregone conclusion that the encroachment will interfere [*sic*] with road maintenance. The shop could interfere with snow removal, for example, if it is necessary for some snow to be placed in the setback to clear GL Hollier Street, and there is insufficient space within the setback to place the snow due to the presence of the shop. In any event, it is the Commissioners' responsibility to evaluate whether the presence of the shop on the setback will interfere with road maintenance, no matter the nature of the encroachment. It may well be the case that Commission [*sic*] will decide it needs more evidence to make an adequate finding in that regard.

....

There is not substantial evidence to support the Commission's conclusions that each of the mandatory standards in KPB 20.10.110(E) has been met. The matter is remanded to the Commission to (1) make additional findings and conclusions supported by substantial evidence in the existing record as to each of the three criteria in KPB 20.10.110(E), or, alternatively,

(2) KPB 20.10.110(E), take additional evidence from the parties and the public and make new findings and conclusions under each of the three criteria, based on the augmented record.

There are no items on the agenda for the Commission's regularly-scheduled meeting of October 9, 2023. As such, it is recommended the Commission first consider the viability of that date for the remand hearing. The other alternatives are to schedule the remand hearing for another regular meeting or to set a special meeting. The other matter for the Commission to decide is whether to reopen the record for additional evidence and, if so, the deadline for submittal. If the Commission elects to reopen the record, it should also consider and decide whether it desires a new staff report after additional information and investigation in light of OAH's guidance. Deputy Borough Attorney Todd Sherwood will attend to advise and assist the Planning Commission as needed.

Finally, this is a quasi-judicial matter. The Commission is reminded to be aware of and refrain from ex parte communication.

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON  
BEHALF OF THE KENAI PENINSULA BOROUGH PLANNING COMMISSION**

In the matter of the Kenai Peninsula Borough )  
Planning Commission's decision to conditionally )  
approve Lot 10, Lake Estates Subdivision Building )  
Setback Encroachment Permit, KPB File )  
2022-121; KPB Resolution 2022-46 located )  
on GL Hollier Street, )  
)  
TROY & AUTUMN TAYLOR, )  
)  
Appellants. )  
\_\_\_\_\_ )

OAH No. 22-0925-MUN  
Agency No. 2022-06-PCA

**DECISION AFTER RECONSIDERATION**

**I. Introduction**

Applicants David and Nancy Whitmore were granted a building setback permit by the Kenai Peninsula Borough Planning Commission on October 24, 2022. A garage the Whitmores built on their property encroaches into the building setback for the lot. Troy and Autumn Taylor own the residential lot across the street from the encroachment. They appealed the Planning Commission's decision, asserting among other things that KPB's setback requirements were disregarded. The case was fully briefed, and oral argument occurred. Based on that briefing, argument and record, the Planning Commission's decision approving the setback permit is remanded.

**II. Facts and Proceedings**

**A. *The Property at Issue***

The Whitmores own Lot 10, Lake Estates Subdivision, per Plat Number K-1648, Records of the Kenai Recording District, Third Judicial District (KPB Parcel ID 05724008).<sup>1</sup> The appellants, the Taylors, own Lot 9, Lake Estates Subdivision (KPB Parcel ID 05724001).<sup>2</sup> Below is an aerial image of the parties' respective parcels, showing the approximate location of the Whitmore encroachment with red hash marks<sup>3</sup>

<sup>1</sup> Record (R.) 12, 26.

<sup>2</sup> T. 4, R. 26.

<sup>3</sup> R. 16. The image was taken before the Whitmores constructed their encroaching building, and therefore does not depict it. *See also* R. 13.





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

R-16

The parties' respective parcels were created by the Lake Estates Subdivision Plat in 1969. Per that Plat, all lots within the subdivision, including Lots 9 and 10, were required to have 20-foot building setback limits from all interior sides and 25-foot building setback limits from all sides with street frontage. The owners also explicitly "dedicate[d] to public use and to the use of the public utilities the streets shown hereon."<sup>4</sup> The strip of land referred to in this decision as the "GL Hollier Access," situated between the parties' lots, was dedicated as a 30-foot public use street and Ross Drive, the main roadway leading through the subdivision to the parties' parcels, was dedicated as a 60-foot public use street. The Lake Estates Subdivision Plat was ultimately approved by the KPB Planning Commission on September 8, 1969.<sup>5</sup>

<sup>4</sup> R. 19.  
<sup>5</sup> R. 19, 20.

The 1969 KPB Planning Commission minutes approving the Plat acknowledged that the 30-foot road dedication to the Holliers' property did not meet the minimum width required for roads within the subdivision. The minutes approving the Plat state that "[t]he 30 foot road dedication to the Holliers [sic] property would be an exception to the minimum width required by the subdivision; however, *since only one parcel of land is to be served*, 30 feet of right-of-way should suffice and the exception granted."<sup>6</sup> Moreover, the KPB staff report in this matter notes that the width is substandard and contends that a 20-foot setback is justified:

[t]he dedication for GL Hollier Street is only 30 feet wide. **The right-of-way does not meet KPB width standards** and while constructed is not maintained by the Borough. The right-of-way only **provides access to three lots**.

...

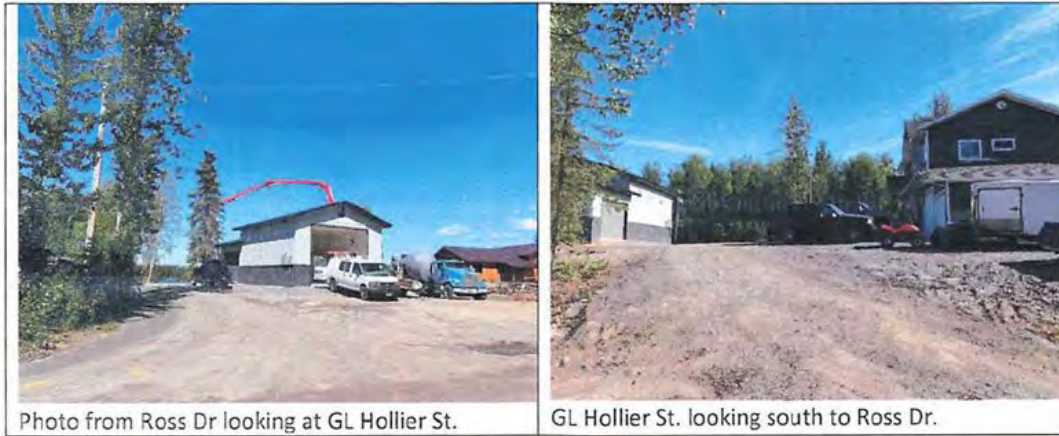
The width that was granted did not fit the width of any of the types of roads defined in the code. Per the staff report it appears an exception to width was granted. This right-of-way fits the definition of Marginal Access Streets in the 1968 KPB code. The definition states 'minor streets which are parallel with and adjacent to arterial streets and highways, and which provide access to abutting properties and protection from through traffic.' **While this width does not comply with the code**, the approval of a substandard width would mean that this is a marginal access street and all streets were subject to a 20 foot building setback at the time. The decision was made that the plat did note setbacks were present, code required a minimal 20 foot setback, the plat did not depict a 25 foot setback, the plat note also included 20 foot setbacks on interior lines, and thus we are enforcing a 20 foot setback along GL Hollier Street.<sup>7</sup>

During the fall of 2021, the Whitmores began prepping for construction of a 24-foot wide by 49-foot-long garage. They began pouring concrete on May 4, 2022. The Taylors saw the garage foundation being poured and realized that it was well within the subdivision's setback requirements per the Plat, and they immediately contacted a compliance officer in the KPB Planning Department. That person said it would take some time for the Borough to look into the issue. By the time the Borough sent staff out to investigate several weeks later, the walls on the garage were already constructed. Below are photos of what the construction project looked like by the time Planning Department staff came out to investigate.<sup>8</sup>

<sup>6</sup> R. 20 (emphasis added).

<sup>7</sup> R. 13 (emphasis added).

<sup>8</sup> T. 2, 4-5; R. 12.



**R-12**

On May 20, 2022, Mrs. Taylor again contacted the KPB Planning Department and spoke with the Department Director, Robert Ruffner. She asked why work was not being stopped on the Whitmores' garage. She also said that before construction got too far along, it seemed that the Whitmores should be told to stop construction so that the building could be moved to comply with the setback requirements. According to Mrs. Taylor, she was informed that the issue was with the KPB legal department, and they were investigating the setback requirements. She was also instructed that if there were further concerns, she and her husband would be notified by mail about a public hearing.<sup>9</sup>

By July 22, 2022, the Whitmores were actively preparing an application for a building setback encroachment permit. KPB also confirmed that a surveyor performing work for the Borough in the subdivision would prepare an as-built survey so that it could be used for their permit.<sup>10</sup>

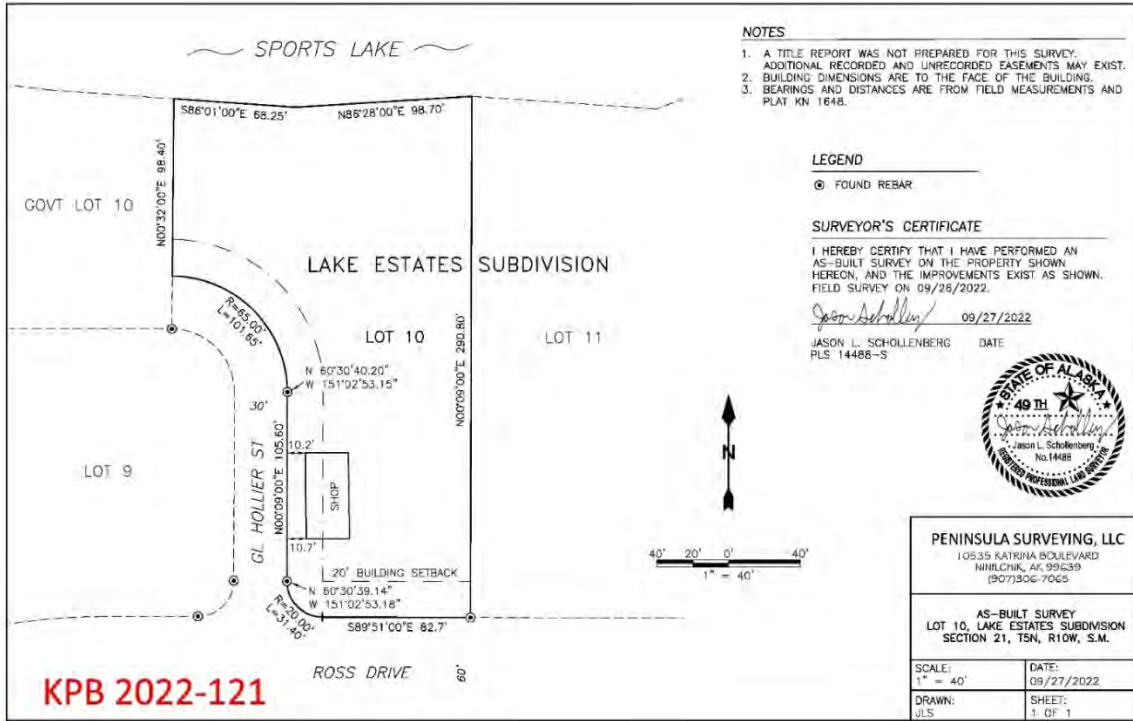
The as-built survey for Lot 10, which was prepared on September 27, 2022, shows that the Whitmores' garage is located between 10.2 feet and 10.7 feet from their property line and the edge of the 30-foot-wide GL Hollier Access. The survey also shows the setback as 20 feet along the two sides of the Whitmores' property.<sup>11</sup>

<sup>9</sup> *Id.*

<sup>10</sup> R. 12.

<sup>11</sup> The Lake Estates Subdivision Plat indicated that all lots would have 20-foot building setback limits from all interior sides and 25-foot setback limits from all sides with street frontage. R. 19. Contrary to the Plat, KPB has taken the position that the setback requirement applicable to Lot 10 is a 20-foot setback along its sides at issue here. R. 11, 13.

A copy of the as-built survey is shown below:



R-11

The image below is an aerial image depicting the Taylors' Lot 9, the Whitmores' Lot 10, the parties' respective homes, the Whitmores' garage, and GL Hollier Street, located between the parties' respective properties.



As the record and argument at the hearing confirmed, the specific details of the Whitmores' garage are not disputed. The garage is 49 feet long by 24 feet wide and approximately 1,176 square feet. It has approximately 14-foot-high walls. It also has in-floor heating and a half bath. It has two garage doors for vehicles. One garage door opens onto Ross Drive and the second garage door opens onto GL Hollier Street across from the Whitmores' home. Mrs. Whitmore has indicated that she intends to use the garage entrance opening onto GL Hollier Street to house her personal vehicle.<sup>12</sup>



On October 4, 2022, the KPB Planning Department published notice that it had received an encroachment permit application from the Whitmores for their garage. Nearby property owners were also informed that the Planning Commission would hold a public hearing regarding the Whitmores' application for an encroachment permit on October 24, 2022.<sup>13</sup>

***B. The Proceedings Before the Commission***

The Whitmores' application for an encroachment permit was heard before the KPB Planning Commission on October 24, 2022. Eleven of the twelve Commission members participated, as did Nancy Whitmore, Troy Taylor and KPB Planning Department staff.<sup>14</sup> Prior to the meeting, the KPB staff report regarding the permit was circulated and provided to the

<sup>12</sup> R. 12 – 15; T. 4; Taylors' Opposition to Motion to Dismiss at 18. In addition to the concrete foundation for the garage itself, there is also a concrete generator pad along the wall bordering GL Hollier Street. T. 5 - 6.

<sup>13</sup> R. 22 - 28. As the notice indicated, the Whitmores' application was received by the Planning Department on September 27, 2022. R. 22.

<sup>14</sup> R. 29 – 33.

Commission members.<sup>15</sup> Although the KPB staff report describes the encroaching structure as a “shed,”<sup>16</sup> the building is in fact a detached “garage/shop,” as Mrs. Whitmore herself confirmed in testimony before the Commission.<sup>17</sup> The staff report recommended adopting the encroachment permit application, as Resolution 2022-46, subject to compliance with KPB 20.10.110, Sections F and G.<sup>18</sup>

Per KPB 20.10.110(E), the Commission was required to apply the three standards in considering the permit application: 1) the building setback encroachment may not interfere with road maintenance; 2) the building setback encroachment may not interfere with sight lines or distances; and 3) the building setback encroachment may not create a safety hazard.

After some discussion and questioning by the Commission members, a vote was taken and the Whitmores’ application for the permit was unanimously approved.<sup>19</sup> In doing so, the Commission adopted each of the findings proposed by the Planning Department staff in its staff report and placed the following conditions on the permit’s approval:

Standard 1. The building setback encroachment may not interfere with road maintenance.

*Findings:*

10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
12. The road is constructed by privately maintained [sic].<sup>20</sup>
13. Due to the width of the street, improvements, the location of Sports Lake, it does not appear that this right-of-way will ever serve additional lots.
14. The encroachment is along a straight portion of the right-of-way.
15. There are no terrain issues within the dedication.

Standard 2. The building setback encroachment may not interfere with sight lines or distances.

*Findings:*

10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
11. There does not appear to be any line of sight issues.
12. The road is constructed by privately maintained [sic].

<sup>15</sup> R. 12 – 20.

<sup>16</sup> R. 13.

<sup>17</sup> R. 31; T. 3.

<sup>18</sup> R. 15.

<sup>19</sup> R. 1 (Planning Commission Resolution 2022-46).

<sup>20</sup> It is inferred that this finding was intended to state that “the road is privately maintained.”

13. Due to the width of the street, improvements, the location of Sports Lake, it does not appear that this right-of-way will ever serve additional lots.
  14. The encroachment is along a straight portion of the right-of-way.
  15. There are no terrain issues within the dedication.
- Standard 3. The building setback encroachment may not create a safety hazard.

*Findings:*

10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
11. There does not appear to be any line of sight issues.
12. The road is constructed by privately maintained [sic].
13. Due to the width of the street, improvements, the location of Sports Lake, it does not appear that this right-of-way will ever serve additional lots.
14. The encroachment is along a straight portion of the right-of-way.
15. There are no terrain issues within the dedication.

