Broyles, Randi

KPB 2776

From: Blankenship, Johni
Sent: Monday, August 31, 2020 8:38 AM
Cc: Broyles, Randi; Turner, Michele
Subject: FW: <EXTERNAL-SENDER>SUBJECT: APPLICATION FOR PLANNING COMMISSION, NORTHWEST DISTRICT; LOU OLIVA

Public comment on agenda item.

From: Wayne Ogle <wayne.ogle@yahoo.com>
Sent: Sunday, August 30, 2020 11:46 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>SUBJECT: APPLICATION FOR PLANNING COMMISSION, NORTHWEST DISTRICT; LOU OLIVA

President Cooper and Assembly Members,

It is my pleasure and honor to support Mayor Pierce's nomination of Lou Oliva for the role of Member, KPB Planning Commission, Northwest District.

As a resident of Nikiski, I have known Lou Oliva personally and in official capacities for over ten years. He is a man of great integrity, competency and common sense. As a long time excavation contractor, Lou has a reputation for quality work, on-time performance, on-site safety and customer satisfaction. Lou has routinely donated, at his own great expense, his time and equipment for projects important to our community, such as building the children's playground at the Nikiski Recreation Center.

Lou Oliva has also offered personal time to his community for over 24 years as a volunteer fireman, 18 years on the Nikiski Fire Service Area Board, 10 years on the Road Service Area Board. All these long years of experience, in addition to his excavator contractor business, would make Lou a very valuable contributor to the work of the Planning Commission.

It has come to my attention that a neighbor of Lou's has submitted negative comments about him in regard to his application. This is his right to do so. However, it is no secret that Lou and this neighbor have had contentious issues between them over a period of time . Most of these issues deal with land use between their properties. They have often been referred to borough and state agencies for resolution. The most recent issue has been decided by the Alaska Supreme Court in Lou's favor which assuredly disappointed this neighbor. Throughout all of this, I am not aware of any unlawful or unethical act on the part of Lou. It is merely an issue being handled through the civil process.

Mayor Pierce's nomination of Lou Oliva to the Planning Commission is an excellent choice. I urge you to vote 'yes' to approve Lou Oliva.

Thank you.

Wayne Ogle
Nikiski

Broyles, Randi KPB 2776

From: Blankenship, Johni
Sent: Monday, August 31, 2020 4:46 PM
To: Broyles, Randi
Subject: FW: <EXTERNAL-SENDER>Jeff West's email 8/4/2020 Oliva appointment

-----Original Message-----
From: Heidi Covey <heidicoveyak@icloud.com>
Sent: Monday, August 31, 2020 4:40 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Jeff West's email 8/4/2020 Oliva appointment

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.

Kelly Cooper, President
Assembly Members
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK 99669

Re: Jeff Wes complaint concerning the Oliva appointment to KPB Planning Commission.

My response to Jeff West email concerning the Oliva appointment to the planning commission on August 4th 2020 while the meeting was in process.

It saddened me to hear about the email Mr. West sent to the assembly during, the August 4, 2020 meeting. The email was received during the meeting therefore making it unavailable to the public and Mr. Oliva while assembly was in process. Mr. Oliva was not even allowed to speak to the said accusations of Mr. West., this left all parties involved to their own imaginations until the next meeting. In my personal opinion a violation of Mr. Oliva's rights given to him by the Constitution of our great State and our great Nation.
Mr. west has made many allegations to different state and borough entities over the last few years, all of which have been disproven through multiple court proceedings and physical inspections from various state, and borough employees. I have personally attended all court hearings of which have been initiated by Mr. West, and have been ruled in Mr. Oliva's favor.

Mr. West allegation of weaponizing the permitting process is somewhat confusing. The borough and state have the permitting processes in place for the protection for We the people, the borough and the States interest. Mr. Oliva has obviously use the process according to the law and ordinances with judgment and determination being authorized by those entities in those government positions, guided by said state and local governing laws. Mr. West has challenged the process at great expense of precious time and tax dollars that we just don't have in this season at both the local Borough and State levels.

I am requesting that the KPB assembly appoint Mr. Oliva to the position of the planning commission in which our Borough Mayor has requested. I have known Mr. Oliva for almost 40 years, he has been a very good friend. I can attest

to the countless hours Mr. Oliva has donated to our community. He has served on the RSA board, fire service area board for Nikiski, he has also served the community of the Nikiski as a volunteer fire fighter for over 20 years, and more. It has been my experience that those who choose to volunteer are extremely valuable to any community or organization. To not appoint Mr. Oliva to the planning commission would be a grave disservice to our borough and the community of Nikiski. His passion to serve others is quite possibly ingrained in his DNA, even to the expense and sacrifice of his own family time. He has donated not only his physical time but numerous amounts of equipment that a good number of residence in my area can attest to. I would strongly encourage the appointment of Mr. Louis Oliva to the planning commission based on the service he has already given to this community.

Sincerely Heidi Covey

Sent from my iPhone

KPB 2776

August 31, 2020

Kelly Cooper, President
Assembly Members
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK 99669

Re: Jeff West's complaints concerning Oliva Appointment

Dear President Cooper and Assembly Members:

This letter is my response to Jeff West's email with subject: "Concerning Oliva Appointment to Planning Commission." Mr. West's email and its attachments were submitted at 6:51 pm on 8/4/20, while the Assembly meeting was in progress.

It was a surprise to me that during public session, members of the Assembly would comment on Mr. West's written comments attacking a nominee's character, especially when his email, letter and photograph were submitted while the meeting was in progress, and the targeted nominee had no prior notice or opportunity to respond. In the past, I have seen a point of order used to deny Assembly consideration/comment on public comments that were so late.

For 35 years, I have lived at my home at Sara Jane Street which I constructed in 1985. Jeffrey West and Bonnie West built next to us in 2007 and have been our neighbors in Nikiski for 13 years. Since 2017 (3 years ago) when the Wests began to compete with us to buy property owned by the Alaska Mental Health Trust (AMHTA), Mr. West has been obsessed with me, my wife, and our family activities. Mr. West has attacked my character and made numerous false accusations against me before, during and after the Trust Land Office's decision to sell Government Lots 17 and 35 to us instead of selling these properties to the Wests. Mr. West has filed several complaints and appeals against Stacy and me.

West's complaint about "Protective Order:" Mr. West knows that Judge Moran denied his false petition for a protective order against me after a hearing on **1/16/20,** in Case No. 3KN-19-00938 CI, because Mr. West didn't prove that I harassed or stalked him.

West's complaint about "Trespass:" Mr. West knows that his complaint was settled with the AMHTA in **2017**. Although Mr. West knew that this issue was settled in **2017,** and that we **bought** the property he is complaining about in **2019**, the Wests continue to complain about "trespass" and "encroachment" on our property as if they were live issues. The Wests took their complaints to the Kenai superior court and the Supreme Court as well; and lost both cases.

West's complaint about "weaponizing the KPB permit process": It is Mr. West who has "weaponized" the KPB permit process, not us. We have a plan to develop our property, and we apply for and obtain the necessary permits for our development as we proceed with our plan. The permits for ROW encroachment, maintenance, and construction are all necessary parts of our development plan.

Here is a list of permits we have obtained for our property development plan:

- RC# 12496 (permit to construct fence in habitat protection area);
- 19-145C (permit for ROW maintenance Park Rd-Sara Jane St for snow removal);
- 19-148E (permit for ROW encroachment Park Rd-Sara Jane St.);
- 20-012P and 20-12P.A (amended permits for ROW construction to improve platted turnaround at end of Park Rd);
- 20-025D (permit for driveway access to ROW)
- RC# 12680 (permit to construct a pathway to Daniel's Lake)

Mr. West has complained about and objected to nearly every one of these permits; and he appealed 19-145C to the Road Service Area Board and lost that appeal. However, with that appeal and his false petition for protective order Mr. West did succeed in stopping all work under our permits for nearly two months.

West's complaint about "blocking public access:" Mr. West's statements about snow removal and the connexes are false. The Borough Road Service Area plowed and maintained Park Road to its end before Mr. West's property line; the RSA has never plowed and maintained ADL 220394 (or platted Craig Drive)". I have maintained and done the snow plowing on ADL 220394 (which the Borough RSA also refers to as "Park Road"). The Borough RSA lists platted Craig Drive as "Park Road" even though it is not developed or maintained. Borough RSA maintenance is shown in the green line on the attached image from the Borough's web site. [Notes have been added.]

ADL 220394 is the driveway to our home. I applied to the State of Alaska in 1984 for a permit to build a driveway across Government Lot 17 to our home on Government Lot 19. Ever since I built the driveway, only me and my family use it, because it dead ends at Government Lot 19. Now Stacy and I own Government Lot 17 and the connexes are placed within our Government Lot 17. The connexes do not block the West's driveway entrance to their property or their street number used for emergency identification.

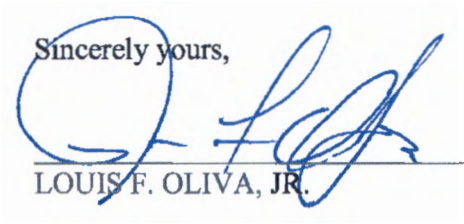
In April 2020, Mr. West complained about snow removal and the connexes to the Nikiski Fire Department. EMS Senior Captain Harrison Deever inspected the site. We were informed (and believe Mr. West was informed too) that our connexes did not impede the Fire Department. This can be verified with Nikiski FD.

Under our permits, we are improving the platted Craig Drive as part of our development plan. We are using our driveway -- ADL 220394 -- as a haul road for gravel and materials. The connexes are placed in ADL 220394 as a safety precaution in response to Mr. West's actions in ignoring other safety precautions, such as pylons, then filing litigation against us. We also filed a petition to vacate ADL 220394 and platted Sara Jane Street. Our vacation petition is with the Planning Department right now.

The Mayor's office has vetted my nomination to the Planning Commission and I respectfully encourage the Assembly to pass over and not give attention to Mr. West's personal vendetta toward me.

Thank you for your consideration.

Sincerely yours,



LOUIS F. OLIVA, JR.


NEIGHBORS RD
Government Lot 35
Oliva
Government Lot 17
Oliva
34
PARK RD
SARA JANE ST
West
West
Oliva
Government Lot 19
Oliva
Note: Lot Lines Are Not Accurate

1 September 2020

Dear Assembly Members:

Subject: Further Comments Regarding the Nomination of Lou Oliva to KPB Planning Commission

I am Jeff West of Nikiski, AK and reside at 52395 Park Road on Daniels Lake. I have been a property owner in KPB since 1979. My wife and I have been adjacent landowners to Mr. Oliva for 33 years, and neighbors for over 13 years. As such, I believe I am qualified to offer comments on this nomination.

It is not my nature to comment unfavorably about anyone. However, in this case exposing the facts must triumph over my inclination to remain silent. Please understand also, I make these comments knowing there will be consequences to me personally.

Mr. Oliva has intentionally and maliciously engaged in actions that serve to intimidate, harass and cause fear to us, to restrict driving access to our property, as well as to diminish the enjoyment, utility, beauty and value of our home and property. These actions are ostensibly an attempt to cause us to abandon our home. Additionally, Mr. Oliva has engaged in trespass on surrounding property and has blocked public access to Daniels Lake for several decades through various encumbrances and actions. The following is a partial list of actions / events which have caused harm to us, nearby properties and/or the public:

Trespass / Encroachment:

Mr. Oliva trespassed onto Alaska Mental Health Trust land without permission for several years then cleared land, made a major excavation and constructed a barn and corral around 2014. See Photo B attached. He earlier constructed an alternate access road with inadequate drainage across the same land causing an environmental concern including ponding, dead mature trees etc. The Mental Health Trust elected to sell the land to Mr. Oliva, a decision that I challenged in court. In the end, the sale was upheld by the court as the sale to the trespasser was a matter of expediency to close the matter of seriously encroached and devalued land. Two statements of December 29, 2017 by the Mental Health Trust Land Office (TLO) Director summarize their actions as follows:

> ***"By selling the parcels to the Olivas, the TLO was able to resolve both past and future unauthorized use issues in a cost effective and practical manner, receiving compensation for past use, without incurring unnecessary legal expenses or risk of litigation."***
>
> ***"Given these facts, the Decision ultimately enabled the TLO to (1) avoid incurring the additional time and expense addressing the trespass and (2) resulting in the Trust receiving compensation for the Olivas' prior unauthorized use of Trust land."***

It is obvious that Mr. Oliva was not exonerated of trespass by the court's ruling to uphold the TLO Decision. Rather it was a matter of convenience for the Trust to dispose of land that had been seriously trespassed on. Various other use encroachments were also observed on four other surrounding lots; thus, the five-lot sale went to the encroacher - - - because it was easy for the Trust. And the court system deferred to agency discretion.

Blocking / Restricting Public and Private Access:

The portion of Park Road north of our residence consists of two parallel 30' wide ROWs. See Photos A, B and C attached. The developed portion (northern) is an ADL (confirmed public easement connecting to Daniels Lake access) while the undeveloped portion (southern) is a KPB managed ROW. They combine to form a 60'

access that was maintained by the KPB since 1987. During most of this period, summer access was blocked by an unauthorized, closed and posted steel gate. Winter access was possible with an open gate allowing KPB snow plowing and turnaround past our property. This all changed in February 2018 when Mr. Oliva moved two connexes into the established roadway in front of our home and closed his gate thus making snow removal by KPB grader impossible. Rather than request removal of the obstructions, the KPB RSA discontinued road maintenance past our home although this road section had been "grandfathered" into the RSA maintenance decades earlier. The last two winters Mr. Oliva has plowed the snow to our detriment. The two connexes have grown into a tethered "train-like" obstruction of connexes and 8' x 20' steel plates over 200' long! Also, the obstructions have migrated toward our property several times to the point that they now restrict vehicular access to our property as well as block the street-view of our home including our street number used for emergency identification. The past two winters the connexes have been used for hay storage necessitating daily retrieval of the hay by Bobcat equipment and associated noise and mess. Since September 2017 there have been at least three requests to Mr. Oliva from the State DNR and the KPB to open the ADL easement to the public. To this day, the access continues to be blocked.

Weaponizing the KPB Permit Process:

Mr. Oliva has ownership of property totally surrounding our property (except for the lake itself) and has applied to the KPB on at least five occasions over the past year for permits that cause harm or intimidation to us. In one case an application was made for road "improvements" for 1700' of KPB roads in our area; yet only the 100' portion in front of our home was actually completed and in a threatening manner (see protective order comments below). In another permit request, Mr. Oliva was granted permission to develop an equipment turnaround 60' in diameter in the only possible driveway location for our new home site. I worked with the RSA for weeks to reconsider this damaging project and finally the permit was rescinded only after Mr. Oliva's actions caused the driveway to our current residence to be completely unusable. Currently 95% of our property line, except for the lakeshore, is defiled with unsightly and dangerous walls, connexes, gravel extraction, a junked car, machinery, used construction material, etc. Much of this damage has been accomplished under the guise of approved KPB permits that were executed in a manner much different than stated on the permit application.

Protective Order:

I filed a protective order against Mr. Oliva within the past year after a series of near misses when he drove toward me in a threatening and reckless manner while I was walking or driving on Park Road near our home. Within a few hours after being served the protective order, Mr. Oliva violated the order to direct his crew to operate a brush cutter in the KPB ROW where my wife and I were at work. We were given no notification of what was about to happen when the brush cutter drove toward us.