The approval is subject to:

1. Approved a permit to allow only the encroaching portion of the shop that extends 9.8 feet into the 20 foot building setback adjoining GL Hollier Street right-of-way on the west boundary of Lot 10, Lake Estates Subdivision, granted by Lake Estates Subdivision (K-1648).
2. That any new, replacement and/or additional construction will be subject to the twenty-foot building setback limit.
3. That the twenty-foot building setback shall apply to the remainder of said lot.
4. That an exhibit drawing or as-built survey prepared by a licensed land surveyor, showing the location of the portion of the building setback exception to be granted be attached to and made a part of this Resolution, becoming page 2 of 2.
5. That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.
6. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.<sup>21</sup>

**C. The Proceedings During This Appeal**

The Taylors, acting *pro se*, timely appealed the Commission's approval of the Whitmores' encroachment permit. They alleged several errors regarding the Commission's

<sup>21</sup> R. 2 – 3.

findings, and claimed that “all parties involved in the building of this shop disregarded the requirements after it was brought to their attention. . .”<sup>22</sup> The matter was then referred to the Office of Administrative Hearings (OAH).<sup>23</sup> Entries of appearance were subsequently filed by Deputy KPB attorney, A. Walker Steinhage, and by Craig and Nancy Whitmore.<sup>24</sup>

The day after the case was referred to OAH, and before the record was produced, KPB filed a motion to dismiss the Taylors’ appeal and to stay of production of the record.<sup>25</sup> The Taylors submitted an opposition to the motion and provided supporting documentation.<sup>26</sup> The Administrative Law Judge denied KPB’s motion to dismiss.<sup>27</sup>

KPB then produced an initial 33-page record, and a 14-page transcript from the public hearing in the matter before the Planning Commission.<sup>28</sup> Next, KPB filed a motion to strike what it alleged was improperly submitted new evidence from the Taylors and, a motion for reconsideration of the earlier order denying its motion to dismiss.<sup>29</sup> Both motions were denied.<sup>30</sup>

A telephonic hearing was held on February 23, 2023. Following the hearing, an order was issued expanding the record with additional specific items, including items required by KPB 21.20.270(A), such as the Whitmores’ original encroachment permit application and supporting information, and portions of the 1968 KPB Code referenced in the briefing and at the hearing.<sup>31</sup>

### **III. Discussion**

#### ***A. Procedural and Substantive Requirements***

KPB procedures for addressing encroachment issues along lot lines are contained in KPB Title 20, Chapter 10. KPB 20.10.010 specifies that “[t]he purpose of this title is to promote an adequate and efficient street and road system, to provide necessary easements, to provide

<sup>22</sup> Appeal of Planning Commission Decision (November 8, 2022).

<sup>23</sup> Case Referral Notice (December 1, 2022).

<sup>24</sup> Notice and Copies of Entries of Appearance (November 30, 2022). At the hearing, Mr. Whitmore confirmed that his middle name is Craig, his first name is David, and that he generally uses his middle name.

<sup>25</sup> Motion to Dismiss and Request to Stay Record Preparation (December 2, 2022). The primary contention of the motion to dismiss was lack of standing.

<sup>26</sup> Taylors’ Opposition to Motion to Dismiss (December 12, 2022).

<sup>27</sup> Order Denying KPB’s Motion to Dismiss. As the order noted, the Taylors, as the Whitmores’ neighbors closest to the encroachment, plainly have standing.

<sup>28</sup> Appeal Record (December 21, 2022), R. 1 – 56.

<sup>29</sup> Motion to Strike Improperly-Submitted New Evidence and Motion for Reconsideration (December 28, 2022).

<sup>30</sup> Order Denying Motions.

<sup>31</sup> Order for Supplementation of the Record and Opportunity to Object (February 23, 2023).



minimum standards of survey accuracy and proper preparation of plats, and to protect and improve the health, safety and general welfare of the people.”<sup>32</sup>

Encroachment permits under Title 20, Chapter 10, are required any time a person seeks to construct, or cause an encroachment within a building setback. When that occurs, a person must apply for an encroachment permit from the KPB Planning Department.<sup>33</sup> After the application is filed, it is then scheduled to be heard at the next available meeting of the KPB Planning Commission.<sup>34</sup>

The Planning Commission is required to either approve or deny the permit application, considering at the three criteria set out in Part II-B above.<sup>35</sup> Its decision is appealable to a hearing officer.<sup>36</sup>

### ***B. Standard of Review***

The applicable standards of review for the approval of the encroachment permit are set by the KPB Code. On purely legal issues, the standard of review is one of independent judgment. However, “due consideration shall be given to the expertise and experience of the planning commission in its interpretations of KPB titles 20 and 21.”<sup>37</sup>

As to findings of fact, the hearing officer shall defer to the Planning Commission if they are supported in the record by substantial evidence.<sup>38</sup> “Substantial evidence” is “relevant evidence a reasonable mind might accept as adequate to support a conclusion.”<sup>39</sup> Thus, the substantial evidence standard requires the reviewer to uphold the original factual findings if they are supported by substantial evidence, even if the reviewer may have a different view of the evidence.

In a case reviewed on the substantial evidence standard, “[i]t is not the function of the [hearing officer] to reweigh the evidence or choose between competing inferences, but only to determine whether such evidence exists.”<sup>40</sup> This said, if substantial evidence in the

<sup>32</sup> KPB 20.10.010.

<sup>33</sup> KPB 20.10.110(A).

<sup>34</sup> KPB 20.10.110(D).

<sup>35</sup> KPB 20.10.110(E).

<sup>36</sup> KPB 20.10.110(H).

<sup>37</sup> KPB 21.20.320(1).

<sup>38</sup> KPB 21.20.320(2).

<sup>39</sup> KPB 21.20.210(7).

<sup>40</sup> *Interior Paint Co. v. Rodgers*, 522 P.2d 164, 170 (Alaska 1974).

record does not support the Commission’s findings the hearing officer may make a different finding on the factual issues based on substantial evidence in the record.<sup>41</sup> Alternatively, the hearing officer has discretion to remand the matter to the Commission for new findings.<sup>42</sup>

When evaluating whether evidence for a finding is substantial, it is proper to “take into account whatever in the record fairly detracts from its weight.”<sup>43</sup> The Alaska Supreme Court has adopted the requirement of substantial evidence in light of the whole record,<sup>44</sup> citing approvingly to the U.S. Supreme Court’s discussion of this issue:

Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting a Labor Board decision merely on the basis of evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the new legislation definitely precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. This is clearly the significance of the requirement in both statutes that courts consider the whole record....

To be sure, the requirement for canvassing “the whole record” in order to ascertain substantiality does not ... mean that even as to matters not requiring expertise a court may displace the Board’s choice between two fairly conflicting views even though the court would justifiably have made a different choice had the matter been before it de novo. Congress has merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board’s view.<sup>45</sup>

### **C. Analysis**

#### **1. The depth of the setback**

There is a question as to whether the depth of the building setback on Lot 10 is 20 feet or 25 feet. The plat establishing the Lake Estates subdivision in 1969 does not depict a setback on GL Hollier Street, but it does show a 25-foot setback on Ross Drive.<sup>46</sup> The plat also contains a plat note

<sup>41</sup> KPB 21.20.320(3).

<sup>42</sup> *Id.*

<sup>43</sup> *Lopez v. Administrator, Public Employees’ Retirement System*, 20 P.3d 568, 571 (Alaska 2001).

<sup>44</sup> *Keiner v. City of Anchorage*, 378 P.2d. 406 (Alaska 1963).

<sup>45</sup> *Delaney v. Alaska Airlines*, 693 P.2d 859, 863, n.2 (Alaska 1985) *overruled on other grounds* 741 P.2d 634, 639 (Alaska 1987) (quoting approvingly, *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487-90, 71 S.Ct. 456, 464-66, 95 L.Ed. 456, 467-68 (1950)).

<sup>46</sup> R-19.

stating that “[s]urface building limits from property lines shall be: Interior sides 20’ and *street Frontage 25’*.” KPB staff concluded that the setback is 20 feet, however. This determination was based on language in the Borough Code in place at the time, which allowed for a less restrictive setback, and the staff’s determination that GL Hollier Street is a Marginal Access Street -i.e., a minor street rather than a more substantial arterial street.<sup>47</sup>

Whether a 20 or 25-foot setback applies in this case may be debatable, but it is not a matter that needs to be resolved in the context of this administrative appeal.<sup>48</sup> It is clear that the Whitmores’ shop encroaches into the setback on Lot 10, irrespective of whether a 20 or 25-foot setback applies. No matter the depth of the setback, the encroaching shop is located approximately 10 feet from the property line abutting GL Hollier Street. It is this encroachment – the presence of a shop 10 feet from the property line – that the Planning Commission was required to evaluate against each of the three criteria in KPB 20.10.110(E).

**2. Does substantial evidence support the Planning Commission’s decision to approve the encroachment permit?**

The Commission concluded that the Whitmores met each of the three standards in KPB 21.10.110(E), and made findings that are essentially the same for each. For the first standard, the Commission concluded that the encroachment will not interfere with road maintenance, based on the following findings:

10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
12. The road is constructed by privately maintained [sic].
13. Due to the width of the street, improvements, the location of Sports Lake, it does not appear that this right-of-way will ever serve additional lots.
14. The encroachment is along a straight portion of the right-of-way.
15. There are no terrain issues within the dedication.<sup>49</sup>

The Commission made the same findings for its conclusions that the second and third standards (concerning interference with sight lines or distances, and the creation of a safety hazard, respectively) will be met, but added one more finding, Finding 11, which states:

<sup>47</sup> R. 13 (emphasis added).

<sup>48</sup> It is possible that a 25-foot setback exists on Lot 10, and that it is enforceable by a private landowner against another.

<sup>49</sup> R. 2.

11. There does not appear to be any line of sight issues.<sup>50</sup>

**a. Whether the encroachment interferes with road maintenance.**

The first standard in KPB 21.10.110(E) requires that the encroachment will not interfere with road maintenance.<sup>51</sup> Although the Commission concluded that the first standard will be met, its conclusion is not supported by substantial evidence.

The Commission's conclusion is based on findings that contain largely factually correct information, but they nevertheless do not show how the standard will be met. Finding 12, for example, correctly states that GL Hollier Street is privately maintained.<sup>52</sup> But the standard in KPB 21.10.110(E)(1) is not limited to whether the encroachment may interfere with the Borough's maintenance of a roadway. The standard requires that the encroachment not interfere with road maintenance at all, irrespective of whether the road is publicly or privately maintained. Thus, the Commission's finding that the road is privately maintained is immaterial to and does not advance the required analysis under the standard.

Similarly, findings 13 (the road is unlikely to serve additional lots), 14 (the encroachment is along a straight portion of the right-of-way), and 15 (there are no terrain issues within the roadway) do not show whether or how the encroachment will not interfere with road maintenance. While these findings may contain accurate statements, without further explanation, it is unclear how these findings support the Commission's conclusion that the shop will not interfere with road maintenance.

The truth of the matter is that the record is extremely sparse. The evidence includes the testimony of Ms. Whitmore and Mr. Taylor at the October 24, 2023 public meeting. The testimony was in response to a concern posed by Commissioner Fikes about the potential impact of the shop on road maintenance. The Commissioner asked:

[My] concern is that's really tight, and its not to code, and so its also not maintained, so I would be concerned about snow removal if that setback is already going to be encroached by 10 feet. Is that loss of road maintenance area, is that going to be impacting the person's access to the back land lock[ed parcel]?<sup>53</sup>

<sup>50</sup> R. 2-3.

<sup>51</sup> R. 2-3; KPB 20.10.110(E)(1).

<sup>52</sup> R. 2, 5.

<sup>53</sup> T. 3.

In response to the Commissioner's question, Ms. Whitmore acknowledged that she had not over-wintered on the property but answered that she thought GL Hollier could be cleared by pushing snow towards and across Ross Drive. She stated:

I would think the snow being pushed would probably be pushed from the farthest point of the road out toward Ross and maybe even across Ross. I don't – I mean, I don't know. We haven't been there for a winter, but it seems pretty wide with their 20-foot setback and our 10-foot setback and the 30 feet of road.<sup>54</sup>

But Mr. Taylor, who does the vast majority of the snow clearing himself, later testified that he does not believe pushing snow across Ross Drive is a viable option, and the encroaching shop will in fact impact the removal of snow from GL Hollier Street:

Clearing the snow down through there – like, it is not – yes, it's not a borough-maintained road, which 75 percent of the snow clearing on this road I do myself, and we are not going to – it was stated of possibly pushing snow across Ross Drive. Well, as we know, we're not supposed to push snow across a borough-maintained road and fill up the road and leave it up to the borough maintenance to take care of. The snow is supposed to be cleared off to the sides and not pushing snow across traffic and impeding traffic as well. So this does limit room for snow removal as well with them being 10 feet – approximately 10 to 12 feet with that pad.

It is unclear whether and how the Commission took Mr. Taylor's testimony about road maintenance into account in reaching its conclusions, and how it reconciled Ms. Whitmore's testimony suggesting that snow may be pushed across Ross Drive, with Mr. Taylor's testimony suggesting it cannot be. Nor was there any evidence documenting the Borough's actual requirements as to whether snow may be cleared from a privately maintained road across a publicly maintained one like Ross Drive. Given these deficiencies and the inadequacies in the Commission's findings, I cannot conclude there is substantial evidence to support the Commission's determination that the shop will not interfere with road maintenance. The matter will be remanded under KPB 21.20.33(B) for the Commission to either make new findings and conclusions supported by substantial evidence in the existing record as to the first standard in 21.10.110(E)(1), or to take additional evidence and issue new findings and conclusions.

<sup>54</sup> T.3.

**b. Whether the encroachment interferes with sight lines and distances.**

The second standard that must be satisfied for an encroachment permit to be issued is that it must not interfere with sight lines or distances. The Planning Commission concluded that the shop meets this standard.<sup>55</sup>

Before standard two is addressed in detail, however, it is important to understand what is meant by the reference in KPB 20.10.110(E) to the terms “sight lines or distances.” These terms are not defined by the KPB Code. As such, we need to look elsewhere to determine their intended meaning.

The purpose of the setback requirement is to promote safe public access, areas for emergency response, and ‘traffic sight distance.’ Permanent structures are prohibited in a setback without a permit, and minor improvements are only allowed in a setback without a permit if they “do not interfere with the sight distance *from the right-of-way.*”<sup>56</sup>

The language of a former KPB design standard further sheds light on the meaning of sight lines and distances.<sup>57</sup> Specifically, the former KPB design standard required that “[c]lear visibility, measured along the center line shall be provided for” within specified distances of different types of streets.<sup>58</sup>

A standard legal treatise specifies that a key purpose of setbacks in planning and zoning law is to “protect[] sight lines for automobiles.”<sup>59</sup> As all the above references demonstrate, the requirement that the encroachment not interfere with sight lines or distances means that for persons travelling on roads near the encroachment, the encroachment itself cannot cause a traveler’s clear line of sight, for things such as vehicles, hazards, obstructions, etc., to be obscured.

Turning to the Commission’s findings, the only difference between the findings relied upon for the Commission’s conclusion regarding road maintenance and the findings relied upon

<sup>55</sup> R. 2-3; KPB 20.10.110(E).

<sup>56</sup> KPB 20.90.010 (definition of “Permanent structures”) (emphasis added).

<sup>57</sup> This standard is not being referenced to suggest that it applies here. Instead, it is merely referenced to demonstrate what is likely intended by the Code’s existing requirement that an encroachment not interfere with “sight lines or distances.”

<sup>58</sup> R. 78.

<sup>59</sup> 83 Am. Jur. 2d Zoning and Planning § 116 (2023).

for its conclusion that there will be no interference with sight lines and distances is Finding 11, which states “[t]here does not appear to be any line of sight issues.”<sup>60</sup>

Although a number of the findings under standard two are factually correct, they do not show how the shop satisfies the standard. For example, Finding 12 (the road is privately maintained) and Finding 13 (the road is unlikely to serve additional lots) appear to have no bearing on whether sight lines and distances are impacted. And Finding 11 is a conclusory statement that is legally insufficient to create a factual basis or support findings of fact for appellate review.<sup>61</sup>

Only Finding 14 - that the road section is straight - and potentially Finding 15 – that there are no terrain issues within the dedication - appear at all relevant to the criteria concerning sight lines and distances. But even so, there is no analysis as to how these findings lead to the conclusion that sight lines will not be impacted. Moreover, the record as to the application of this standard is exceptionally thin. Absent from the record, for example, are any comments from a traffic engineer or other person experienced in evaluating roadway sight lines. Given that the matter must be remanded in any event regarding the other required showings, the Commission will be given the opportunity to better explain its reasoning on the second criterion and to revisit whether there is substantial evidence to support a determination that the shop will not interfere with sight lines or distances under the second standard in 21.10.110(E).

**c. Whether the encroachment creates a safety hazard.**

The third standard that must be satisfied for an encroachment permit to be issued is that the encroachment will not create a safety hazard.<sup>62</sup> Although the Planning Commission determined that this standard has been met, some of the Commission’s underlying findings contain deficiencies similar to those in the findings under the other two standards, and the record is sparse in any event.<sup>63</sup> Because it has already been determined that the matter will be remanded back to the Planning Commission, the Commission may endeavor to make new findings and conclusions, supported by substantial evidence in the existing record, under the third standard in

<sup>60</sup> R. 5.

<sup>61</sup> *Stephens v. ITT/Felec Services*, 915 P.2d 620, 626-27 (Alaska 1996); *Schug v. Moore*, 233 P.3d 1114, 1117 (Alaska 2010).

<sup>62</sup> R. 2-3; KPB 20.10.110(E).

<sup>63</sup> As with the standard concerning sight lines, comments from a person with expertise on road safety issues would have been useful for the Commission’s analysis under this standard.