General Annoyance and Nuisance:

Upon completion of the "privacy fence" described below, Mr. Oliva advised me that "… the tricks will continue until you (that's me) stop talking to others about things that are none of your business." I believe things like personal security and safety, public and private access, property value, and common decency, are indeed my business. Below are a few examples of what I can only assume are "tricks":

- "Privacy Fence" on our eastern border (see Photos G and H):
    - Constructed from scrap steel and uncleaned used drill pipe
    - Piles driven without notification with exceedingly high noise levels with no mitigation attempt
    - Safety concerns from sharp projections on scrap steel, and no arc flash protection while welding, potential contamination near our water well, unstable connex stacking, etc.
- Playing a boom-box at very high volume directed at our home from behind the fence for up to 16 hours per day, seven days a week, for over six weeks

- Horse manure collected and piled adjacent to the fence
- Relocating a junked ’57 Buick on the property line opposite our new home site
- Does not follow KPB code regarding encroachments on ROWs, setback requirements, snow placement from private property into KPB ROW’s, water well locations per plat, etc.
- And unfortunately, more……

From what I have witnessed over the years – trespassing on public land, blocking public access to the lake, and our property devaluation – it is hard for me to imagine that Mr. Oliva could make good public interest decisions.

“The measure of a man’s real character is what he would do if he knew he would never be found out.”

Thomas Macaulay

I am available if you have questions. Or, if you wish to witness this situation in person, you are always welcome at our property. You can find us - - right behind the first two connexes at the south end of Park Road, where others seldom venture.

Thank you for listening to my concerns and comments.

Sincerely,

Jeffrey R. West

Comments for Attached Photos:

- **Photo A:** Sketch using Rappe Park Subdivision plat and situation as of May ’20. ADL obstructions have since moved south and expanded in numbers and scope both east and west.

- **Photo B:** Drone photo of April 2017 provided by Mental Health Trust confirming barn and corral in structural trespass. MHT Gov’t Lot 17, sale property, is highlighted. Note huge building not in compliance with standard 20’ KPB setback and causing snow trespass onto our property as well as our property devaluation in excess of $100K per KPB appraisal one year after the huge building construction.

- **Photo C:** Duplicate of above drone photo taken early May ’20 to show negative impact to public and private access as well as our property in past three years.

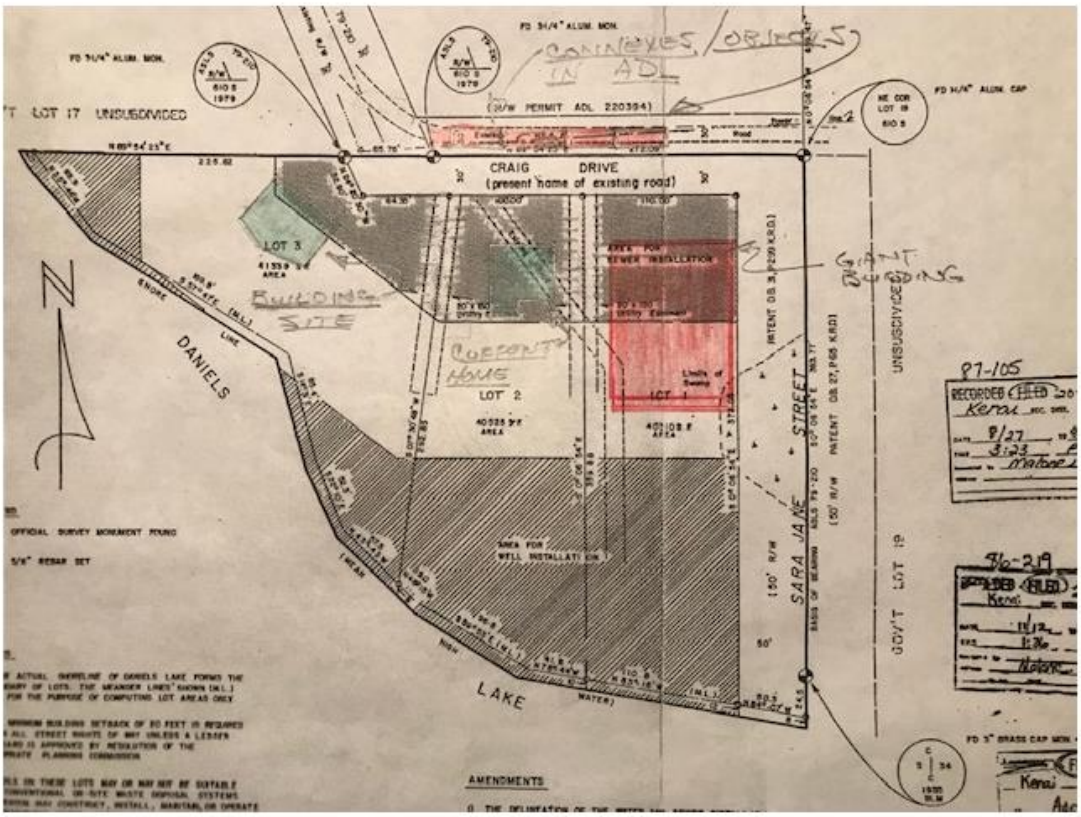
- **Photo D:** Street view of our current home – August ‘20.

- **Photo E:** View out of our driveway – August ’20.

- **Photo F:** Our improvised driveway – August ’20.

- **Photo G:** “Privacy fence” that includes essentially all of our 360’ eastern border.

- **Photo H:** “Privacy fence includes unstable connex stacking that leans into our property constituting a safety hazard.