KPB 20.10.110(E). Alternatively, it may take additional evidence and issue new findings under this standard.<sup>64</sup>

#### **IV. Concluding Guidance**

In deciding how to proceed on remand, the Borough is advised that the record developed before the Planning Commission to date is exceedingly sparse as to information relevant to *each* of the three criteria in KPB 20.10.110(E). The Commission should be mindful that issuing a building setback encroachment permit is an exception to the rule prohibiting such encroachments. The Commission may only approve an encroachment permit if there is substantial evidence showing that each of the three criteria is met – i.e., that the encroaching shop will not interfere with road maintenance, it will not interfere with sight lines or distances, and it will not create a safety hazard. If this threshold is not met as to any of the three criteria, the permit may not be issued. These are affirmative findings, and the applicant has the burden to demonstrate with substantial evidence that they are true. It is immaterial whether there is substantial evidence showing the opposite conclusion (that the shop will interfere with road maintenance, will interfere with sight lines or distances, and will create a safety hazard), because that is not the applicable standard. I caution the Commission against trying to do the required analysis under KPB 20.10.110(E) with an extremely thin record.

Further, the Commission should be cognizant that it must apply each of three criteria in KPB 20.10.110(E).<sup>65</sup> There is evidence that at least some Commissioners may have applied a different standard, rather than those in KPB 20.10.110(E), in voting to approve the permit. Comments by Commissioner Morgan and Commission Gillham during the October 24, 2022 public hearing suggest they may have felt compelled to approve the permit because they believed the Whitmores' contractor was to blame for the shop encroaching into the setback. Commissioner Morgan stated:

I am also included to support this. I think I have a bigger frustration with two contractors in the area who should know all of this. It is the homeowner's job to do research, but we also depend on our contractors to know their business. And so I'm kind of disappointed in their lack of researching before they started the work and not getting good information to the homeowners.<sup>66</sup>

<sup>64</sup> R. 5-6, 13-14.

<sup>65</sup> The language of the KPB Code does not affirmatively state that a building setback encroachment permit must be issued if each of the three standards in KPB 20.10.110(E) is met. It merely states that a person seeking to construct within a building setback must apply for a permit, and the three standards must be considered by the Planning Commission. KPB 20.10.110(A) and (E).

<sup>66</sup> T-7.



Commissioner Gillham commented similarly:

I would have to concur with Commissioner Morgan in that I would put most of the blame on the contractor who should have a little bit more knowledge on this than the homeowner. . . . I am inclined to vote in favor of this, mostly because I feel that this is more due to the contractor's fault rather than the property owner's fault.<sup>67</sup>

But whether the contractor or the homeowner failed to determine that the shop would be an encroachment into the building setback is not relevant to the analysis under KPB 20.10.110(E). Thus, it cannot be used as an independent basis for the Commissioners to approve the permit.

I also am concerned that some Commissioners may have misunderstood how to evaluate whether road maintenance will be impacted by the presence of the shop on Lot 10. A comment by Commissioner Stutzer suggests that the fact that the road is privately, rather than publicly, maintained may have influenced his vote on the permit:

So – and yeah, you've got a neighbor now and a building there and snow removal is a problem, but, you know, the road is always going to be – was designed not – that the borough is not going to take it over. So it's going to be a neighborhood snowplow operation, and you'll just have to figure out where you're going to push the snow.

But as Judge Sullivan correctly pointed out in the April 18, 2023 decision, it is immaterial for the analysis whether the road is privately or publicly maintained. The Planning Commissioner was required to determine whether the shop will interfere with road maintenance, irrespective of whether the road is publicly or privately maintained.

Finally, a comment by Commissioner Brantley suggests that he voted in favor of the permit because the encroachment was into the building setback, which is the Whitmores' private property, rather than into the public right-of-way. He stated, "They are not out in the right-if-way at all, so I don't see how snow removal would be affected anyway since they're not encroaching in the right-of-way at all, just in the setback."<sup>68</sup> But as explained previously, whether the encroachment is into the right-of-way is not the end of the analysis. Said another way, just because the property within the setback is the Whitmores' private property, it is not a foregone conclusion that the encroachment will

<sup>67</sup> T-7.

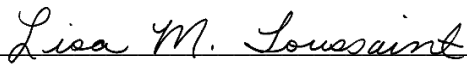
<sup>68</sup> T-7.

not interference with road maintenance. The shop could interfere with snow removal, for example, if it is necessary for some snow to be placed in the setback to clear GL Hollier Street, and there is insufficient space within the setback to place the snow due to the presence of the shop. In any event, it is the Commissioners' responsibility to evaluate whether the presence of the shop on the setback will interfere with road maintenance, no matter the nature of the encroachment. It may well be the case that Commission will decide it needs more evidence to make an adequate finding in that regard.

**V. Conclusion**

There is not substantial evidence to support the Commission's conclusions that each of the mandatory standards in KPB 21.20.110(E) has been met. The matter is remanded to the Commission to (1) make additional findings and conclusions supported by substantial evidence in the existing record as to each of the three criteria in KPB 21.20.110(E), or, alternatively, (2) KPB 21.20.110(E), take additional evidence from the parties and the public and make new findings and conclusions under each of the three criteria, based on the augmented record.

DATED this 22<sup>nd</sup> day of May, 2023.

  
\_\_\_\_\_  
Lisa M. Toussaint  
Administrative Law Judge

**Certificate of Service:** I hereby certify that on May 22, 2023, a true and correct copy of this document was served on the following by email, or mail if email is unavailable, to the following listed below:

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By: *Halley Canfield*  
Office of Administrative Hearings

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON  
REFERRAL BY THE KENAI BOROUGH PLANNING COMMISSION**

In the matter of the Kenai Peninsula Borough )  
Planning Commission's decision to conditionally )  
approve Lot 10, Lake Estates Subdivision Building )  
Setback Encroachment Permit, KPB File )  
2022-121; KPB Resolution 2022-46 located )  
on GL Hollier Street, )  
)  
TROY & AUTUMN TAYLOR, )  
)  
Appellants. )  
\_\_\_\_\_ )

OAH No. 22-0925-MUN  
Agency No. 2022-06-PCA

**ORDER GRANTING RECONSIDERATION**

**I. Background**

David and Nancy Whitmore built a 49-foot by 24-foot shop on Lot 10 in the Lake Estates Subdivision in the Kenai Peninsula Borough. Because the shop encroaches into the building setback for the lot, the Whitmores applied for a building setback encroachment permit under KPB 21.10.110. After the Borough Planning Commission unanimously approved the permit on October 24, 2022, Troy and Autumn Taylor, the owners of a lot directly across the street from Whitmores, appealed the decision.

The Borough moved to dismiss the appeal, arguing that the Taylors lacked standing. The Taylors filed an opposition, including photos of the shop and its location on the lot and the surrounding area. The photos were eventually added to the record, against the Borough's objection, pursuant to an order explaining that the photos "do not change the facts, nor do they add additional facts," but rather clarified the evidence that had already been presented to the Commission.

Following briefing and oral argument, Administrative Law Judge Kent Sullivan issued a decision on April 18, 2023, reversing the approval of the permit on the grounds that substantial evidence did not support the Commission's conclusion that the encroaching shop will not interfere with road maintenance under the first of the three criteria set forth in KPB 20.10.110(E). Instead, the judge found that substantial evidence supported the opposite conclusion – that the encroachment will interfere with road maintenance – and adopted sixteen new factual findings.

On May 1, 2023, the Borough moved for reconsideration of the decision on several grounds, including that it contained findings based on information outside the record developed before the Planning Commission; misconstrued the depth of the building setback; misconceived the nature of the setback and the encroachment, and road maintenance on GL Hollier Street; and misapplied the relevant sections of KPB 21.20.330 in reversing, rather than remanding, the Planning Commission’s decision.

The Taylors and the Whitmores were given until May 11, 2023 to respond to the motion for reconsideration. The Taylors responded on May 8, 2023, arguing that reconsideration is unnecessary because the Commission’s findings under the first criterion in KPB 21.20.110(E) were not supported by substantial evidence. The Whitmores responded on May 11, 2023, reiterating many of the same points raised by the Borough but disagreeing that a remand is appropriate. Instead, they argued that the Planning Commission’s approval of the permit should be approved because it is supported by substantial evidence as to each of the three criteria.

In accordance with KPB 21.20.350(C), this order responds to the motion for reconsideration and addresses the arguments in the motion. The arguments have led to clarification or correction of language in the original decision, which will be accomplished through a “Decision After Reconsideration” issued later today. The outcome of the case will change, as the matter will be remanded to the Commission to (1) make additional findings and conclusions supported by substantial evidence in the existing record as to each of the three criteria in KPB 21.20.110(E), or, alternatively, (2) open the record to take additional evidence from the parties and the public and make new findings and conclusions under each of the three criteria, based on the augmented record.

## **II. Commentary on the Borough’s and Applicant’s Arguments<sup>1</sup>**

### ***A. Arguments about findings based on evidence not before the Planning Commission***

#### **1. Argument about Finding 14 (drainage)**

Citing to KPB 21.20.030(3), which allows a hearing officer to “make a different finding on a factual issue, based on the evidence in the record before the planning commission,” the Borough asserts that Judge Sullivan improperly adopted findings predicated upon information

<sup>1</sup> Because many of the Borough’s and the Whitmores’ arguments are largely the same, the Whitmore’s arguments will be discussed separately only where they raised new points not presented by the Borough.

outside the record before the Planning Commission. The Borough points to one finding - Finding 14 - which states that “[t]he encroachment has caused drainage issues.” The judge explained that “snow sloughing from the roof could be an issue with this encroachment.” His conclusion was based on “a detailed explanation and photographic evidence” (namely, Photo 3) provided by the Taylors in their opposition to the Borough’s motion to dismiss, which shows “how water from the roof” of the encroaching shop “has drained into GL Hollier Street, apparently causing erosion and impacting maintenance.”<sup>2</sup> The judge eventually expanded the record after oral argument to include the photo, as well as others in the Taylor’s opposition to the motion to dismiss, explaining that the photos did not “change . . . or add additional facts” but rather clarified the evidence that had already been presented to the Commission.<sup>3</sup>

The Taylors may have legitimate concerns about drainage from the shop roof impacting the GL Hollier Street, but they did not articulate those concerns in writing to the Planning Commission (indeed, there were no written comments submitted on the proposed permit at all), or in their testimony at the October 24, 2022 public meeting. They raised those concerns for the first time in their opposition to the Borough’s motion to dismiss. Although that information could have been provided to the Planning Commission earlier, it was not before the Commission when the Commission approved the permit on October 24, 2022. Thus, the information about drainage, while appropriate to consider in the context of a motion to dismiss based on standing, should not have been considered as to concerns not previously raised to the Commission. Finding 14 was based on information not before the Planning Commission when it approved the permit, and was used as an additional factual basis for Judge Sullivan’s conclusion that the shop will impact road maintenance, rather than to merely clarifying existing evidence. The Decision After Reconsideration will remove that finding and make other related adjustments as necessary.

## 2. Argument about fire safety

The Whitmores argue that Judge Sullivan misapplied KPB 21.20.270(c). That section requires that an appeal “shall be on the record,” and that the record may not be supplemented absent a showing that “even with due diligence the new evidence could not have been provided before the planning commission and a reasonable opportunity is provided” for the other parties to respond to it. The Whitmores claim that Judge Sullivan erred in relying on photos and testimonial evidence offered by the Taylors in their opposition to the motion to dismiss because

<sup>2</sup> Decision at 20.

<sup>3</sup> Order Expanding the Record at 3.

that information could have been submitted to the Commission previously, but it was not. They point to the judge's statements in the decision about fire safety. He described the "close proximity of the Whitmore's [sic] garage to the Taylors' home" as creating a "safety hazard in the event the structure is ever fully engulfed in a fire," and noted that "radiant heat from the fire may well cause the Taylors' home to catch fire."

As with the Taylors' concerns about drainage, they may have valid fire safety concerns related to the shop. But those concerns were not before the Planning Commission when it approved the permit on October 24, 2022, because the Taylors did not raise those concerns until they filed their opposition to the Borough's motion to dismiss. They could have provided that information in writing or orally at the public hearing, but they did not do so. Thus, the information should not have been considered in Judge Sullivan's April 18, 2023 decision as to concerns not previously raised to the Commission. Adjustments will be made in the Decision After Reconsideration accordingly.

3. Argument about information in opposition to motion to dismiss

The Whitmores broadly assert that the new information in the Taylors' opposition to the motion to dismiss, including the photos, were "highly prejudicial" to them. No examples were provided other than those concerning drainage (Finding 14) and fire safety, which have already been discussed above. Nonetheless, new information in the opposition to the motion to dismiss will not be used as a factual basis for any of the conclusions in the Decision After Reconsideration. The photos will only be used to the extent they help clarify the location of the shop on the lot and in the surrounding area.

***B. Arguments about the depth of the setback***

The Borough alleges that Judge Sullivan erred in finding the building setback on the lot to be 25 feet from the property line, rather than 20 feet, and that this error impacted three of his findings (Findings 3, 4, and 5). The judge's conclusion was based on a 25-foot setback specified in a plat note on the 1969 subdivision plat establishing the Lake Estates subdivision. Citing language in a footnote in *Yankee v. City of Borough of Juneau*, 407 P.13d 460 (Alaska 2017), Judge Sullivan determined that the plat note specifying the setback constituted a covenant that runs with the land and binds all subsequent landowners, including the Whitmores, despite

language in the Borough Code in place at the time, which *allowed* developers to specify a less restrictive setback.<sup>4</sup>

The Borough claims Judge Sullivan’s reliance on *Yankee* was misplaced, arguing that provision at issue in that case, a section of the City and Borough of Juneau Code, is distinguishable from the KPB Code. While the Juneau code expressly describes a plat note as a restrictive covenant that runs with the land in favor of the municipality and the public, enforceable against future owners, the KPB Code contained no such language in 1968. Moreover, the *Yankee* court held that the City and Borough of Juneau had discretion, but not the obligation, to enforce the restrictive covenant at issue. Thus, even if were the case that a plat note is a covenant running with the land under the KPB code, the Borough would not be required to enforce it. Thus, the Borough argues that Judge Sullivan lacked the authority to compel the Borough to apply the 25-foot setback in the plat note.

Whether a 20 or 25-foot setback applies in this case may be debatable, but it is not a matter that needs to be resolved in the context of this administrative appeal.<sup>5</sup> It is clear that the Whitmores’ shop encroaches into the setback on Lot 10, irrespective of whether a 20 or 25-foot setback applies. No matter the depth of the setback, the encroaching shop is located approximately 10 feet from the property line abutting GL Hollier Street. It is this encroachment – the presence of a shop 10 feet from the property line – that the Planning Commission was required to evaluate against each of the three criteria in KPB 20.10.110(E).

The Decision After Reconsideration will remove the findings concerning the depth of the setback and otherwise correct the manner in which this subject was handled in the original decision. Because this matter is being remanded back to the Planning Commission to take additional evidence and make new findings, if the Borough believes the depth of the setback is relevant to its analysis under KPB 20.10.110(E), it is free to explore that subject further on remand.

***C. Arguments about the nature of the setback and the encroachment, and road maintenance***

**1. Argument about the nature of the setback and the encroachment**

<sup>4</sup> The 1969 Borough Code allowed for a “minimum 20-foot building setback for dedicated rights-of-way in subdivisions.

<sup>5</sup> It is possible that a 25-foot setback exists on Lot 10, and that it is enforceable by a private landowner against another through a civil action.



Relying on Mr. Taylor’s testimony at the October 24, 2022 public meeting, Judge Sullivan concluded that the encroaching shop will impact road maintenance by making snow removal, the vast majority of which is done by Mr. Taylor, more difficult by limiting the space available for snow cleared from GL Hollier Street. The Borough challenges the judge’s findings (Findings 13, 15, and 16) supporting this conclusion, claiming he misconstrued the setback as an easement rather than private property, and he conflated the building setback encroachment here with an encroachment into the right-of-way. The Borough focuses on the judge’s statement that “KPB was anxious to avoid any conclusion that the encroachment was an encroachment into a public right-of-way,” and statements suggesting the setback may be used for snow cleared from the road. According to the Borough, no portion of the setback was ever available for that purpose because the setback is private property, and pushing snow onto it would be a trespass. The Borough appears to suggest that the shop could not possibly impact road maintenance because any snow removal or other maintenance occurring in the setback, the Whitmores’ private property, would be illegal.

The Borough is correct that the setback on Lot 10 is private property, and the encroachment is into the building setback – not into the right-of-way (GL Hollier Street). But the contention that Judge Sullivan determined otherwise is incorrect. Nevertheless, in the Decision After Reconsideration, adjustments will be made to statements in the original decision that could potentially be misconstrued as suggesting that the encroachment here was into the right-of-way.