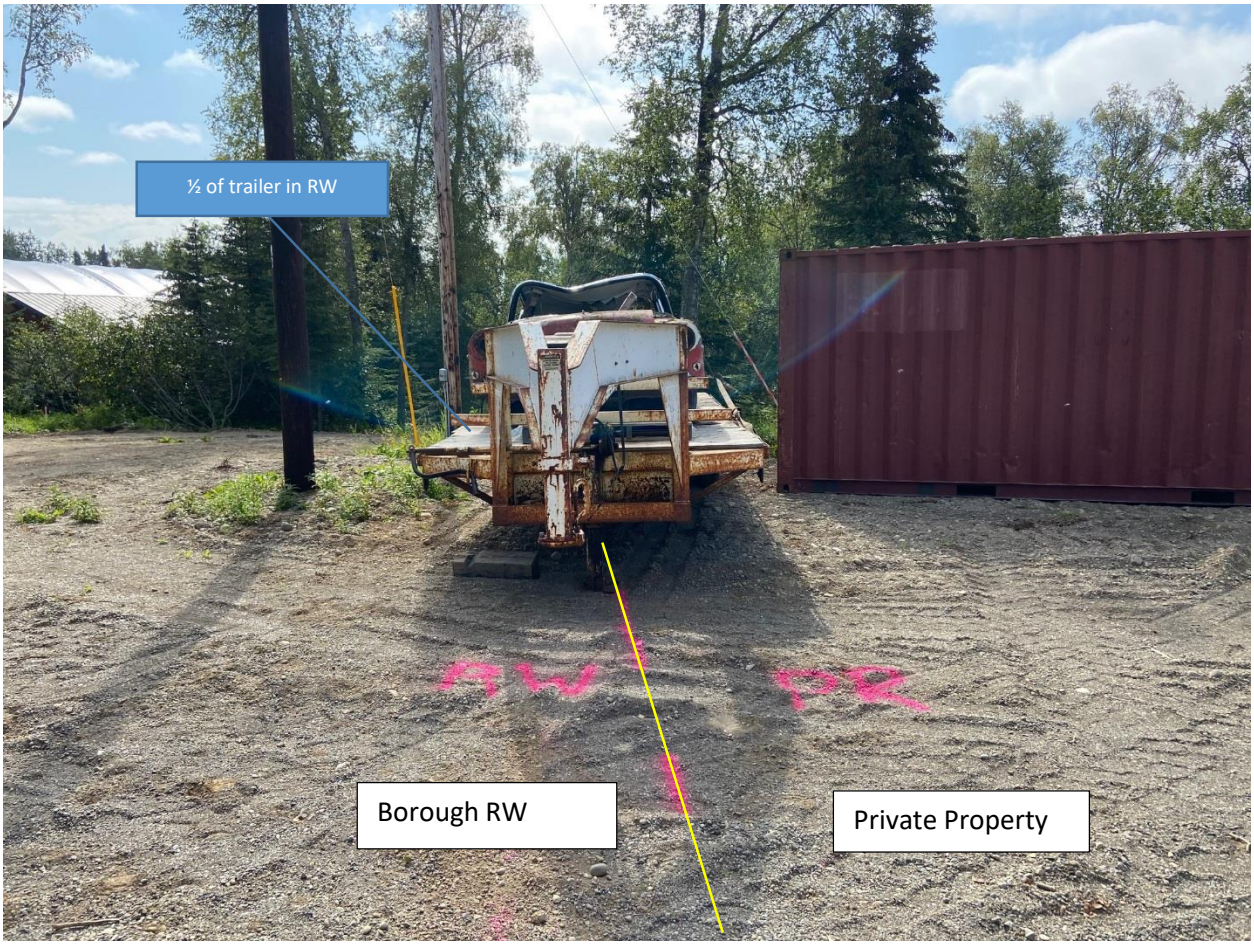

CRAIG DRIVE
(present home of existing road)
LOT 3
LOT 2
LOT 1
BUILDING SITE
DAIRMONT HOME
AREA FOR SEWER INSTALLATION
AREA FOR WELL INSTALLATION
DANIELS LAKE
SARA JANE STREET
GOVT LOT 19
AMENDMENTS
87-105
RECORDED
Kenai


"K"LI

Park Rd Field Report

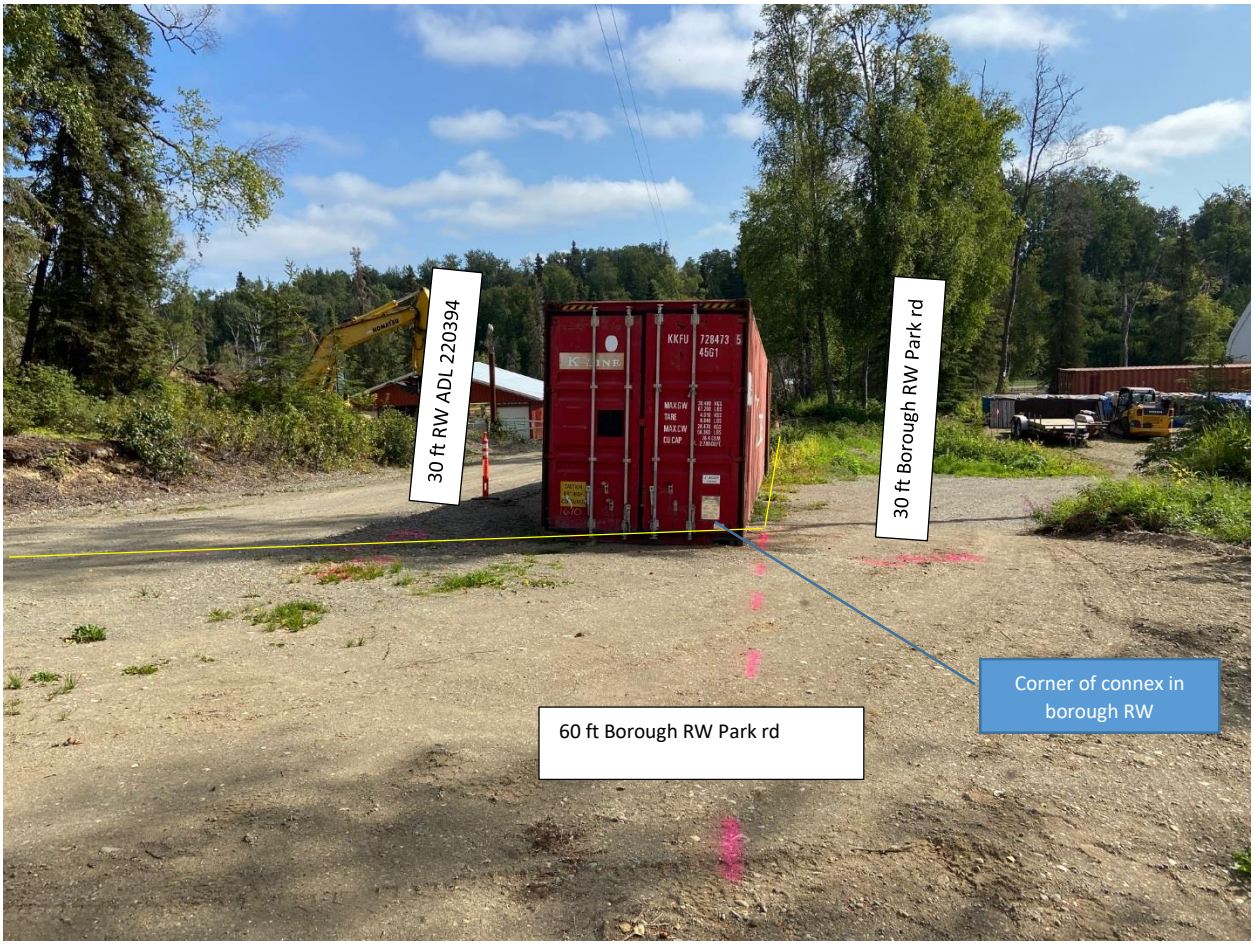
8-17-20

This morning I went out to Park rd to verify weather or not a couple of items were stored in the Right of Way. The items in question were a trailer with a classic vehicle and a connex. See pictures below.


½ of trailer in RW
Borough RW
Private Property

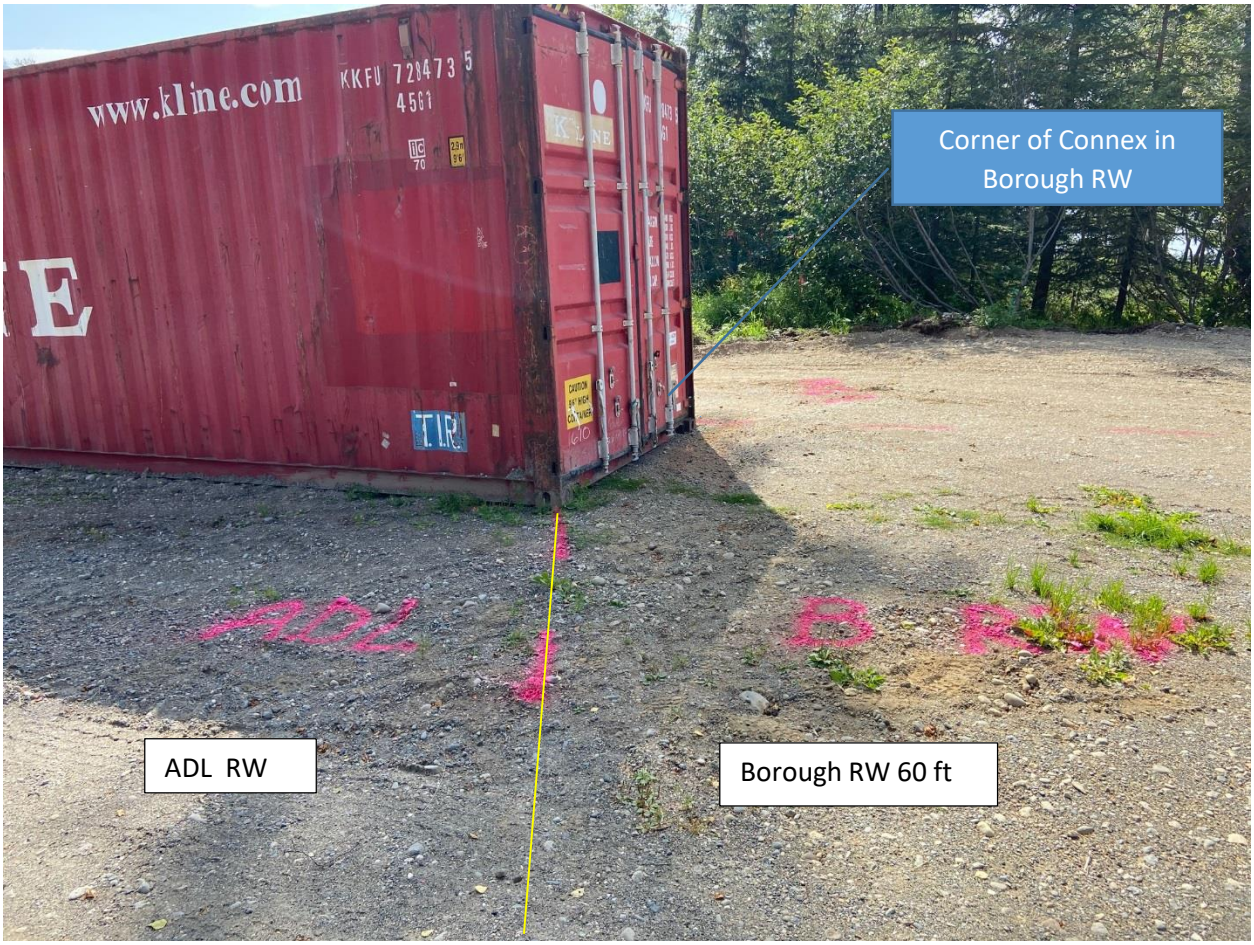

½ trailer in RW
60 ft Borough RW
Private property

After review it appears that about half of this trailer has been placed in the Park Rd Borough Right of way.

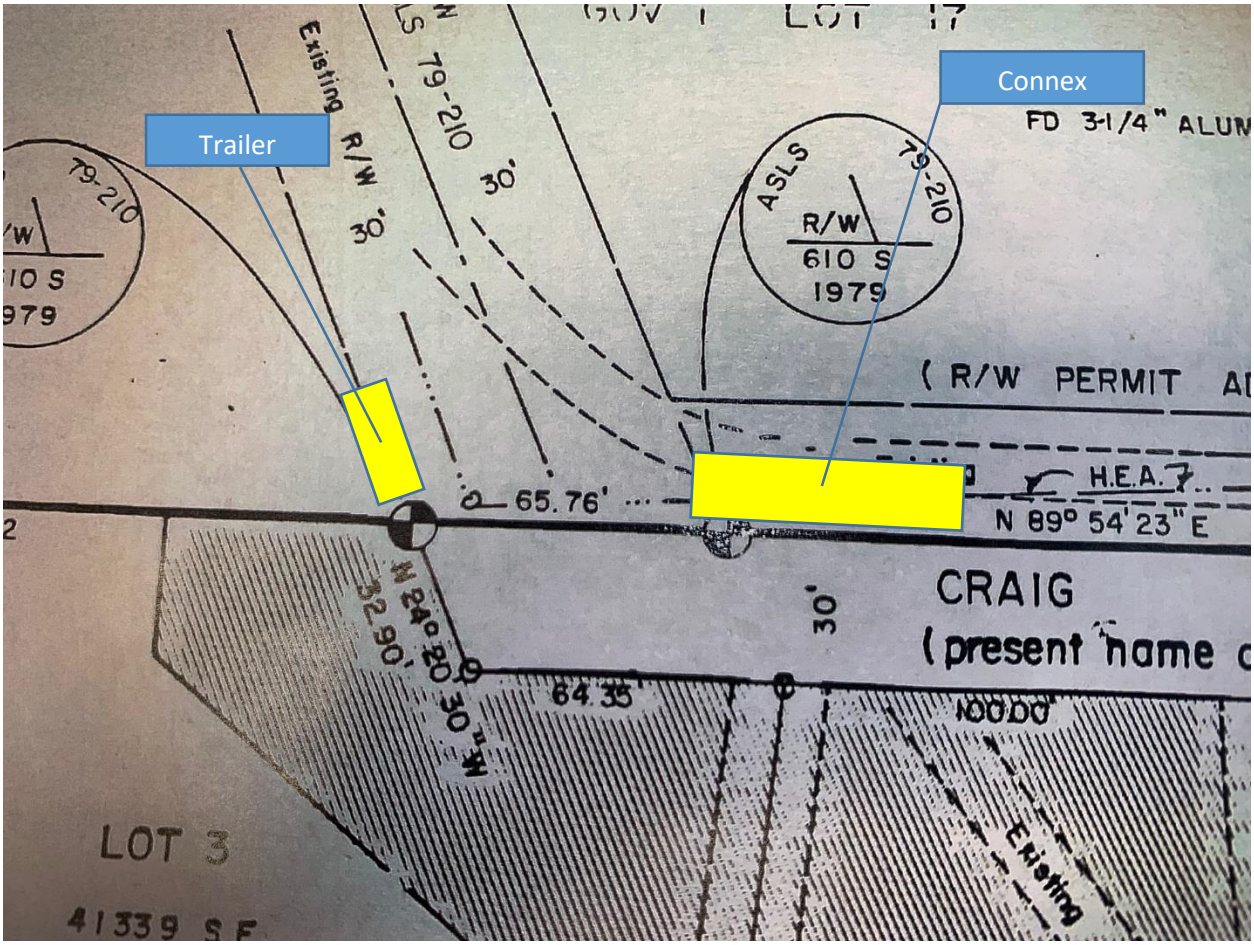

30 ft RW ADL 220394
30 ft Borough RW Park rd
Corner of connex in borough RW
60 ft Borough RW Park rd


Corner of Connex in Borough RW
Borough Right of way


Corner of Connex in Borough RW
K LINE
www.kline.com
ADL RW
Park Rd 60 ft RW


www.kline.com
KKFU 728473 5
4561
T.I.R.
Corner of Connex in Borough RW
ADL RW
Borough RW 60 ft

After review, the corner of this connex has been placed in the Borough Right of way.


Trailer
Connex
Existing R/W 30'
79-210
30'
ASLS
R/W
610 S
1979
FD 3-1/4" ALUM
(R/W PERMIT
H.E.A.
65.76'
N 89° 54' 23" E
CRAIG
(present home
30'
N 24° 20' 30" W
32.90'
64.35
LOT 3
41339 S.F.
Existing

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources
DIVISION OF MINING, LAND & WATER
Southcentral Regional Land Office
550 West 7th Avenue, Suite 900C
Anchorage, Alaska 99501-3577
Main: 907.269.8503
TTY: 711 or 800-770-8973
Fax: 907.269.8913

August 10, 2020

Louis and Stacy Oliva
PO Box 8567
Nikiski, AK 99635

Mr. and Mrs. Oliva:

On April 20, 2020, the Southcentral Regional Land Office (SCRO) received a report of the presence of shipping containers, and additional impediments to use such as snow berms and boulders within a public access easement in the Nikiski area. The obstructions referenced in the report are potentially located within a public access easement managed by this office. Specifically, ADL 220394, located within Lot 17, Section 34, Township 8 North, Range 11 West, Seward Meridian, Alaska. To date our office has not received any application to vacate the easement created under ADL 220394.

The obstructions as reported on April 20, may be negatively impacting the use of the public access easement by an adjacent property owner. Public safety concerns have been raised with regard to whether these obstructions would prevent emergency vehicles from being able to access a private residence. As such this office will seek abatement of any unauthorized activities within ADL 220394.

Public records indicate that you are currently the underlying property owner and have previously utilized the easement to access other properties; we have inferred that the obstructions may have been placed at your direction. If this is the case, please be aware that the public has a free right of use of this easement and adjoining street dedications to access private property and Daniel's Lake; and that the obstructions, if present, must be removed. Alternatively, you are encouraged to notify this office if you do not own the obstructions so that we may contact the proper party or proceed to remove the obstructions if they are unclaimed.

SCRO is committed to public access to and across state lands and easements retained under its management. If you have any additional information or comments please respond to Frank McGuire at (907) 269-7480 or frank.mcguire@alaska.gov within two weeks (August 24, 2020) of receipt of this letter to discuss this matter.