## 2. Argument about trespass

Regarding the assertion that Mr. Taylor would be committing a trespass if he were to place any snow cleared from the street onto the setback, this argument strains logic. Snow removed from a 30-foot-wide road needs to go somewhere. Logic dictates that when snow is pushed from a road, some amount may need to be placed (or may incidentally spill) onto property abutting the road. This would occur whether the road is publicly maintained by an entity like the Borough, or privately maintained by a person like Mr. Taylor. But no one could legitimately contend that the Borough would be committing a trespass in those circumstances. Nor can a legitimate argument be made that Mr. Taylor would be committing a trespass in those circumstances either.<sup>6</sup> The suggestion that the shop will not interfere with road maintenance,

<sup>6</sup> There could be a trespass if Mr. Taylor were to remove snow from his own property and place it on the Whitmores’ setback. But there is no evidence of this occurring. Nor is there any evidence that Mr.

including snow removal, simply because the setback is on private property (i.e., the encroachment is not into the right-of-way) where no snow can be placed, is incorrect. Indeed, such an interpretation would effectively render the requirement of KPB 21.20.110(E) meaningless—a result inconsistent with the rules of statutory construction requiring that a statute be interpreted “to give effect to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.”<sup>7</sup>

3. Argument about snow clearing across public roads

The Borough also challenges Finding 13 in the April 18, 2023 decision, which reads, “Because the Borough mandates that snow cannot be pushed across public roadways, snow removal is now restricted on three of four sides. . . .” The authority cited for the finding is Mr. Taylor’s testimony before the Planning Commission, summarized on page 18 of the decision, and a footnote referencing a Borough website containing information about illegal snow clearing activities. The website states that “[i]t is illegal to plow snow into the roads, ditches, and rights of way *from private property*,” but, as the Borough points out, it is silent as to snow plowed from a public right-of-way. Thus, the Borough contends that Finding 13 is misconceived.

The Borough’s point is well-taken. Finding 13 will be removed, and other adjustments will be made in the Decision After Reconsideration, accordingly.

***D. Arguments about the application of KPB 21.20.320 and 21.20.330***

Claiming that the judge made findings “based upon a mix of misconceived facts” and evidence outside the record before the Planning Commission, the Borough contends the judge misapplied KPB 21.20.330 and 21.20.330, and should have remanded rather than reversed the Commission’s decision. The Borough points to language in KPB 21.20.330(3), which states:

The hearing officer may revise and supplement the planning commission’s findings of fact. Where the hearing officer decides that a finding of fact made by the planning commission is not supported by substantial evidence, the hearing officer may make a different finding on the factual issues, ***based on the evidence in the record developed before the planning commission*** if it concludes a different finding was supported by substantial evidence, or may remand the matter to the planning commission as provided in KPB 21.20.330(B). (Emphasis supplied.)

Taylor places a disproportionate amount of snow removed from the roadway onto the Whitmores’ setback when he plows the road.

<sup>7</sup> *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1128, 1139 (Alaska 2012) (quoting 2A Norman J. Singer & Shambie Singer, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 46:6 (7th ed. 2007)).

KPB 21.20.330(A) and (B), in turn, provide:

A. *Changed circumstances.* An appeal alleging changed circumstances or new relevant evidence, which with due diligence could not have been presented to the planning commission, shall be remanded to the planning commission.

B. *Lack of findings.* Appeals from the planning commission decisions which lack findings of fact and conclusions by the planning commission ***or contain findings of fact and conclusions which are not supported by substantial evidence*** shall be remanded to the planning commission with an order to make adequate findings of fact and conclusions. (Emphasis supplied.)

As explained previously, the Decision After Reconsideration will reflect adjustments to the original decision to account for problems with some of the factual findings, including that one finding was based on information outside the record before the Planning Commission (Finding 14), and that others were predicated on various misconceptions. I agree that remand is the appropriate remedy here. The matter will be remanded back to the Planning Commission to (1) make findings of fact and conclusion supported by substantial evidence in the existing record as to each of the three criteria in KPB 21.20.110(E), or, alternatively, (2) take additional evidence from the parties and the public and make new findings and conclusions under each of the three criteria, based on the augmented record.

**E. Argument that the Planning Commission’s findings should be affirmed**

The Whitmores argue that substantial evidence supports the Commission’s conclusions that each of the three standards in in KPB 21.20.110(E). I disagree. The record in this case is extremely thin as to evidence relevant to each of the three standards. The matter will be remanded back to the Commission, where there will be an opportunity to take additional evidence and make new findings and conclusions. Because the Whitmores have the burden on each of the three criteria, they may wish to participate in the remand proceeding.

**III. Concluding Guidance**

In deciding how to proceed on remand, the Borough is cautioned that the record developed before the Planning Commission to date is exceedingly sparse as to information relevant to *each* of the three criteria in KPB 20.10.110(E). The Commission should be mindful that issuing a building setback encroachment permit is an exception to the rule prohibiting such encroachments. The Commission may only approve an encroachment permit if there is substantial evidence showing that each of the three criteria is met – i.e., that the encroaching

shop will not interfere with road maintenance, it will not interfere with sight lines or distances, and it will not create a safety hazard.<sup>8</sup> If this threshold is not met as to any of the three criteria, the permit may not be issued. These are affirmative findings, and the applicant has the burden to demonstrate with substantial evidence that they are true. It is immaterial whether there is substantial evidence showing the opposite conclusion (that the shop will interfere with road maintenance, will interfere with sight lines or distances, and will create a safety hazard), because that is not the applicable standard. I caution the Commission against trying to do the required analysis under KPB 20.10.110(E) with an extremely thin record.

Further, the Commission should be cognizant that it must apply each of three criteria in KPB 20.10.110(E).<sup>9</sup> There is evidence that at least some Commissioners may have applied a different standard, rather than those in KPB 20.10.110(E), in voting to approve the permit. Comments by Commissioner Morgan and Commission Gillham during the October 24, 2022 public hearing suggest they may have felt compelled to approve the permit because they believed the Whitmores' contractor was to blame for the shop encroaching into the setback.

Commissioner Morgan stated:

I am also included to support this. I think I have a bigger frustration with two contractors in the area who should know all of this. It is the homeowner's job to do research, but we also depend on our contractors to know their business. And so I'm kind of disappointed in their lack of researching before they started the work and not getting good information to the homeowners.<sup>10</sup>

Commissioner Gillham commented similarly:

I would have to concur with Commissioner Morgan in that I would put most of the blame on the contractor who should have a little bit more knowledge on this than the homeowner. . . . I am inclined to vote in favor of this, mostly because I feel that this is more due to the contractor's fault rather than the property owner's fault.<sup>11</sup>

<sup>8</sup> To approve the permit, there must be substantial evidence to show that each the three criteria will be met. It is immaterial whether there is substantial evidence showing the opposite conclusion (that the shop will interfere with road maintenance, will interfere with sight lines or distances, and will create a safety hazard), because that is not the applicable standard.)

<sup>9</sup> The language of the KPB Code does not affirmatively state that a building setback encroachment permit must be issued if each of the three standards in KPB 20.10.110(E) is met. It merely states that a person seeking to construct within a building setback must apply for a permit, and the three standards must be considered by the Planning Commission. KPB 20.10.110(A) and (E).

<sup>10</sup> T-7.

<sup>11</sup> T-7.

But whether the contractor or the homeowner failed to determine that the shop would be an encroachment into the building setback is not relevant to the analysis under KPB 20.10.110(E). Thus, it cannot be used as an independent basis for the Commissioners to approve the permit.

I also am concerned that some Commissioners may have misunderstood how to evaluate whether road maintenance will be impacted by the presence of the shop on Lot 10. A comment by Commissioner Stutzer suggests that the fact that the road is privately, rather than publicly, maintained may have influenced his vote on the permit:

So – and yeah, you’ve got a neighbor now and a building there and snow removal is a problem, but, you know, the road is always going to be – was designed not – that the borough is not going to take it over. So it’s going to be a neighborhood snowplow operation, and you’ll just have to figure out where you’re going to push the snow.

But as Judge Sullivan correctly pointed out in the April 18, 2023 decision, it is immaterial for the analysis whether the road is privately or publicly maintained. The Planning Commissioner was required to determine whether the shop will interfere with road maintenance, irrespective of whether the road is publicly or privately maintained.

Finally, a comment by Commissioner Brantley suggests that he voted in favor of the permit because the encroachment was into the building setback, which is the Whitmores’ private property, rather than into the public right-of-way. He stated, “They are not out in the right-if-way at all, so I don’t see how snow removal would be affected anyway since they’re not encroaching in the right-of-way at all, just in the setback.”<sup>12</sup> But as explained previously, whether the encroachment is into the right-of-way is not the end of the analysis. Said another way, just because the property within the setback is the Whitmores’ private property, it is not a foregone conclusion that the encroachment will not interference with road maintenance. The shop could interfere with snow removal, for example, if it is necessary for some snow to be placed in the setback to clear GL Hollier Street, and there is insufficient space within the setback to place the snow due to the presence of the shop. In any event, it is the Commissioners’ responsibility to evaluate whether the presence of the shop on the setback will interfere with road maintenance, no matter the nature of the encroachment. It may well be the case that Commission will decide it needs more evidence to make an adequate finding in that regard.

<sup>12</sup> T-7.

**IV. Order**

The motion for reconsideration is granted. A revised decision will be issued later today.

DATED: May 22, 2023.

By: Lisa M. Toussaint  
Lisa M. Toussaint  
Administrative Law Judge

**Certificate of Service:** I hereby certify that on May 22, 2023, a true and correct copy of this document was served on the following by email, or mail if email is unavailable, to the following listed below:

Troy & Autumn Taylor 43680 Ross Drive Soldotna, Alaska 99669 <a href="mailto:aутtytaylor@yahoo.com">auttytaylor@yahoo.com</a> <a href="mailto:troytaylor32@yahoo.com">troytaylor32@yahoo.com</a>	David & Nancy Whitmore P.O. Box 881 Soldotna, Alaska 99669 <a href="mailto:nancywhitmore@gmail.com">nancywhitmore@gmail.com</a> <a href="mailto:dcwhitmore@gmail.com">dcwhitmore@gmail.com</a>
Jason Schollenberg Peninsula Surveying, LLC 10535 Katrina Blvd. Ninilchik, Alaska 99639 <a href="mailto:jason@peninsulasurveying.com">jason@peninsulasurveying.com</a>	Julie Hindman KPB Platting Specialist 144 N. Binkley Street Soldotna, Alaska 99669 <a href="mailto:jhindman@kpb.us">jhindman@kpb.us</a>
Robert Ruffner KPB Planning Director 144 N. Binkley Street Soldotna, Alaska 99669 <a href="mailto:ruffner@kpb.us">ruffner@kpb.us</a>	Michele Turner, MMC Borough Clerk 144 N. Binkley Street Soldotna, Alaska 99669 <a href="mailto:micheleturner@kpb.us">micheleturner@kpb.us</a>
A. Walker Steinhage KPB Deputy Attorney 144 N. Binkley Street Soldotna, Alaska 99669 <a href="mailto:wsteinhage@kpb.us">wsteinhage@kpb.us</a> <a href="mailto:legal@kpb.us">legal@kpb.us</a>	

By: Halcy Canfield  
Office of Administrative Hearings



# Planning Department

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

Peter A. Micciche  
Borough Mayor

## KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF BUILDING SETBACK ENCROACHMENT PERMIT

Public notice is hereby given of a remand hearing on a building setback encroachment permit application, originally received on 9/27/2022. You are being sent this notice because you are within 600 feet of the subject parcel and are invited to comment.

The building setback encroachment permit application is for the following property:

Request / Affected Property: Allows a 9.4 feet by 49 feet portion of a shop to remain in the building setback granted on Lake Estates Subdivision K-1648.

KPB File No. 2022-121

Petitioner(s) / Land Owner(s): David and Nancy Whitmore of Soldotna, AK.

Purpose as stated in petition: We are requesting a 20' Building Setback Exception from the KPB Planning and Platting Department because our garage has been built approximately 10' into the setback for GL Hollier St, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115. At our meeting with representatives from the Planning and Platting Department on Friday July 22, 2022, we were told that the KPB had a surveyor currently surveying 3 parcels in this subdivision, and that we could use this survey as the As-Built Survey or Site Survey required for the Application for Building Setback Encroachment Permit. This violation was not intentional; it was a collective error in planning how to use our lot (Lot 10) to meet our objectives of building a detached garage, a home, and on-site well and septic systems. The lot is oddly shaped, with poor soils, having the useable area restricted by both Ross Dr. and GL Hollier St. In discussion with the builder and the excavation company, we were aware of the required 100' separation between well and septic system (including the wells and septic systems of our adjacent neighbors). We were unaware of the 20' road setback for GL Hollier St. as there are no dotted lines to indicate this on the plat: a road setback is shown on the plat for Ross Dr. Our error was in not reading the notes on the plat. It appears that the 48' exception to the road setback will not; 1. not interfere with road maintenance (road is privately maintained). 2. Not interfere with sight lines or distances. 3. Not create a safety hazard. We appreciate your consideration of this matter.

Building setback encroachment permit reviews are conducted in accordance with KPB Subdivision Ordinance.

Public hearing will be held by the Kenai Peninsula Borough Planning Commission on **Monday, October 9, 2023**, commencing at **7:30 p.m.**, or as soon thereafter as business permits. The meeting is being held in person at the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, Alaska and remotely through Zoom.

To attend the meeting using Zoom from a computer visit <https://us06web.zoom.us/j9077142200>. You may also connect to Zoom by telephone, call toll free **1-888-788-0099** or **1-877-853-5247**. If calling in you will need the Meeting ID of 907 714 2200. Additional information about connecting to the meeting may be found at <https://www.kpb.us/planning-dept/planning-commission>.

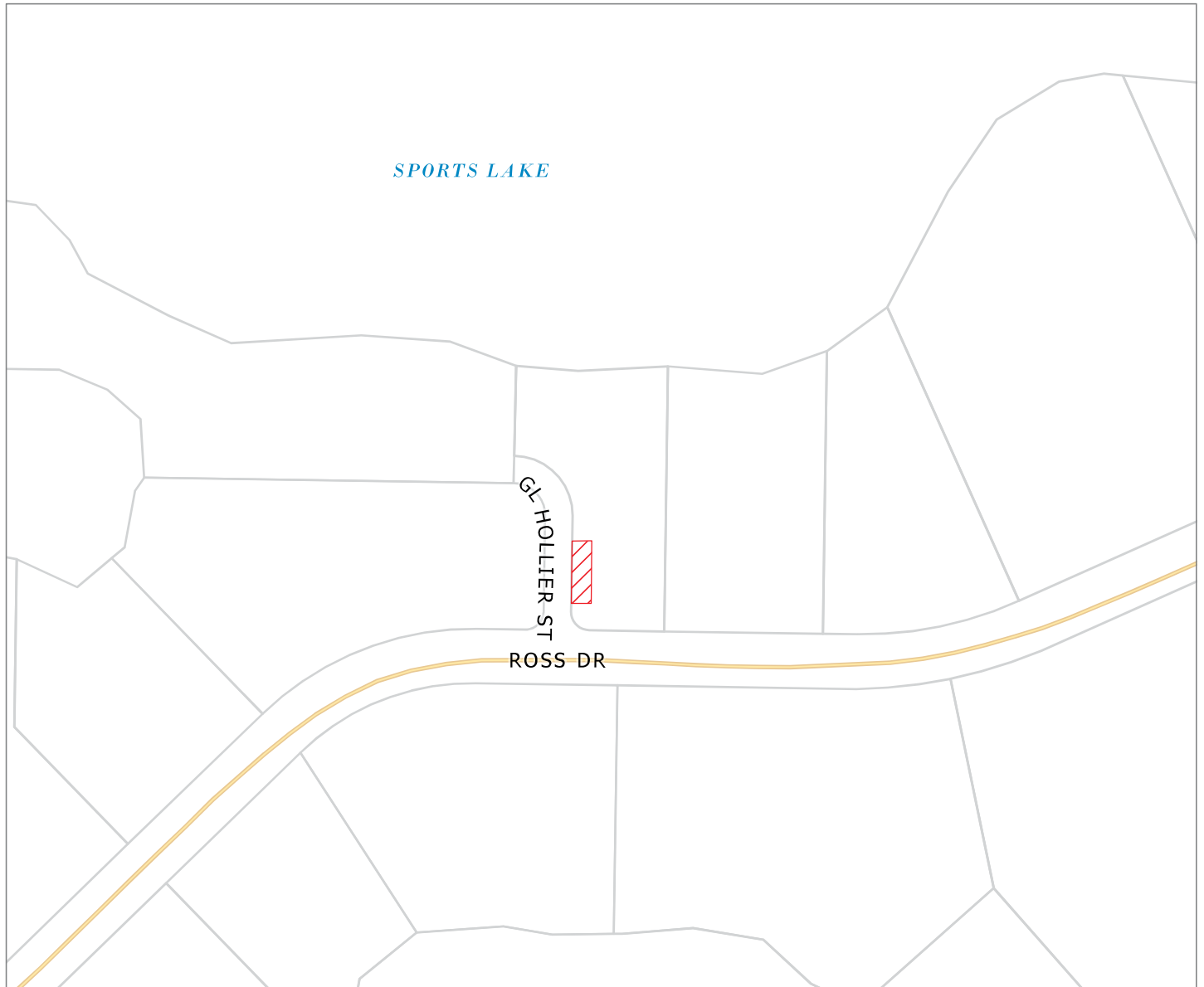
Anyone wishing to testify may attend the meeting in person or through Zoom. Written testimony may be submitted by email to [planning@kpb.us](mailto:planning@kpb.us), or mailed to the attention of Beverly Carpenter, Kenai Peninsula Borough Planning Department, 144 N. Binkley Street, Soldotna, Alaska 99669. [Written comments may also be sent by Fax to 907-714-2378]. All written comments or documents must be submitted by **1:00 PM, Friday, October 6, 2023**. The deadline to submit written comments or documents does not impact the ability to provide verbal testimony at the public hearing.