Sincerely,

Frank McGuire
Natural Resource Specialist III

CC:
Colleen Moore, Department of Law

THE SUPREME COURT OF THE STATE OF ALASKA

JEFFREY WEST and BONNIE WEST, Appellants, v. ALASKA MENTAL HEALTH TRUST AUTHORITY; STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, TRUST LAND OFFICE; LOUIS OLIVA; and STACY OLIVA, Appellees.	Supreme Court No. S-17407 Superior Court No. 3KN-18-00087 CI O P I N I O N No. 7468 – July 24, 2020

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Kenai, Lance Joanis, Judge.

Appearances: Hilary D. Stump and Carl Bauman, Gilman & Pevehouse, Kenai, for Appellants. Colleen J. Moore, Senior Assistant Attorney General, Anchorage, and Kevin G. Clarkson, Attorney General, Juneau, for Appellees Alaska Mental Health Trust Authority and State of Alaska, Department of Natural Resources, Trust Land Office. Robert J. Molloy and Kristine A. Schmidt, Molloy Schmidt LLC, Kenai, for Appellees Louis Oliva and Stacy Oliva.

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

STOWERS, Justice.

I. INTRODUCTION

In October 2017 the Trust Land Office (Land Office) issued a best interest decision in favor of selling five lots of land owned by the Alaska Mental Health Trust (Trust) to Louis and Stacy Oliva. Oliva's neighbors, Jeffrey and Bonnie West, submitted late comments opposing the sale. The Land Office accepted those comments as a request for reconsideration, but it ultimately denied West's request and proceeded with the sale. West appealed to the superior court, which affirmed the best interest decision. On appeal West argues that the sale was not in the Trust's best interest, the Land Office violated a number of statutes and regulations, and the agency's public notice regulation is invalid. We conclude that West's first argument lacks merit and the remaining issues have been waived for various reasons; we therefore affirm the best interest decision.

II. FACTS AND PROCEEDINGS

A. The Land Office And Background Facts

The Alaska Mental Health Trust Authority (Trust Authority) was created in 1991 to act as trustee for the lands granted to Alaska by the federal government in 1956 through the Alaska Mental Health Enabling Act.[1] The Department of Natural Resources (DNR) was tasked with the actual management of Trust lands, and it created the Land Office as a special unit to handle that duty.[2] Prior to any decision involving the sale of Trust lands, the Land Office is required by regulation to consult with the Trust

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[1] *See* AS 37.14.001; AS 47.30.011. *See generally* ch. 66, SLA 1991 (establishing Trust Authority); *Weiss v. State* (*Weiss II*), 939 P.2d 380, 382-85 (Alaska 1997) (detailing events prior to Trust Authority's creation).

[2] *See* AS 44.37.050(a) ("To carry out its duties under AS 38.05.801, the Department of Natural Resources shall establish a separate unit with responsibility for management of the mental health trust land."); 11 Alaska Administrative Code (AAC) § 99.010 (2018) (describing Land Office's duties and authority).

Authority's Resource Management Committee.[3] The Land Office's executive director makes the final decision whether a sale is in the Trust's best interest.[4]

In a January 2017 consultation with the Resource Management Committee, the Land Office proposed to "offer up to 100 Trust properties" for sale each year from 2018 to 2020, including three of the five lots at issue in this appeal. Those five lots — referred to as Lots 17, 22, 35, 36, and 37 — are located on Daniels Lake near Nikiski and are adjacent to Oliva's property. Only Lot 17 has a common boundary with West's property. Notice of sale was posted on Lots 17 and 35 in late April 2017 and the Land Office commissioned an appraisal of those two lots. The appraiser's report noted encroachments and overturned gas containers on Lot 17, but it assessed the properties based on the hypothetical conditions that the lots were clean and vacant. The report valued Lot 17 at $93,000 and Lot 35 at $80,000, and recommended the lots be sold as-is for the highest return.

Oliva submitted his application in late May seeking a negotiated purchase of those two lots as well as Lots 22, 36, and 37. In response, the Land Office commissioned another appraisal for the three additional lots, which were valued collectively at $145,000. The appraiser did not note any encroachments or other potential issues for those lots. Based on Oliva's offer and the appraisal reports, the Land Office again consulted with the Resource Management Committee in early August regarding the potential negotiated sale of the five lots to a "neighboring land owner."

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[3] *See* 11 AAC 99.030(c)-(d); *Committees*, ALASKA MENTAL HEALTH TR. AUTHORITY, https://alaskamentalhealthtrust.org/about/governance/committees/ (last visited Apr. 8, 2020) (describing Resource Management Committee's role as "advising the [Land Office] on managing the Trust's non-cash assets including land and natural resources").

[4] *See* 11 AAC 99.010(b), (d); 11 AAC 99.020(b).

The Land Office stated it would seek "approximately 20-30% above the appraised values" and estimated the total revenue at around $410,000. The consultation report noted several "structural encroachments" placed by Oliva on Lot 17, including a barn and a manmade pond, and reasoned that "the sale would generate revenue for the Trust while solving an ongoing trespass/encroachment issue." The Resource Management Committee approved the negotiated sale without objection.

West met with the Land Office to discuss his interest in purchasing Lots 17 and 35 in August and submitted an application to buy those two lots. West "provided a firm verbal offer of up to 30% above" the lots' appraised values "contingent upon no competition," because he was "uninterested in getting into a bidding war" with Oliva. The Land Office conducted a site visit in early September along with a DNR land surveyor. The surveyor was able to find several field monuments with a metal detector and noted that the property boundaries appearing on Alaska Mapper and the Kenai Peninsula Borough's mapping service both contained erroneous boundary lines at odds with the U.S. Bureau of Land Management's plat map. Based on the corrected boundary lines, the surveyor confirmed several structural encroachments on Lot 17, but determined that "there did not appear to be any structural trespass" on Lot 22. The surveyor's memorandum concluded by noting that "[t]he exact extent of structural or use trespass can only be determined by a complete survey performed by a professional surveyor."

West conducted his own site visit in September and then informed the Land Office that he "can no longer support [his] original offer to purchase Lot 17 as is." West suggested subdividing both lots prior to sale and again offered "appraisal value plus a 30% premium" for only the unencumbered portions of Lots 17 and 35 "to help with the cost of subdividing and to avoid a bidding war." West later suggested that he would be open to "the possibility of subdividing [the encumbered] portion off after acquiring the entire lot" in order to avoid "be[ing] eliminated from consideration." When the Land

Office asked if he was interested in purchasing any of the other parcels, West replied that his "interest remains exclusively in Lots 17 and 35."

In contrast, Oliva stated that subdivision would be unacceptable, but agreed to "pay reasonable compensation" for past use of Lot 17. In October, Oliva offered a $10,000 settlement based on three years of unauthorized use at $3,000 per year, "plus an additional $1,000." This initial offer was rejected and Oliva subsequently agreed to pay $21,000 separate from any land sale. Oliva also made an initial offer of 30% above the appraisal price on Lot 17 and 20% above for the other four lots. After some negotiation, Oliva revised his offer to 30% above the appraised value for both Lots 17 and 35, and 25% above for the remaining three lots for a total purchase price of $406,150.

B. The Best Interest Decision And West's Request For Reconsideration

At the end of October 2017 the Land Office drafted its best interest decision to accept Oliva's proposal, finding it to be "in the best interest of the Trust." The decision noted that Oliva "ha[d] been using a portion of Trust land to house horses," but had "remitted $21,000 to pay in full the past unauthorized land uses." West's offer was also mentioned as an alternative option, but one that would not "resolve unauthorized use" and would result in continued accrual of management costs for the three remaining lots "as a non-performing asset." Proceeding with the sale to Oliva, on the other hand, would "alleviate the Trust from managing a non-performing asset and resolve an unauthorized use, while generating maximum revenue." The decision included an inconsistency determination listing a number of statutes that were not applied as "inconsistent with Trust management principles and inapplicable to Trust land by [agency] regulations," including the notice provisions in AS 38.05.945.[5] Notice of the

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[5] This statute governs certain state land sales and requires a robust public notice process, such as by publishing notice for two weeks "in newspapers of statewide (continued...)

decision was to be provided in accordance with 11 AAC 99.050; anyone who submitted comments could subsequently file for reconsideration.