Additional information such as staff reports and comments are available online. This information is available the Monday prior to the meeting and found at <https://kpb.legistar.com/Calendar.aspx>. Use the search options to find the correct timeframe and committee.

For additional information contact Beverly Carpenter ([bcarpenter@kpb.us](mailto:bcarpenter@kpb.us)) or Madeleine Quainton ([mquainton@kpb.us](mailto:mquainton@kpb.us)), Planning Department, 714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough).

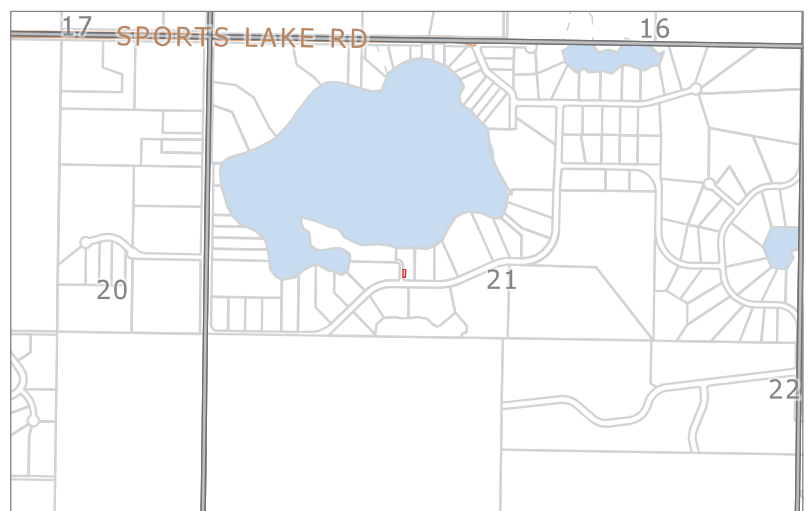
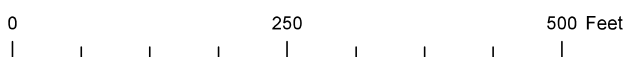
Mailed September 26, 2023





KPB File 2022-121  
T 05N R 10W SEC 21  
Ridgeway

9/26/2023



**NOTES**

1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
2. BUILDING DIMENSIONS ARE TO THE FACE OF THE BUILDING.
3. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT KN 1648.

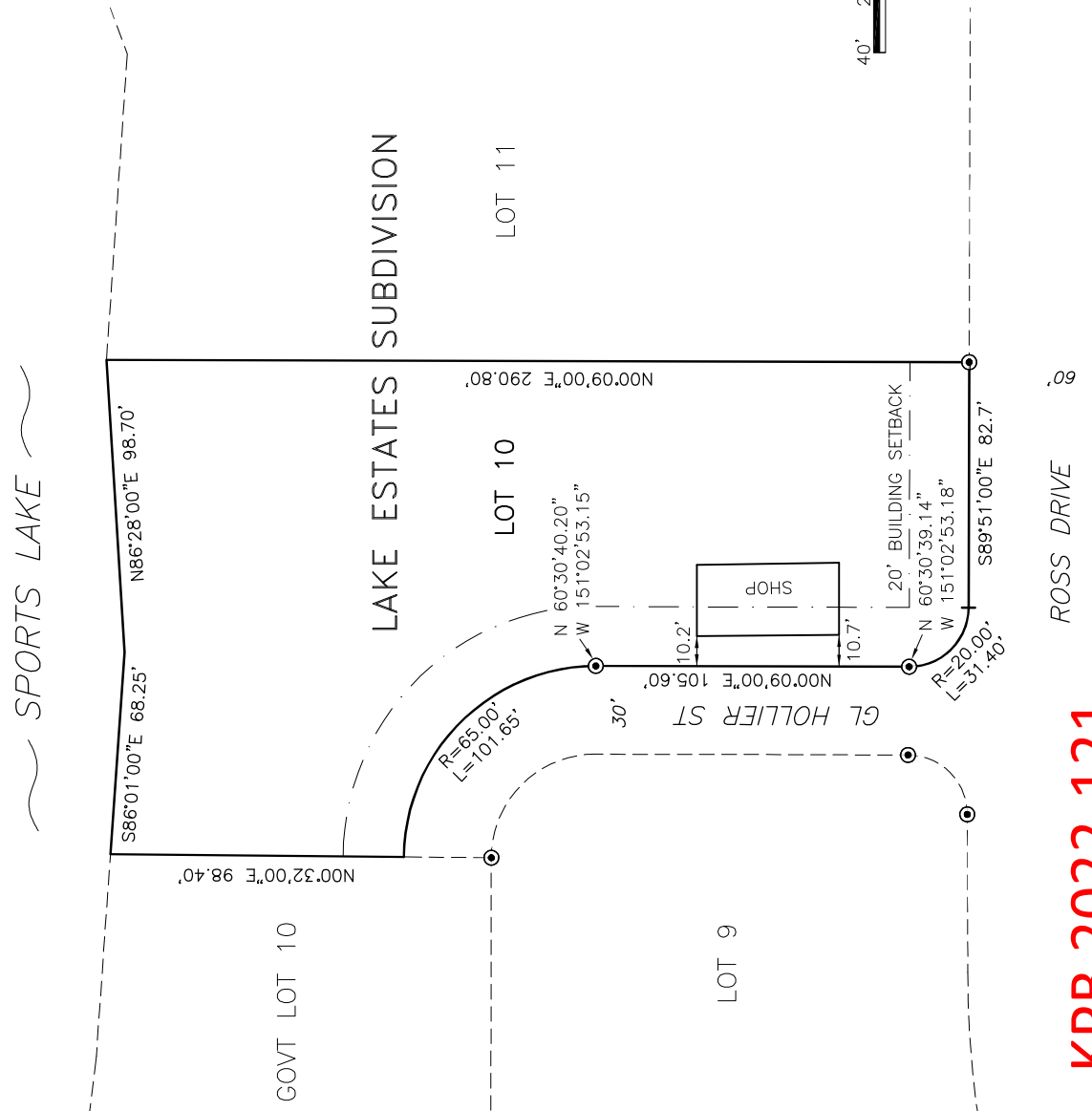
**LEGEND**

- FOUND REBAR

**SURVEYOR'S CERTIFICATE**

I HEREBY CERTIFY THAT I HAVE PERFORMED AN AS-BUILT SURVEY ON THE PROPERTY SHOWN HEREON, AND THE IMPROVEMENTS EXIST AS SHOWN. FIELD SURVEY ON 09/26/2022.

*Jason L. Schollenberg* 09/27/2022  
 JASON L. SCHOLLENBERG DATE  
 PLS 14488-S



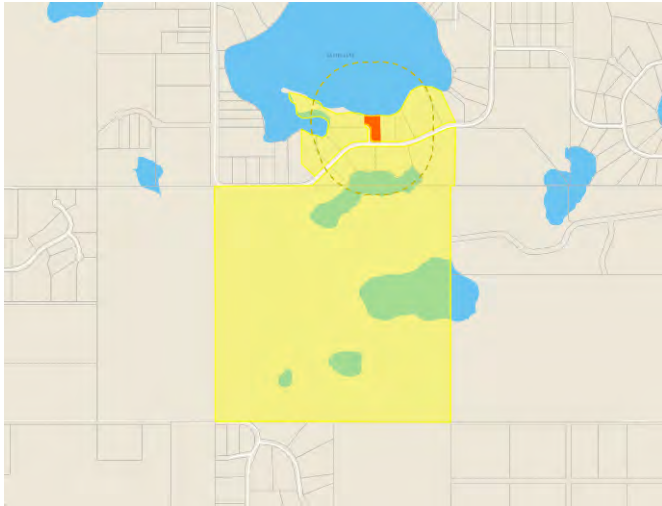
**PENINSULA SURVEYING, LLC**  
 10535 KATRINA BOULEVARD  
 NINILCHIK, AK 99639  
 (907)306-7065

**AS-BUILT SURVEY**  
**LOT 10, LAKE ESTATES SUBDIVISION**  
**SECTION 21, T5N, R10W, S.M.**

SCALE: 1" = 40'	DATE: 09/27/2022
DRAWN: JLS	SHEET: 1 OF 1

ROSS DRIVE 80

**KPB 2022-121**



- Input parcel(s)
- Parcels within 600ft
- Parcels within 300 feet (when applicable).

# Notification Report

Tuesday, September 26, 2023

Report generated for KPB Parcel(s):  
05725001



The following list was created by applying a 600 ft buffer to the parcel or parcels indicated above. Questions or comments can be relayed to [BCarpenter@kpb.us](mailto:BCarpenter@kpb.us).

## All Ownership Records

PARCEL_ID	OWNER	ADDRESS	CITY	STATE	ZIP
05704414	MARKHAM ERICA	3374 E VALLEJO CT	GILBERT	AZ	85298
05723007	MILLER FRITZ W & CINDY A	43850 ROSS DR	SOLDOTNA	AK	99669
05723008	GIOVANELLI TERRI L	43732 ROSS DR	SOLDOTNA	AK	99669
05724001	TAYLOR AUTUMN R	43680 ROSS DR	SOLDOTNA	AK	99669
05725001	WHITMORE NANCY	PO BOX 881	SOLDOTNA	AK	99669
05725002	WALKER DONALD G	PO BOX 3161	MONTROSE	CO	81402
05725003	HAWKES RENAE SALLY	43610 ROSS DR	SOLDOTNA	AK	99669
05704413	INNES DAVID SCOTT	740 E REDOUBT AVE	SOLDOTNA	AK	99669
05724003	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669
05724007	RODGERS CHARLES R & JEANETTE K	43725 ROSS DR	SOLDOTNA	AK	99669
05725003	HAWKES BRADFORD JAY	43610 ROSS DR	SOLDOTNA	AK	99669
05725011	IVERSON JAMES P & HEIDI L	43530 ROSS DR	SOLDOTNA	AK	99669
05704414	MARKHAM ZACHARY	3374 E VALLEJO CT	GILBERT	AZ	85298
05724004	MARCOTTE TAMAR G	43625 ROSS DR	SOLDOTNA	AK	99669
05724008	RAWSON JOYCE	43565 ROSS DR	SOLDOTNA	AK	99669
05724008	RAWSON SETH	43565 ROSS DR	SOLDOTNA	AK	99669
05725001	WHITMORE DAVID C	PO BOX 881	SOLDOTNA	AK	99669
05725006	IVERSON JAMES P & HEIDI L	43530 ROSS DR	SOLDOTNA	AK	99669
05704414	MARKHAM MICHAEL	3374 E VALLEJO CT	GILBERT	AZ	85298
05704414	MARKHAM MICHELE	3374 E VALLEJO CT	GILBERT	AZ	85298
05723009	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669
05724001	TAYLOR TROY R	43680 ROSS DR	SOLDOTNA	AK	99669
05724002	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669

# DESK PACKET

*(MATERIALS RECEIVED AFTER THE PACKET  
PUBLICATION DATE OF 9/29/23)*

## J. NEW BUSINESS

### 1. Remand Hearing

Building Setback Encroachment; KPB File 2022-121

Lot 10, Lake Estates Subdivision, Plat KN 1648

Applicants: David & Nancy Whitmore

General Location: GL Hollier Street

Ridgeway Area

**MEMORANDUM**

**TO:** Jeremy Brantley, Chair  
Members, Kenai Peninsula Borough Planning Commission

**FROM:** A. Walker Steinhage, Deputy Borough Attorney

**CC:** Robert Ruffner, Director of Planning

**DATE:** October 9, 2023

**SUBJECT:** Timeline for ITMO: Setback Encroachment Permit Along GL Hollier Street

---

On September 27, 2022, David and Nancy Whitmore applied for a building setback encroachment permit for a garage they had built that encroaches into the building setback for their lot. The Planning Commission approved the application, subject to conditions, by unanimous consent through Planning Commission Resolution 2022-46 at its regular meeting on October 24, 2022. On November 8, 2022, Troy and Autumn Taylor appealed the Planning Commission’s decision to the Office of Administrative Hearings (“OAH”). The Taylors live on GL Hollier Street across from the Whitmores’ lot.

On February 23, 2023, a telephonic hearing was held before OAH’s Administrative Law Judge (“ALJ”) Sullivan. On April 18, 2023, OAH’s *Decision* was issued. In the *Decision*, ALJ Sullivan determined the Planning Commission’s findings regarding the standards in KPB 20.10.110(E) were not supported by substantial evidence in the record. Further, ALJ Sullivan ruled that the first standard was not met and therefore must be denied. Accordingly, ALJ Sullivan reversed the Planning Commission’s approval of the Whitmores’ building setback encroachment permit reflected in Resolution 2022-46.

The Borough sought reconsideration on several grounds, particularly that KPB 21.20.330(B) requires remand to the Planning Commission – not reversal – if findings of fact are not supported by substantial evidence. On May 22, 2022, OAH issued its *Order Granting Reconsideration* and a separate *Decision After Reconsideration*. Both were authored by ALJ Toussaint. ALJ Toussaint agreed there was not substantial evidence to support the Planning Commission’s conclusions that the standards in KPB 20.10.110(E) had been met; however, remand was the appropriate remedy under Borough Code. Accordingly, ALJ Toussaint remanded the matter to the Planning Commission.

In the interim, the Whitmores have appealed OAH’s *Decision After Reconsideration* to the Kenai Superior Court. They have not requested a stay of OAH’s remand, and the appeal to the Kenai Superior Court is pending.

At the Planning Commission meeting on September 25, 2023, the Planning Commission voted to re-open the record for new evidence before considering the matter on remand.

October 6, 2023

*Via Email: [planning@kpb.us](mailto:planning@kpb.us)*

Planning Commission  
c/o Beverly Carpenter, Planning Department  
Kenai Peninsula Borough  
144 North Binkley Street  
Soldotna, AK 99669

**Re: Written Comments in Support of Lot 10, Lake Estates Subdivision  
Building Setback Encroachment Permit**

**KPB File No. 2022-121**

Dear Planning Commission,

We are the homeowners of 43664 Ross Drive in Soldotna. We initially submitted this application for a setback encroachment permit in July 2022. As we explained in our initial permit application, the detached garage that we built on our property extends by approximately 10 feet into the 20-foot setback along GL Hollier St.

We acknowledge that an error was made when selecting the location for this building. In trying to find a location for our well and onsite septic system, we encountered a challenge due to the shape of our lot, the locations of the existing well, the location of the septic systems of our neighbors, and the wetland area near the lake. We worked with our builder and excavator, using a 100-foot tape measure and walking back and forth diagonally across the lot to ensure safe distances between the existing wells and septic systems on the adjacent lots. Our only real option for the well and septic system was located in the southeast corner of our lot, along Ross Dr. This led us to locating the garage in the southwest corner of our lot near the intersection of GL Hollier St. and Ross Drive. *See Meeting Packet at J-15 to J-17 and J-22 to J-25.* We are attaching additional photographs of the property and garage. *See Figures 1-7.*

After the Planning Commission unanimously approved our initial permit application last October, there was an administrative appeal to the Office of Administrative Hearings. Ultimately, the administrative law judge concluded that the Planning Commission’s original decision, which relied on the Planning Department’s Staff Report “Findings,” was not supported by substantial evidence. Because we have the burden of showing that the setback encroachment meets each of the three standards in the Code for a permit, we submit this letter with additional explanations and evidence supporting our permit application.

We have also included a report dated October 6, 2023, from Kinney Engineers LLC, a traffic engineer that we hired to provide an expert opinion on the encroachment. The report includes the following conclusions:

“A common reason for building setbacks is to ensure adequate space for parking outside of the [right of way]. The Whitmore parcel has plenty of parking on-site so they will not be reliant on the building setback area in front of their garage for parking, ensuring their parked vehicles will not encroach into the [right of way] or traveled way . . .

Based on the preceding discussion, it is my opinion that the proposed setback encroachment does not adversely impact road maintenance (or the potential for road maintenance), sight distances, or traffic safety.”

**Standard 1: “The building setback encroachment may not interfere with road maintenance.” [KPB 20.10.110(E)(1)]**

There is substantial evidence in the record that the setback encroachment will not interfere with road maintenance. The Planning Department’s Staff Report described five factual findings supporting the conclusion that the permit application meets this standard. We offer the following additional explanations to the Staff Report’s findings and we also offer additional (“New”) evidence and responses to concerns that have been raised regarding road maintenance.

- *Finding 10.* The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.

- *Additional Explanation:* This finding is supported by the as-built survey prepared with the permit application. *See* J-32. The survey identifies that the garage is between 10.2 and 10.7 feet from GL Hollier St.

This finding supports the conclusion that the setback encroachment will not interfere with road maintenance because there is a minimum of 10 feet of setback remaining for the length of the garage that is unaffected by the encroachment. The encroachment takes up less than half of the original setback, which is enough space for parking, backing up, and any road maintenance that may be required in the future. *See* Figure 1.