Public notice began on November 2 with the best interest decision to be posted on the Land Office's website along with courtesy copies being sent to the state website, the trustees, the municipality, and Oliva as the purchaser. The notice provided a physical mailing address as well as an email address for submitting comments and listed December 7 as the cutoff date. The Land Office also called West to inform him directly where the decision would be posted and explained that "anyone has a right to submit a written comment within that 30 days for consideration if they disagree." The Land Office formally adopted its decision on December 8, noting that "no comments were received." That same day West requested a stay in order to submit late comments, alleging that he only recently found out about the comment period and that the Land Office had previously advised him that he had no "options for recourse or comment." West stated that his challenge would focus primarily on "[u]nfair business practices" and whether the sale was in the Trust's best interest.

West submitted his written comments on December 11. West alleged a number of factual omissions from the best interest decision, including that Oliva's "house and beach development" encroached on Lot 22. West criticized the decision to sell the lots to Oliva as "encourag[ing] future encroachment by rewarding illegal behavior." West argued that he paid the $500 application fee for the privilege of being "kept in the loop," but alleged that he "never had a place at the negotiating table." Instead, the sale was "a package deal" on all five lots, and West was "never . . . given an opportunity to revise [his] bid." West did not, however, suggest that he would have

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[5] (...continued)
circulation" or even directly notifying "parties known or likely to be affected by the action." AS 38.05.945(b)(3)(A), (D).

raised his offer on Lots 17 and 35 or that he would have offered to purchase more lots had he been "kept in the loop," nor did he explicitly make any increased offer in his comments. West acknowledged that the Land Office followed its regulatory requirements for public notice, but still generally "challenge[d] the ethics involved."

Rather than reject West's comments as untimely, the Land Office opted to treat them "as a request for reconsideration." Nevertheless, the Land Office denied West's request and upheld the best interest decision in its entirety. The Land Office refuted the notion that it required a block sale, but noted that Oliva was "not interested in purchasing anything less than all five parcels" while West was only interested in two. The Land Office explained that the potential alternative of subdividing Lot 17 was "ultimately abandoned . . . because it became apparent that the parties were unlikely to agree on how to subdivide the lots, and such a subdivision would have cost money, without any increase in value to the lots." And because Oliva's final offer not only matched West's offer for Lots 17 and 35 but included three more, "the [Land Office] reduced its management burden and realized an above-market gain" by selling all five to Oliva. The agency also rebutted West's allegations of any additional encroachments and argued that its success in obtaining payment for Oliva's past use "without incurring unnecessary legal expenses or risk of litigation" instead "demonstrates that the [Land Office] has and will continue to seek compensation for unauthorized use of Trust land."

C. Superior Court Proceedings

West appealed the best interest decision and the Land Office's denial of his request for reconsideration to the superior court. The court held oral argument in February 2019. In addition to those issues raised in his comments to the agency, West argued that the Land Office failed to abide by various state statutes or provide adequate explanation for its decision. The State countered that West had not alleged any real harm because he received both actual and constructive notice, and his late comments were

ultimately considered by the Land Office. The State also pointed out that West was not disputing the validity of any of the agency's regulations,[6] and West did not address that issue on rebuttal.

The superior court affirmed the best interest decision "in large part in agreement with the briefing by the State." Applying the "reasonable basis standard" to the Land Office's legal interpretations, the court found that West failed to "show[] how the . . . Land Office could obtain a better return for the Trust and its beneficiaries" other than through its sale to Oliva. The court noted that "the only applicable public notice requirements for the proposed sale . . . were in 11 AAC 99.050(a)," and regardless West "did receive actual notice" and was "given a full opportunity to participate." The court also briefly commented on the validity of 11 AAC 99.020(f),[7] stating only that it "is clearly consistent and necessary to implement" the Trust Authority's governing statutes. Because the agency "did consider all reasonable alternatives" and "did comply with applicable procedural requirements," the court affirmed the Land Office's best interest decision.

West now appeals.

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[6] West argued that the Land Office should have applied AS 38.05.945 for public notice, but at no point did he suggest that 11 AAC 99.050 was an invalid agency regulation prior to this appeal. West first mentioned the issue of preemption in his reply brief before the superior court in regard to 11 AAC 99.030(e), but without reference to any specific legal authority.

[7] This subsection states: "Unless otherwise specified in this chapter, every provision of law applicable to other state land applies to the management of trust land unless its application is determined, in [a] written finding . . . , to be inconsistent, in whole or in part, with [trust management principles]." 11 AAC 99.020(f). Most of the Land Office regulations contain a similar clause. *See, e.g.*, 11 AAC 99.030(e); 11 AAC 99.040(c); 11 AAC 99.050(b).

III. STANDARD OF REVIEW

We review the merits of administrative decisions on appeal de novo.[8] For questions of law in administrative appeals we apply the reasonable basis standard "when the interpretation at issue implicates agency expertise or the determination of fundamental policies within the scope of the agency's statutory functions."[9] Under that standard, we only "seek to determine whether the agency's decision is supported by the facts and has a reasonable basis in law."[10]

IV. DISCUSSION

A. History Of The Alaska Mental Health Trust

The issues West raises require us to revisit the history of the Alaska Mental Health Trust for the first time in over twenty years.[11] This is also the first appeal of a Land Office decision to come before us.

Congress passed the Alaska Mental Health Enabling Act (Act) in 1956 partially for the purpose of creating and implementing "an integrated mental health program" in the soon-to-be State of Alaska.[12] To effectuate this goal, the Act granted up

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[8] *Handley v. State, Dep't of Revenue*, 838 P.2d 1231, 1233 (Alaska 1992) (citing *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 903 (Alaska 1987)).

[9] *Haar v. State, Dep't of Admin., Div. of Motor Vehicles*, 349 P.3d 173, 180 (Alaska 2015) (quoting *Marathon Oil Co. v. State, Dep't of Nat. Res.*, 254 P.3d 1078, 1082 (Alaska 2011)).

[10] *Id.* at 180-81 (quoting *Davis Wright Tremaine LLP v. State, Dep't of Admin.*, 324 P.3d 293, 299 (Alaska 2014)).

[11] *See Weiss II*, 939 P.2d 380 (Alaska 1997).

[12] Pub. L. No. 84-830, § 201, 70 Stat. 709, 709 (1956).

to "one million acres from the public lands of the United States in Alaska" to the State.[13] The Act provided that those lands

> shall be administered . . . as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands . . . may be sold . . . or otherwise disposed of in such manner as the Legislature of Alaska may provide . . . . The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act.[14]

Despite this directive, the State did not maintain a separate account for Trust lands for over 20 years, and in 1978 the legislature formally redesignated those lands "as general grant land" to be managed by DNR and disposed of in accordance with applicable state law.[15] A number of individuals filed a class-action lawsuit in 1982 alleging a breach of the public trust as a result of that redesignation.[16] In *Weiss I* we held that the State was not empowered to unilaterally terminate that public trust,[17] and we remanded to the trial court for further proceedings, stating that its goal should be "to restore the trust to its position just prior to the conveyance effected by the redesignation legislation."[18]

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[13] *Id.* § 202(a), 70 Stat. at 711.

[14] *Id.* § 202(e), 70 Stat. at 712.

[15] *State v. Weiss* (*Weiss I*), 706 P.2d 681, 682 (Alaska 1985) (quoting ch. 181, § 3(a), SLA 1978).

[16] *Id.* at 682.

[17] *Id.* at 683.

[18] *Id.* at 684.