- *Finding 12.* The road is privately maintained.
  - *Additional Explanation:* The Borough has stated that it does not maintain GL Hollier St. and does not perform snow removal on the road. But GL Hollier St. is not a private driveway; it is a public right of way.

This finding supports the conclusion that the setback encroachment will not interfere with road maintenance because the property owners, including us, are responsible for road maintenance and snow removal. There is no indication of how specifically the encroachment could interfere with our snow removal, and we do not believe that road maintenance will be affected by the encroachment.

- *Finding 13.* Due to the width of the street, improvements, the location of Sports Lake, it does not appear that this right-of-way will ever serve additional lots.
  - *Additional Explanation:* This finding is supported by the vicinity map depicting that there are only three lots located along GL Hollier St. and that the road ends near the lake at the curve. *See* J-15.

This finding supports the conclusion that the setback encroachment will not interfere with road maintenance because it is not possible for the road to be used as an access road for any other lots or developments other than those that already exist. There is no reason



why the road would become a thoroughfare or have increased traffic from its present use.

- *Finding 14.* The encroachment is along a straight portion of the right-of-way.
  - *Additional Explanation:* This finding is supported by the vicinity map depicting GL Hollier St. *See* J-15; Figure 1.

This finding supports the conclusion that the setback encroachment permit will not interfere with road maintenance because there are no physical obstacles that would impair road maintenance.

- *Finding 15.* There are no terrain issues within the dedication.
  - *Additional Explanation:* This finding is supported by the aerial photos and maps depicting the area. *See* J-22 to J-24; Figure 1.

This finding supports the conclusion that the setback encroachment will not interfere with road maintenance because there are no physical obstacles that would impair road maintenance.

- *New Evidence.* We have installed gutters on the garage that drain into our side yard and we installed a culvert to deal with runoff from our side yard.
- *New Evidence.* We hired Steam on Wheels to perform road maintenance on GL Hollier St. during and following construction of the garage. An invoice showing that we installed screen gravel for “touch up and blending to GL Hollier” is attached.
- *New Evidence.* We have performed extensive sloping/ditching to our lot to control drainage and prevent runoff into GL Hollier St. The sloping and ditching on our property will prevent runoff from creating any new road maintenance issues and will improve road maintenance. *See* Figure 2.
- *New Evidence.* We have been informed from the Planning Department that we may install a see-through fence on the property line with GL Hollier St. That

means that we could legally block any use or access across the setback area, which is our private property.

- *New Evidence.* We have been informed by the Borough attorneys that snow from GL Hollier St. is not permitted to be pushed onto our property or stored on our property, including the setback, without our permission. Unauthorized snow storage is a trespass. We understand that one of the main concerns with road maintenance on GL Hollier St. is snow removal and snow storage; however, the garage will not interfere with snow removal because it has never been an option to push the snow from the street onto our setback.
- *New Evidence.* We hired Steam on Wheels to build a snow storage area in our lower yard that we will use to store snow from our driveway and lot. This snow storage area will also help reduce snow berms from blocking the driveway or road access. *See Figures 2, 3.*
- *New Evidence.* We have been informed from the Borough that we are allowed to park cars in the setback up to the property line. Because we can park a car between the garage and GL Hollier St. within the setback, there are no additional issues with road maintenance that will be caused by the garage.
- *New Evidence.* We hired Kinney Engineers LLC to study the potential effects on road maintenance. The report makes the following conclusions regarding road maintenance:
  - There is adequate room on our property to accommodate snow storage from our driveway and garage access routes;
  - The full width of a standard road could still fit in between the centerline of GL Hollier Street and the Whitmore garage, in the unlikely event GL Hollier Street were ever to be upgraded to KPB standards as a publicly maintained road;
  - There is adequate space in the [right of way] to accommodate drainage-enhancing grading if it becomes necessary.

**Standard 2: “The building setback encroachment may not interfere with sight lines or distances.” [KPB 20.10.110(E)(2)]**

There is substantial evidence in the record that the setback encroachment will not interfere with sight lines or distances. The Planning Department’s Staff Report described six factual findings supporting the conclusion that the permit application meets this standard. We offer the following additional explanations to the Staff Report’s findings and we also offer additional (“New”) evidence and responses to concerns that have been raised regarding sight lines or distances.

- *Finding 10.* The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
  - *Additional Explanation:* This finding supports the conclusion that the setback encroachment will not interfere with sight lines or distances because the garage is located at least 10 feet back from GL Hollier St. and it does not block any sight lines, either from the road or from any driveways entering the road. *See Figures 1, 2.*
- *Finding 11.* There does not appear to be any line of sight issues.
  - *Additional Explanation:* Although this finding is conclusory, there are no obvious sight lines or distances issues that have been raised in the record. *See Figures 1, 2.*
- *Finding 12.* The road is privately maintained.
  - *Additional Explanation:* This finding supports the conclusion that the setback encroachment will not interfere with sight lines or distances because Borough standards for road sight lines do not apply. But even if the road was maintained to Borough standards, there would be no sight line or distances issues. *See Report from Kinney Engineers LLC at 2.*
- *Finding 13.* Due to the width of the street, improvements, the location of Sports Lake, it does not appear that this right-of-way will ever serve additional lots.

- *Additional Explanation:* This finding supports the conclusion that the setback encroachment will not interfere with sight lines or distances because it is unlikely that any additional development or will occur in the area or create new traffic problems. The encroachment is not likely to have cumulative impacts on sight lines or distances issues. *See* Figures 1, 2.
- *Finding 14.* The encroachment is along a straight portion of the right-of-way.
  - *Additional Explanation:* This finding supports the conclusion that the setback encroachment will not interfere with sight lines or distances because the road is straight, resulting in clear views and sight lines. *See* J-15; Figures 1, 2.
- *Finding 15.* There are no terrain issues within the dedication.
  - *Additional Explanation:* This finding supports the conclusion that the setback encroachment will not interfere with sight lines or distances because the road is straight and flat, resulting in clear views and sight lines. *See* Figures 1, 2.
- *New Evidence.* Our neighbors often use GL Hollier St. as a driveway even though it is a public right of way. There are frequently many vehicles, including large trucks and trailers, parked in our neighbors' setback, which makes turning around difficult. Although we have no control over parking in other setbacks, any traffic issues or parking problems are not caused by our garage. *See* Figure 4.
- *New Evidence.* We hired Kinney Engineers LLC to study the potential effects on sight lines and distances. The report makes the following conclusions regarding sight lines:
  - “The Whitmore garage has no effect on sight distance for motorists traveling on the road. It also has no effect on motorists looking to leave the public roads.”

- “A forested yard, which is allowed in the building set back, would have much more effect on sight distance.”

**Standard 3: “The building setback encroachment may not create a safety hazard.” [KPB 20.10.110(E)(3)]**

There is substantial evidence in the record that the setback encroachment will not create a safety hazard. The Planning Department’s Staff Report described three factual findings supporting the conclusion that the permit application meets this standard. We offer the following additional explanations to the Staff Report’s findings and we also offer additional (“New”) evidence and responses to concerns that have been raised regarding potential safety hazards.

- *Finding 10.* The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
  - *Additional Explanation:* This finding supports the conclusion that the setback encroachment will not create a safety hazard because there is still more than 10 feet of space between the garage and GL Hollier St, which provides an adequate buffer and space between the structure and road. *See* Figures 1, 2.
- *Finding 11.* There does not appear to be any line of sight issues.
  - *Additional Explanation:* This finding supports the conclusion that the setback encroachment will not create a safety hazard because line of sight issues for traffic could potentially create a safety hazard. There are no line of sight issues caused by the setback encroachment, and thus, no resulting safety hazards. *See* Figures 1, 2, and 5.
- *Finding 12.* The road is privately maintained.
  - *Additional Explanation:* This finding supports the conclusion that the setback encroachment will not create a safety hazard because the road is not maintained by the Borough and it is unlikely to see increased traffic or development in the foreseeable future. The current level of usage does not raise safety concerns. *See* Figure 6.

- *New Evidence.* We hired Kinney Engineers LLC to study the potential effects on safety hazards. The report makes the following conclusions regarding safety hazards:
  - “Since the garage provides space for adequate sight distance, the primary traffic safety concern would be the need to maneuver in the [right of way] when pulling out of or into the garage space on the north end of the garage . . . However, this conflict would exist for any driveway that does not have turn-around space on site, such as the neighbors across the street who access their garage and parking directly off of the GL Hollier Street [right of way].”

\* \* \*

Finally, we want to briefly address some of the concerns that we’ve heard from our neighbors. During the previous Planning Commission hearing and the administrative appeal, we understand there to be three main concerns. First, we heard concerns about parking and turning vehicles around in GL Hollier Street. It appears that before we moved to the property, the area where we built our garage was used for some neighbors to turn their vehicles and trailers around. Some neighbors park vehicles and trailers within their setbacks, leaving little room other than in the road (GL Hollier Street) to turn around. *See* Figure 4; Report from Kinney Engineers LLC at 2 (Figure 1). But we want to make it clear that our property including the setback within our property was never available for other people to use as a turnaround. Our garage does not make that existing problem worse. *See* Figure 2. We have abundant parking areas on our property (in front of the house and behind the house), as noted in the Report from Kinney Engineers LLC.

Second, we have reviewed a “report” that was submitted by our neighbors during the administrative appeal describing purported safety problems with the garage’s location, including that it may increase fire risk to neighbors. We want to be clear that we do not think such a report is credible. It does not appear that the report is based on any first-hand information, and it does not explain the bases for its conclusions or the likelihood that any safety risks would occur. The Commission should not rely on worst case scenarios for denying a permit application.

Third, there has been a lot of discussions about snow storage and snow plowing. As we described above, the setback on our property is not available for snow storage for snow plowed from GL Hollier Street without our permission. The setback is part of our private property. Snow from any public right of way, including GL Hollier Street should remain within the right of way. Last winter we had problems with snow that was plowed from GL Hollier Street and the neighbors' property into our driveway creating snow berms and making it difficult for us to plow out. We hired a contractor to create a separate snow storage area on our property, which we think will help alleviate some of the snow storage issues. *See* Figure 3. We want to work with our neighbors to share the costs for plowing and snow removal, but we think the garage's location does not contribute to that problem in any way.

We hope that the Planning Commission will agree that there is substantial evidence for each of the three standards in KPB 20.10.110 for granting the setback encroachment permit. We are happy to address any questions the Commission may have during the public hearing.

Sincerely,

Craig and Nancy Whitmore

Encls.



Figure 1. Aerial photo of our garage (right) and GL Hollier Street. October 4, 2023.





Figure 2. GL Hollier Street and our garage (right) from intersection of Ross Dr. and GL Hollier Street. Note the road maintenance at our request / expense.



Figure 3. North end of GL Hollier Street. Our lower driveway to the right, our snow storage area in the center, the Markham's driveway on the left. The orange cones indicate our property line, with the cone on the far left being the lot corner.



Figure 4. View of GL Hollier Street looking from our property to the neighbors across the street (Taylors).



Figure 5. View from south side of Ross Drive towards GL Hollier Street and our garage (right); cones indicate lot line.



Figure 6. Our home and garage on left looking south toward Ross Drive.



Figure 7. View from intersection of Ross Drive and GL Hollier Street, our garage on right.

12/16/2022

Dear Neighbor,

We'd like to take this opportunity to introduce ourselves and try to add some perspective to the variance issue related to the placement of our garage on Lot 10 of Lake Estates Subdivision. We hope you will take the time to read this letter.

We are full-time residents of Alaska: Craig arrived in 1957 and Nancy in 1977. We have worked in Alaska for more than 40 years, Craig initially as a biologist and Nancy as a teacher. We currently work as Appraisers. Our children and grandchildren are all Alaska born and raised: our reason for moving from Homer to Soldotna is to be closer to our young grandchildren.

Our .84-acre lot is oddly shaped with less than 85' of frontage on Ross Drive. In working with our builder and excavator we struggled with how to build a home and detached garage on this lot given the adjacent well and septic systems: the location for our own septic system was severely restricted. Together we decided to locate the garage along GL Hollier St, which is a substandard KPB road. Unfortunately, we weren't aware of the setback and the garage was built on our private property 9.8' into the setback.

We were notified of a potential issue during construction (concrete was poured, walls were in place). When we asked for more information, the KPB code enforcement officer specified that "we are not telling you to stop work" and no order was ever issued to stop work. The elevated building pad was in place and visible from the street through the winter of 2021/2022 and no one contacted us expressing concerns about the location of this future building: we wish someone would have expressed a concern so we could have moved the footprint of this building to be in compliance.

During the October 2022 hearing, the KPB Planning Commission granted a variance for the garage, after deciding unanimously that the location of this garage did not violate any of the criteria used by the Planning Commission to make determinations. The Taylors have appealed this decision and shared their concerns broadly through the neighborhood as evidenced by the letters in their appeal packet.

It is unfortunate that the garage was built 9.8' into the setback on our private property, has caused so much concern in the neighborhood. A setback is an invisible line **on private property**. An easement (rather than a setback) would allow for shared use: no easement exists. The limitations the Taylors experience turning their vehicles and trailers around would be no different than if the building was not located in the setback: they are not entitled to use our private property for any reason without permission.

The Taylors have a 1.94-acre lot and chose to build their home on the setback line: they use their setback area (private property) for parking, which leaves them with only the 30' roadway (GL Hollier St) to maneuver their vehicles and trailers. This appears to be the heart of the problem

In regard to other issues raised by the Taylors, we would like say:

- 1) we were unaware of most of these concerns as not one person has discussed these issues with us.

- 2) we hired a Contractor and professional Excavator to help us navigate the building process.  
Building was hampered by the extensive rain and the Excavator has been aware, since May, that the road will need be restored to pre-construction condition.
- 3) other unresolved issues (downspout drainage, etc.) will be resolved.

We plan to live in the neighborhood and sincerely hope to have an amicable relationship with all of our neighbors.

We are available to talk with you if you have further concerns or questions.

Craig Whitmore                      907-299-5352

[dcwhitmore@gmail.com](mailto:dcwhitmore@gmail.com)

Nancy Whitmore                      907-299-7717

[nancywhitmore@gmail.com](mailto:nancywhitmore@gmail.com)



**STEAM ON WHEELS, LLC**45240 KNIGHT DRIVE #4  
SOLDOTNA, AK 99669  
US**INVOICE**Invoice Number: 14132  
Invoice Date: Sep 1, 2022  
Page: 1*Duplicate*

Voice: 9072623240

Fax: 9072605230

<b>Bill To:</b>
Craig Whitmore

<b>Ship to:</b>
Craig Whitmore

Customer ID	Customer PO	Payment Terms	
Craig Whitmore		Net 30 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	Courier		10/1/22

Quantity	Item	Description	Unit Price	Amount
3.00		Grading skid steer for GL Hollier during House Construction	150.00	450.00
3.00		Water truck for compaction and dust for GL Hollier during House and Constuction	150.00	450.00
2.00		Loads for Screen Gravel for touch up and blending to GL Hollier	200.00	400.00
<i>Paid Cash</i>				
Subtotal				1,300.00
Sales Tax				15.00
Total Invoice Amount				1,315.00
Payment/Credit Applied				
<b>TOTAL</b>				<b>1,315.00</b>

Check/Credit Memo No:

Finance Charges will be charged on all overdue invoices.



October 6, 2023

Nancy Whitmore  
Craig Whitmore  
43664 Ross Drive  
PO Box 881  
Soldotna, Alaska 99669

**Subject: Whitmore Residence Setback – Traffic Implications**

Dear Nancy and Craig:

Based on our phone and email conversations, we understand you are petitioning the Kenai Peninsula Borough (KPB) to grant a variance to the 20-foot building setback on your property from GL Hollier Street.

The parcel in question is Lot 10, Lake Estates Subdivision, which is near Soldotna, Alaska and sits north of Ross Drive, east of GL Hollier Street, and south of Sports Lake. Your garage building was constructed approximately 10 feet off of the GL Hollier Street right of way (ROW) line, or right in the middle of the 20-foot building setback identified in the as-built survey by Peninsula Surveying, LLC. GL Hollier Street provides access to 3 parcels (yours and two others). Two of those parcels (including yours) also have road access via Ross Drive. GL Hollier Street has 30-foot wide ROW, does not appear to be constructed to KPB standards, and you have reported that it is not maintained by KPB or a road service area (RSA). The area is relatively flat, with the garage building at the high point of GL Hollier Street.

The photo in Figure 1 was provided by you and has the west edge of your parcel delineated (based on survey markers in the photograph). It shows your buildings relative to the ROW line as well as your vehicle access points onto GL Hollier Street.

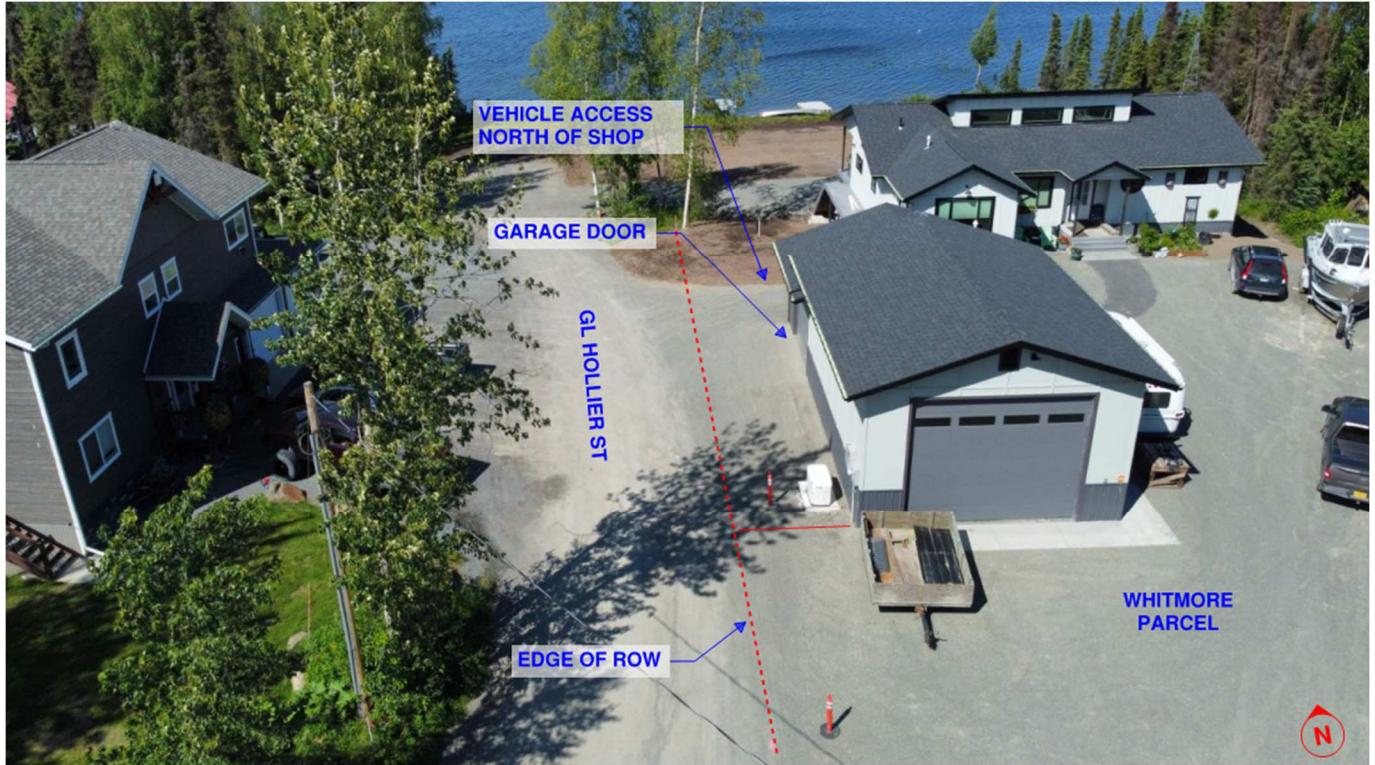


Figure 1 – Overhead view of GL Hollier Street and Whitmore Parcel

KPB evaluates 3 standards when considering set back variances:

1. The building setback encroachment may not interfere with road maintenance.
2. The building setback encroachment may not interfere with sight lines or distances.
3. The building setback encroachment may not create a safety hazard.

### Road Maintenance

Road maintenance activities cannot take place outside of the ROW, so the on-property development should have no effect on maintenance practices.

There could be a concern for on-site development to increase run-off into the ROW, block drainage paths, or result in snow being pushed into the ROW. In the case of the Whitmore property, the garage building is sited on an existing high point between Sports Lake and Ross Drive, so does not affect drainage patterns. Furthermore, we understand that the building's gutters and downspout were recently installed and routed to keep roof runoff out of GL Hollier Street, as well as a culvert installed under your north driveway to facilitate drainage away from GL Hollier Street. Finally, there is adequate room on the Whitmore parcel to accommodate snow storage from your driveways and garage access routes.

If GL Hollier Street were constructed to KPB road standards, they would require the road to be 20 feet wide as a category 1 road, with at least 15 feet of clearing on either side of the road to accommodate ditching or sight lines. As Figure 2 shows, the full width of a standard road could still fit between the centerline of GL Hollier Street and the Whitmore garage, in the unlikely event GL Hollier Street were ever to be upgrade to KPB standards as a publicly maintained road. This also shows there is adequate space to accommodate drainage-enhancing grading if it becomes necessary.

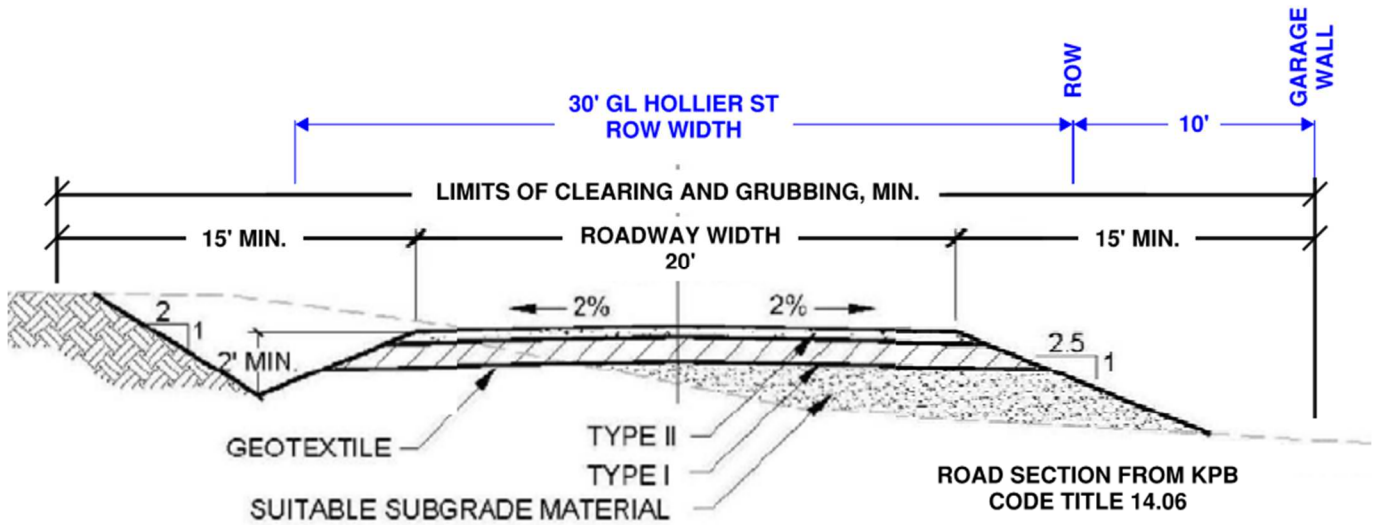


Figure 2 – KPB typical section for Category I roads

### Sight Lines or Distances

Sight distance is an important consideration for motorists for two scenarios:

- For travelers on a road, they need to be able to see a potential hazard in the road, mentally process it, and bring their vehicle to a stop if necessary.
- For motorists entering or leaving a road, they need to be able to see on-coming traffic with enough time to either stop and wait or turn and get clear of on-coming traffic.

The Whitmore garage has no effect on sight distance for motorists traveling on the road. It also has no effect on motorists looking to leave the public roads.

It *could* affect motorists leaving the Whitmore property. Sight distance measurements are guided by the *Policy on Geometric Design of Highways and Streets*, published by the American Association of State Highway and Transportation Officials, which is also referred to as the “Green Book”. Sight distance is measured from a point 14.5 feet back from the edge of the road. The actual edge of the road area of GL Hollier is unclear, but if it were configured to KPB standards, the road would be 20 feet wide in the middle of the 30-foot ROW. This is all illustrated in Figure 3 below, which shows the sight triangle is limited by the length of the road and not affected by the garage. Figure 4 is a photograph showing the sight line between Ross Drive and the Whitmore garage. A forested yard, which is allowed in the building set back, would have much more effect on sight distance.

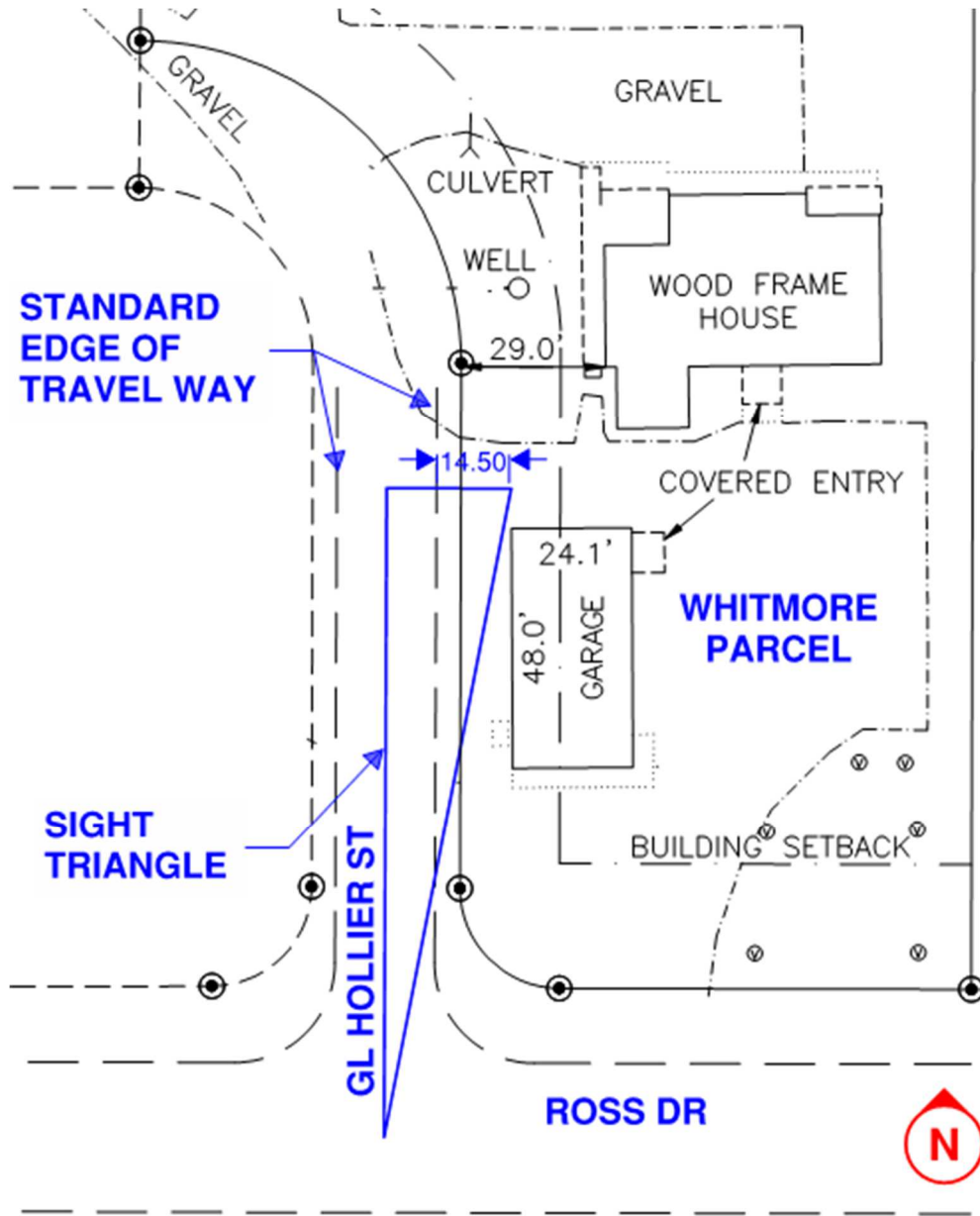


Figure 3 - Sight triangle shown on site as-built from Peninsula Surveying, LLC



*Figure 4 – View of sight triangle from Ross Drive looking north up GL Hollier Street. Construction candles are 1 to 2 feet on-property.*

### Safety Hazard

Since the garage provides space for adequate sight distance, the primary traffic safety concern would be the need to maneuver in the ROW when pulling out of or into the garage space on the north end of the garage. This creates potential conflict points between garage users and through traffic on GL Hollier Street. However, this conflict would exist for any driveway that does not have turn-around space on-site, such as the neighbors across the street who access their garage and parking directly off of the GL Hollier Street ROW. However, driveway access directly onto the street is allowed and the neighbors' wide, multi-vehicle driveway across the street shows it currently functions adequately, so this should not be considered a hazard affected by the requested setback variance.

A common reason for building setbacks is to ensure adequate space for parking outside of the ROW. The Whitmore parcel has plenty of parking on-site so they will not be reliant on the building setback area in front of their garage for parking, ensuring their parked vehicles will not encroach into the ROW or traveled way.

Closing


In summary,

1. Road maintenance activities cannot take place outside of the ROW, the requested setback variance reserves space for runoff if required, and there is adequate space on-site for snow storage, so the requested variance should have no effect on maintenance practices.
2. The Whitmore garage has no effect on sight distance for motorists on GL Hollier Street, and no effect on motorists looking to enter GL Hollier Street from the adjacent parcels.
3. The requested setback variance on the Whitmore parcel will not lead to parking in the ROW or more maneuvering in the ROW, so should have no effect on traffic safety.

Based on the preceding discussion, it is my opinion that the proposed setback encroachment does not adversely impact road maintenance (or the potential for road maintenance), sight distances, or traffic safety.

Sincerely,

**Kinney Engineering, LLC**



Will Webb, PE, PTOE

Senior Engineer

Dear Planning Commission,

We are writing to express our deep concerns regarding a setback violation issue that has had a profound impact on our property and community. Our address is 43680 Ross Dr., and we are adjacent property owners to the Whitmore's, whose recent construction project has encroached upon the setback requirements in Lake Estates Subdivision.

Our story begins on May 4th, 2022, when we reached out to the Borough Code Compliance Officer, Eric Ogren, upon noticing that the Whitmore's had commenced construction, seemingly in violation of setback regulations. At the time of our call, concrete was already being poured, effectively blocking GL Hollier St. and diverting traffic onto our property. We expected swift intervention by the Borough to rectify this situation. (See attachment #1)

Regrettably, the construction continued, and on May 17th, 2022, a Borough Representative inspected the site, revealing that walls had been placed, and construction had proceeded. Our inquiry to Planning Director Robert Ruffner on May 20th, 2022, yielded a response that the Borough was aware of the situation and was awaiting legal clarification on the setback requirements. This delay was concerning, as it appeared that the Whitmore's were building in disregard of established regulations.

The setback requirements were clearly indicated on the plat provided during the property purchase process, a standard practice including the Title Report, which the Whitmore's would have acknowledged. Despite this, the construction seemed to ignore these regulations. Regardless of the



setback regulation the borough was going to enforce, whether it be 20 or 25 foot setback, they were clearly over both of those measurements. The Whitmore's, as owners of Whitmore Appraisal Service LLC, should reasonably be presumed to be well-versed in setback requirements.

As we waited for Borough intervention, the Whitmore's continued construction, even pouring a concrete pad for a generator that further encroached into the setback.

When the Electrical Company wired the shop, they wired it to the corner that was already over the setback. That was intentional, and all parties involved knew of the setback violation before the electrical work had even started, yet they still didn't make those changes. Each act demonstrates their willful disregard. (see attachment #2 and #3)

We were unable to attend the initial public hearing on October 24, 2022, due to our son's scheduled surgery out of state. During this hearing, the Whitmore's stated that the lot was oddly shaped and that they hadn't surveyed the property. The truth is, the lot's shape allows ample space for compliant construction, but the Whitmore's chose an alternative placement to maximize usable space. (See attachment #4)

The impact of their actions extends beyond just us, affecting the Markham Family and all neighbors who use GL Hollier Street.

Our residence is situated along GL Hollier Street, which is not maintained by the Borough and is characterized by substandard road conditions. While the access is theoretically dedicated to a 30-foot width, the road fails to meet these specifications throughout its entirety. This limited space poses challenges, since there is already hardly any room between the road surface itself and the boundary of the GL Hollier access to account for things such as toes and slopes, vehicle adjustments, maintenance and ensuring proper sightlines and distances, and accounting for boundary considerations.

When we initially moved here, GL Hollier Street was in a deplorable state, being nothing more than a dirt road that transformed into mud during adverse weather conditions. In collaboration with our neighbor who previously owned the Markham property, we took it upon ourselves to make substantial improvements. We rented equipment, purchased gravel, and reclaimed asphalt to upgrade the road, effectively mitigating dust issues. This endeavor was a joint effort driven by our shared respect for neighbors and the collective desire to enhance our subdivision.

Regrettably, Whitmore's construction activities have had a detrimental impact on the road improvements we worked diligently to achieve. We have repeatedly requested that they and their dirt contractor, Steam on Wheels, contribute to the road's repair by placing a reclaimed asphalt cap, to control dust. To date, these requests have gone unheeded. It is essential to clarify that we have never implied an exclusive property interest in GL Hollier; we recognize it as a public road. Our aim has always been to enhance the road's condition due to its privately maintained status, a responsibility shared among neighbors.