Following our decision in *Weiss I* the legislature made a number of attempts at settling the class-action litigants' claims,[19] including the creation of the Trust Authority in 1991.[20] The negotiations culminated in the passage of House Bill 201 in 1994,[21] which in essence created the present statutory scheme governing the management and disposal of Trust land.[22] Relevant to our discussion here, HB 201 directed DNR to "establish a separate unit with responsibility for management of the mental health trust land,"[23] which was further instructed to manage Trust land "consistent with the trust principles imposed on the state by the Alaska Mental Health Enabling Act."[24] Secondary to those trust principles, HB 201 required Trust land to be managed "under those provisions of law applicable to other state land" and directed DNR to adopt regulations addressing, *inter alia*, "management for the benefit of the trust."[25] Complying with this directive, DNR created the Land Office and in 1997 promulgated the regulations at issue here.[26]

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[19] *See Weiss II*, 939 P.2d 380, 384-85 (Alaska 1997).

[20] *Id.* at 385; *see also* ch. 66, §§ 10, 26, SLA 1991.

[21] *Weiss II*, 939 P.2d at 385; *see also* chs. 5-6, FSSLA 1994.

[22] *See Weiss II*, 939 P.2d at 385-86.

[23] AS 44.37.050(a); ch. 5, § 22, FSSLA 1994.

[24] AS 38.05.801(a); ch. 5, § 17, FSSLA 1994.

[25] AS 38.05.801(b)-(c).

[26] *See* Alaska Administrative Code Register 141, at 38-46 (Apr. 1997) (adding chapter 99 to title 11).

Not all of the parties agreed with the proposed settlement, however, and the issue once again ended up before us in *Weiss II*.[27] One area of disagreement was HB 201's land management provisions; the litigants argued "that the management regime is 'illegal' because it allegedly does not require trust lands to be managed 'solely in the best interest of the beneficiaries.' "[28] However, recognizing the "express language" in HB 201 requiring "manage[ment] consistent with . . . trust principles," we agreed with the superior court's reasoning "that the settlement's management standard conforms with the requirements of the trust."[29] We concluded that the superior court did not abuse its discretion when it approved the settlement terms contained in HB 201.[30] The Land Office's regulations were not addressed in *Weiss II*.

B. The Land Office's Decision To Sell The Five Lots In Question To Oliva Was In The Trust's Best Interest.

The central question in West's appeal is whether the Land Office's best interest decision actually furthered the Trust's best interest. The applicable agency regulation lays out five "management principles" that the Land Office relies on to determine whether a sale is in the Trust's best interest.[31] Of particular relevance here is the first principle of "maximization of long-term revenue from trust land."[32]

West argues that the Land Office's decision "did not maximize the return to the Trust" and thus the sale was not in its best interest. The crux of West's argument

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[27] 939 P.2d at 386.

[28] *Id.* at 395.

[29] *Id.* (quoting AS 38.05.801(a)).

[30] *Id.* at 402.

[31] 11 AAC 99.020(c).

[32] 11 AAC 99.020(c)(1).

is that he "would have paid more" or "would have offered to purchase all five parcels" if the Land Office had given him the opportunity. As the State points out, however, West's present willingness to increase his offer after-the-fact "is not supported by the record." Throughout the proceedings West only exhibited interest in Lots 17 and 35; indeed, rather than affirmatively increasing his offer or seeking to compete with Oliva, he instead *decreased* his offer and sought "to avoid a bidding war." Although West touts his continued "willingness to negotiate," that does not offer support to his present contention. The Land Office's denial of reconsideration noted that whereas West never increased his offer, Oliva matched West's offer of 30% above fair market value on Lots 17 and 35 and exceeded it by offering 25% above fair market value for three more lots. Furthermore, because Oliva was "only interested in purchasing all five parcels" and the parties were unable to agree on subdivision, selling Lots 17 and 35 to West "would have resulted in additional management costs" for the remaining three lots and "would not have resolved the unauthorized use issues."

West's secondary argument is that the Land Office "le[ft] potential revenue on the table" by not "pursu[ing] the claims for trespass and encroachment on the four other parcels of land." This contention is likewise devoid of support in the record, aside from West's own unsubstantiated allegations. To the contrary, the Land Office was able to negotiate an additional $21,000 settlement for past encroachments, more than double Oliva's initial offer. The Land Office's site visit uncovered no evidence of encroachment on any lots other than Lot 17. Altogether, the total proceeds from the land sale and settlement exceeded the Land Office's estimated projection by $17,150. A review of the whole record reveals ample evidence that supports the best interest decision. It was therefore reasonable for the Land Office to conclude that the sale of five lots to Oliva maximized revenue and was in the Trust's best interest.

C. West's Remaining Arguments Were Not Raised Below And Are Deemed Waived.

West additionally argues that the Land Office's public notice regulation is inconsistent with the governing statute and is thus invalid. However, West has waived this argument as it is raised here for the first time. Issues that are "inadequately briefed or raised for the first time in a reply brief" on an administrative appeal to the superior court are considered waived.[33] The validity of 11 AAC 99.050 was not one of the nine issues West initially brought for review before the superior court. In his opening brief before the superior court, West never suggested that any of the Land Office's regulations were invalid, nor did he cite any case to provide the applicable legal standard.[34] West first questioned the validity of the agency's regulations in his reply brief, but he again failed to cite any applicable case law in support and at no point did he imply that the public notice regulation was invalid. Nor did West squarely raise the issue at oral argument before the superior court. Instead, the State specifically pointed out that West never alleged the invalidity of any regulation, and West did not contest that characterization on rebuttal. The superior court likewise did not appear to understand West to have been challenging the regulations' validity and only briefly noted the general presumption of validity in passing. West now argues for the first time that 11 AAC 99.050 is an invalid regulation. But this issue has been waived.

West also argues that the Land Office violated its own regulations and a number of other statutes. But none of these issues were raised in his initial comments

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[33] *Alyeska Pipeline Serv. Co. v. State*, 288 P.3d 736, 743 (Alaska 2012).

[34] Although West argued opaquely that "regulations do not trump statutes," he cited no authority for this proposition and only discussed a legislative audit and some newspaper articles.

to the Land Office.[35] West's remaining arguments are thus waived for failure to initially raise them before the administrative agency.[36] With no other issues properly before us, we affirm.

V. CONCLUSION

We AFFIRM the Land Office's best interest decision approving the sale of five lots of Trust land to Oliva.

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[35] *See* AS 38.05.035(*l*) (limiting points on appeal to those presented for reconsideration); 11 AAC 99.060(a)-(c) (providing for appeal contingent on request for reconsideration). West's late comments to the Land Office — which were accepted as a request for reconsideration — focused exclusively on the Trust's best interest and what he described as "[u]nfair business practices." The present statutory and regulatory issues were not raised until West appealed to the superior court. West's validity challenge was also not raised in his initial comments, but that failure is potentially excusable as the validity of a regulation falls outside the scope of what an agency has authority to decide. *See* AS 44.62.300(a); AS 44.62.560(e); AS 44.62.570(b). Regardless, failure to adequately brief an issue before the superior court is fatal. *See Alyeska Pipeline*, 288 P.3d at 743.

[36] It is a well-established rule of appellate review that "it is inappropriate for courts reviewing appeals of agency decisions to consider arguments not raised before the administrative agency involved." *Walker v. State, Dep't of Corr.*, 421 P.3d 74, 78 (Alaska 2018) (quoting *1000 Friends of Md. v. Browner*, 265 F.3d 216, 227 (4th Cir. 2001)); *accord* 2 AM. JUR. 2D *Administrative Law* § 512 (2014). Although the superior court addressed each of West's arguments below and the applicability of issue exhaustion was never briefed by the parties, we nonetheless decline to reach issues not adequately preserved. We reiterate that the superior court is generally not obligated to pass on issues not raised to the administrative agency when acting as an intermediate appellate court. *See Thoeni v. Consumer Elec. Servs.*, 151 P.3d 1249, 1256-57 (Alaska 2007).