With the Whitmore's shop encroaching onto GL Hollier Street, snow plowing has become increasingly challenging due to limited space. Their practice of depositing substantial amounts of snow from their private property and the road onto GL Hollier further compounds this issue, essentially obstructing the road (Attachment #7 and #8). This restriction has hampered our snow plowing efforts, making it difficult to keep the road open and creating a massive snow berm that prevented access to our neighbors' home, the Markham family (Attachment #9 ). Emergency services, such as fire trucks and ambulances, would have been unable to reach their property due to this massive snow berm. To address this, the Markham family had to enlist the Whitmore's assistance, utilizing heavy equipment to remove the obstructing snow. We also attempted to engage a professional plow service to push the snow berm back, but these efforts proved unsuccessful. These conditions raise significant visibility and safety concerns for all users of GL Hollier Street.

Furthermore, it's important to address a previous statement made by the Borough attorney,

which suggested that placing snow cleared from the street onto the setback would be considered trespassing. This assertion contradicts the practical reality of snow removal from a 30-foot wide road. As supported by OAH Judge Lisa Toussaint, Snow removed from a 30 foot wide road needs to go somewhere. Logic dictates that when snow is pushed from the road, some amount may need to be placed onto property abutting the road. This would occur whether the road is privately or publicly maintained. The suggestion that the shop will not interfere with road maintenance including snow removal, simply because the setback is on private property where no snow can be placed, is incorrect.

Moreover, it's important to highlight a specific incident that occurred on December 13, 2022, at 10:30 pm. Alaska State Trooper Timothy Collins was summoned to our home by the Whitmore's, who were spending the winter in Hawaii watching their video surveillance. They requested an inspection of their property, alleging that a snow berm was blocking their driveway. However, upon examination, Trooper Collins found that the driveway was not obstructed by a snow berm; and GL Hollier had been freshly plowed (see attachment #10).

This incident occurred the day after a massive snowstorm that brought over 3 feet of snow and high winds, resulting in significant snow drifts throughout the area.

We have diligently sought resolution through the Borough, but the opposition from the Whitmore's, who are seemingly aware of what is required, has been disheartening.

Our introduction here outlines the initial events and concerns that have led us to this point. In the following sections, we will provide evidence to support our case and explain how the setback violation affects the three standards for a setback permit.

Thank you for your attention to this matter.

Standard 1. The building setback encroachment may not interfere with road maintenance.

Findings:

1. The encroachment prevents us from adequately pushing snow berms, leading to narrowed roads and road erosion when the snow melts, necessitating costly repairs.

2. The gutter drain spout on the Northwest side of the shop directs water onto GL Hollier Street, making it challenging for us to access our property and posing the risk of accidents in the winter. (See Attachment #11 and Attachment #12)

3. This same drain spout leads to material washout, potholes, washboard, and gullies on the road, further hindering access and requiring repairs.

4. Lack of proper drainage, like ditches, exacerbates these issues, compounding road damage.

5. The shop's location complicates snow plowing, leading to visibility issues and safety concerns for all GL Hollier Street traffic.

Standard 2. The building setback encroachment may not interfere with sightlines or distances.

Findings:

6. The encroachment reduces the setback to a minimal and unsafe distance, impacting sightlines and traffic safety.

7. The shop's location has shifted traffic onto our property, creating a safety hazard for us and our visitors, as well as confusion regarding property boundaries (See Attachment #13)

8. The close proximity of the shop forces us to back larger vehicles onto Ross Drive, a busier road, raising significant safety concerns.

9. The encroachment poses a safety risk for our family, friends, neighbors, and the owners of the shop and generator.

10. The Whitmore's garage door facing GL Hollier Street limits visibility when backing out, endangering pedestrians, cyclists, and drivers.

11. Traffic may need to reroute onto our property to avoid accidents, placing our family and friends in danger.

12. The lack of space prevents us from executing an offensive fire attack, leaving us only with defensive options, and the radiant heat from the shop threatens our home (see Attachments #14)

13. Delivery trucks, like FedEx and UPS, avoid entering our driveway due to insufficient space for turning, impacting package deliveries and accessibility for larger vehicles.

Standard 3. The building setback encroachment may not create a safety hazard.

Findings:

2. The gutter drain spout on the Northwest side of the shop contributes to icy road conditions on GL Hollier Street, making it challenging for us to access our property and posing the risk of accidents.

5. The shop's location complicates snow plowing, leading to visibility issues and safety concerns for all GL Hollier Street traffic.

7. The shop's location has shifted traffic onto our property, creating a safety hazard for us and our visitors, as well as confusion regarding property boundaries

8. To avoid collision with the shop and generator, we are forced to back larger vehicles onto Ross Drive, which is busier and riskier.

9. The shop's closeness to the road raises safety concerns for our family, friends, neighbors, and the shop and generator owners.

10. The Whitmore's garage door facing GL Hollier Street limits visibility when backing out, endangering pedestrians, cyclists, and drivers.

11. Traffic may need to reroute onto our property to avoid accidents, putting our family at risk.

12. Insufficient space prevents us from employing offensive fire tactics, leaving only defensive options, with the threat of the shop's radiant heat igniting our home.

13. Delivery services like FedEx and UPS avoid our driveway due to space constraints, impacting package deliveries and access for larger vehicles.



Attachment #1, Day one of pouring concrete for foundation, blocking access on GL Hollier.



Attachment #2, Generator beside shop in setback.



Attachment # 3, Generator beside shop in setback. The construction candle and whiskers depict the edge of the road.





Attachment # 4, Photo depicts plenty of space on lot for shop to be built within lot limits.



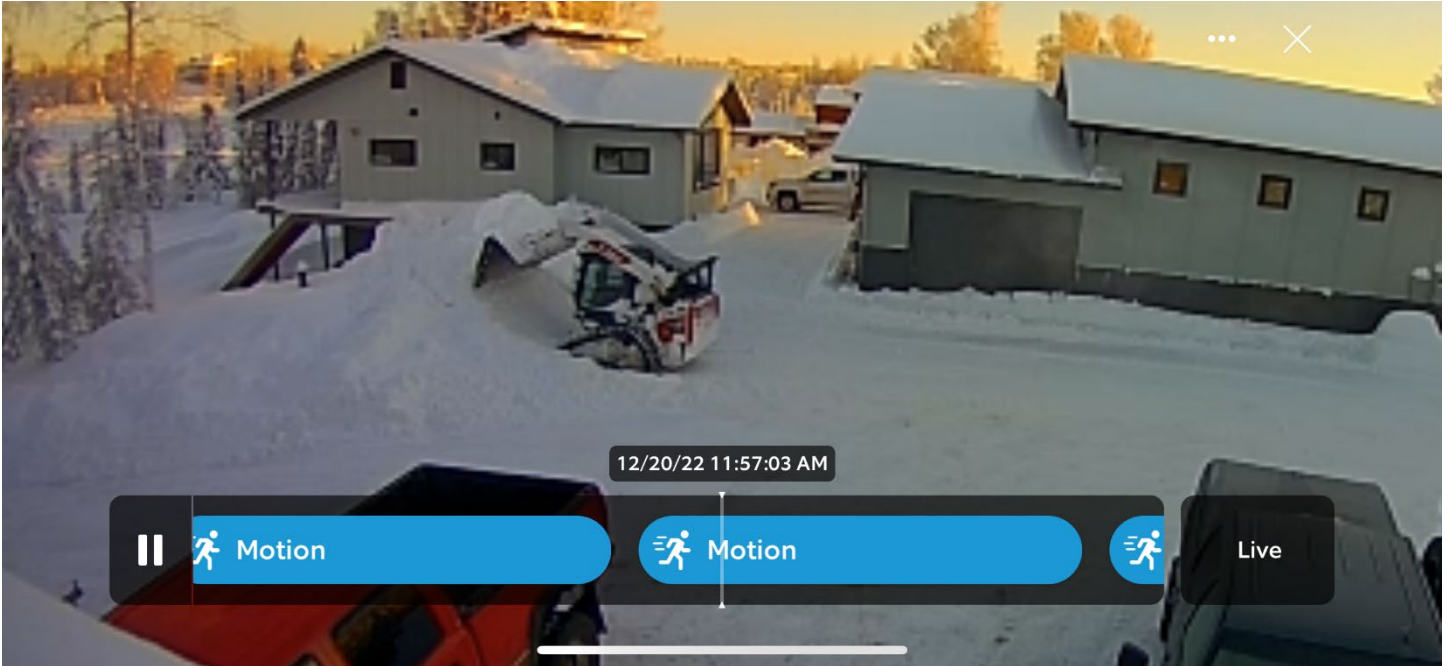
Attachment #5, Survey stakes on Lot 10 before construction began.



Attachment # 6 Survey stakes of Lot 10 before construction began.




Attachment # 7 Plowing snow from private property into GL Hollier



Attachment #8 Plowing snow berm in GL Hollier, essentially blocking access.



Attachment #9 Orange paint marks property line of Taylor's lot 9 and left side of road.

 **Alaska Department of Public Safety**  
**Incident Report**

**Incident: AK22128235**

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**Incident Type:** Civil Issue [CIVL]  
**Incident time:** 12/13/2022 20:07-  
**Reported time:** 12/13/2022 20:07  
**Incident location:** 43664 ROSS Drive, Soldotna, Kenai Peninsula Borough AK USA 99669  
**Incident status:** Closed non-criminal  
**Summary:** CFS #4188 / Caller reported that the neighbors were pushing snow in front of her driveway. I responded to the area and found that the driveway was not blocked by snow and freshly plowed.

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**Incident Activities/Offenses**

- Civil Problem()

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**Involved Persons/Organizations**

**TAYLOR, AUTUMN ROSE**

Gender: Female

**TAYLOR, TROY RICHARD**

Gender: Male

**WHITMORE, NANCY STORY**

Gender: Female

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**Involved Officers**

- Reporting officer; Reporting unit/ #TKC1COLLINS, TIMOTHY K/ DPS

Attachment # 10 Trooper Collins incident report



Attachment #11 Gutter draining into GL Hollier and creating gullies



Attachment #12 Gutter draining into GL Hollier creating icy road conditions.



Attachment #13 Pump truck had to back onto GL Hollier street from Ross Drive, another example of not enough space and the property stake behind the truck indicates the edge of Taylor Property. This pump truck was accessing the Whitmore's portable toilet. He backed over the stake.



SLP Alaska, LLC: 46540 Jo Avenue Kenai, AK 99611: (907) 202-3274 brian@slpalaska.com

To whom it may concern,

My name is Brian Walden. I am a Certified Safety Professional (BCSP #21908), Associate Safety Professional (BCSP #A15379), Occupational Health and Safety Technologist (BCSP #3303), Certified Safety and Health Manager (CSHM #2556), and I am qualified as an expert in premises liability law as presented in the Alaska Court System. I have provided expert witness testimony in numerous litigations in the State of Alaska with specific regard to premises liability. I am an expert incident investigator and pre-incident planning expert as well. I have over 20 years' experience in this field and possess degrees in Fire Service Administration and Occupational Safety and Health. I have extensive training in incident investigation, incident prevention, causal factors analysis, critical human action profiling, fire safety inspections, fire investigation, transportation safety, public safety, and have demonstrated the ability to solve problems as related to these subjects which deem me qualified to provide these services.

I was contracted by Troy and Autumn Taylor to conduct a safety and premises liability inspection at their residence (43680 Ross Drive Soldotna, AK 99669). I arrived at the residence on 11/28/2022 and subsequently observed the neighboring garage/shop nearly in the road. My first concern was the ability to safely get a range of view for driving on GL Hollier Street. With the positioning of the shop/garage (basically) in the roadway, it is difficult to get a full view of the cross traffic on Ross Drive and for people entering or exiting the residence across from the Taylor's home while driving on GL Hollier Street.

My next observation was the rain gutter runoff directly from the shop/garage flowing into GL Hollier Street. This creates troughs in the snow/ice as well as the dirt surface of GL Hollier Street, which may impact the safe usability of

the street. Accordingly, liability may be imposed on an adjoining landowner or lessee if they create a dangerous condition (as clearly described herein).

Further, the closeness of the proximity of the shop/garage to the Taylor's home creates an exposure risk to their home in the event the neighbors' shop/garage were to be involved in a fire event. Although Central Emergency Services (CES) is within 15 minutes to the residence, there are no hydrants in the neighborhood for the response teams to use. This means they will need to access Sports Lake (directly down GL Hollier Street from the Taylors' home). Responders will need to have access to the lake to use as supply water in an offensive fire attack as their tanker holds (approximately) 5,000 gallons of water. A fully involved structure of that size would require more than the capacity of the tanker to extinguish. Additionally, this puts the responding fire service personnel at risk due to the siting of the structure. How does the Borough expect the fire response teams to set up to fight a fire in this neighborhood? As a former professional firefighter/engineer I would find it difficult to stage more than one apparatus in the area to attempt an offensive fire attack.

If we examine the encroachment to the roadway caused by the structure built across the street from the Taylor residence, it is clear the approval to build (approximately 14.5 feet) into the easement causes liability concerns for the neighbor and the borough approving the encroachment. There was actual knowledge of the encroachment at the time of the build, as the Taylor's provided notice to the Borough and the build was suspended for two days. The build negligently creates a hazardous situation for line of sight, street damage from water runoff, difficulty in staging firefighting apparatus, snow removal, daily traffic, etc.



SLP Alaska, LLC: 46540 Jo Avenue Kenai, AK 99611: (907) 202-3274 brian@slpalaska.com I assume GL Hollier Street has been in place for some time, and that the Taylor's and their neighbors have the rights to use the entirety of the street. If the borough has easements recorded that outline the ability of the neighbors, as well as the public, to use the road, it is my assumption the borough is vicariously liable for allowing the building to be sited as built for any damages resulting from the hazards listed in this report. There is a concept in law relating to implied or required easements given certain specific circumstances. That is to say, if an easement must be implied given the prior use of a roadway and that easement is necessary for access, the law may create and imply that easement even when there is no paper document.

Finally, the roadway is necessary for life, fire, and safety requirements, and is encumbered by the encroachment into the roadway. In general, the underlying theme is that adjoining landowners are expected to use their property reasonably without unduly interfering with the rights of the owners of contiguous land. Actions taken by a landowner that appropriate adjoining land or substantially deprive an adjoining owner of the reasonable enjoyment of his or her property is an unlawful use of one's property. According to *Abbinett v. Fox* (103 N.M. 80 Ct. App. 1985) the general law of most states is put well: in that case it is observed that a landowner is entitled to use his/her property in a manner that maximizes his/her enjoyment. However, the enjoyment must not unreasonably interfere or disturb the rights of adjoining landholders or create a private nuisance. It is the duty of the landowner to utilize his/her property in a reasonable manner, avoiding potential injury to, or displacement of, adjoining property owners or causing unreasonable harm to others in the vicinity. In most jurisdictions, compliance with a zoning ordinance will not immunize one from the consequences of an unreasonable use of one's property that results in the invasion of the private rights of his/her neighbor. Invariably, however, violation of zoning ordinances is powerful evidence that the use is unreasonable and, of course, liability for violation of zoning ordinances can be imposed independent of legal actions by the adjoining landowners.

It is the Taylors' assessment that the building of the structure pushed the road traffic further into their property and creates the hazards as described above. I tend to agree after conducting my assessment. I contest that the Borough should never have allowed the construction in the easement for the purposes of permanent structures given all the considerations listed. The structure should be moved back from the roadway which would allow fire response services to adequately stage for fire and life safety response scenarios; safe snow removal considerations; and daily traffic use of GL Hollier Street and Ross Drive.

Thank you,



# Brian Walden

Brian Walden  
Founder & CEO  
SLP Alaska, LLC

## Attachment #14

In conclusion, our journey to address the setback violation issue has been marked by a deep sense of frustration and concern. From the moment we alerted the Borough about the violation and throughout the appeals process, we have consistently encountered obstacles and challenges that seemed to favor our neighbors' interests.

Despite our genuine efforts to seek resolution through proper channels, we couldn't shake the unsettling feeling that the Borough's handling of this case was marred by undue influence and a lack of transparency. The fact that the first administrative judge reversed the Borough's decision, only to see it appealed and remanded back, speaks volumes about the serious flaws in the initial approval process.

We cannot help but question whether our neighbors received preferential treatment or guidance during this ordeal, particularly given their own knowledge of borough codes and their evasive actions, such as paying cash to avoid inspections. Additionally, the dismissive and adversarial stance of the Borough's attorney towards our concerns has been disheartening.

Despite these challenges, we have persisted in our pursuit of justice, as we believe that fairness and adherence to regulations should prevail. We have provided substantial evidence of our standing and the significant errors in the original permit approval. Our commitment to upholding the integrity of the regulations has not wavered.

As we approach the upcoming remand hearing on October 9, we hope that our concerns will finally receive the attention they deserve, and that the process will be guided by fairness and a genuine commitment to upholding the borough's regulations.

We are not seeking special treatment or favoritism; we are simply asking for a level playing field where rules and regulations are applied consistently and without bias. We trust that the Planning Commission will carefully consider the evidence, the flaws in the original decision, and the potential influence that may have affected this case.

We remain hopeful that justice will ultimately prevail, and that our community can continue to rely on the Planning Commission to uphold the integrity of our zoning regulations. We look forward to a fair and just resolution in the upcoming remand hearing.

Thank you for your attention to this matter.

Sincerely,

Troy and Autumn Taylor