

AGENDA ITEM E. NEW BUSINESS

ITEM 1 - CABIN HOPPERS SUBDIVISION

<b>KPB File No.</b>	2021-160
<b>Plat Committee Meeting:</b>	January 24, 2022
<b>Applicant / Owner:</b>	Freddie's Roadhouse, Inc., Freddie Pollard Jr., and Sheila K. Best all of Kenai, Alaska
<b>Surveyor:</b>	Jason Schollenberg / Peninsula Surveying, LLC
<b>General Location:</b>	Marquis Street, Arneson Avenue, and Matson Street, Ninilchik

<b>Parent Parcel No.:</b>	185-498-10, 185-498-18, and 185-498-19
<b>Legal Description:</b>	Parcel 1 Plat Waiver Resolution 93-07 (S1/2 NE1/4 SE1/4 Excluding portion within ROWs), HM 93-15 and Tracts 3 and 4, Anna's Acres, Plat HM 2007-126, Section 9, Township 2 South, Range 12 West, Homer Recording District
<b>Assessing Use:</b>	General Commercial and Residential
<b>Zoning:</b>	Rural Unrestricted
<b>Water / Wastewater</b>	On Site

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STAFF REPORT

**Specific Request / Scope of Subdivision:** The proposed plat will finalize a vacation of a portion of Arneson Avenue right of way as well as dedicate Freddie Lane Right of way. The plat will involve three parcels that range in size from 4.2 acres to 12.5 acres.

**Location and Legal Access (existing and proposed):** The proposed subdivision is within the Caribou Hill recreation area near Ninilchik. The property is located near Mile 16 of Oil Well Road, a 100 foot wide right of way maintained by the borough. Anderson Avenue and Matson Street provide legal access from Oil Well Road to the subdivision. Both are dedicated 66 foot wide right of ways that are improved but not maintained by KPB.

A driveway from Matson Street extends through the 18 acre parent parcel and provides physical access to Tracts 1-4 of Anna's Acres, Plat HM 2007-126. Tracts 1-4 contain multiple improvements. This plat will dedicate Freddie Lane, a 60 foot wide right of way, centered on the existing drive.

A structure is located within the portion of Arneson Avenue that is being proposed to be vacated.

The proposed plat will affect two blocks. Both blocks will be closed. Arneson Avenue, Marquis Street, Anderson Avenue, Matson Street, and proposed Freddie Lane will define the northern block. That block will be compliant with block lengths. The southern block, defined by Arneson Avenue, Marquis Street, Boley Avenue, seismic line right of way, Matson Street, and proposed Freddie Lane, will have one section of the block longer than allowable lengths by 100 feet. The right of way for both blocks are affected by steep terrain. The right of way vacation and new right of way dedication will not hinder, or improve, the block length issue. ***Staff recommends the plat committee concur that an exception is not required nor additional right of way dedications required as this platting action will not generally change the existing block lengths***

An exception has been requested for 20.30.100 – Cul-de-sacs. The request states “Arneson Avenue has not been constructed. The right of way being dedicated with this plat (shown as Freddie Lane) is currently a constructed road. Arneson Avenue extends only 65' to the east of Freddie Lane, in order to provide legal access to Tract 3A. This plat would create a natural T-type turnaround where Freddie Lane intersects Arneson Avenue.” Per KPB Code 20.30.100(B), T-type turnarounds may be allowed on a case by case basis. ***Staff recommends the planning commission concur the exception to KPB 20.30.100 is not required, as the t-type turnaround will meet code requirements and provides an adequate turn around area.***

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: The RSA has no comment at this time.
SOA DOT comments	No comment

**Site Investigation:** The southern portion of proposed Tract 3A and Tract 4A are affected by a riverine ecosystems as depicted per the Kenai Watershed Forum wetlands mapping. The area has been depicted on the preliminary plat.

Steep slopes affect the southwest corner of proposed Tract A, the western portion of Arneson Avenue, the south portions of proposed Tract 3A, and the south portion of Tract 4A. The top and bottom of the steep areas are depicted and labeled on the drawing.

The southwest portion of proposed Tract 3A is subject to the Anadromous Waters Habitat Protection District as Silver Salmon Creek is located just south of the subdivision. **Staff recommends the Anadromous Waters Habitat Protection District be depicted and labeled on the drawing and the plat note per KPB 20.30.290 be added to the plat.**

KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments  B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: KPB\maldrige  C. State Parks Reviewer: Russell, Pam Comments: No Comments
SOA Fish and Game	Alaska Dept of Fish and Game has no objections to the proposed platting actions, Public access to public lands and waters will not be affected.

**Staff Analysis** The preliminary subdivision is within the Caribou Hills area. Right of Way Map, Plat HM 84-115, referred to as the Ninilchik ROW Map, subdivided thirteen sections. The plat dedicated 66 foot wide right of ways centered on seismograph lines as well as 66 foot right of ways on all 1/16 and 1/4 aliquot line and section lines. The Right of Way Map, HM 84-115, is a paper plat with no field survey. Terrain was not considered with the right of way dedications and steep terrain or low wet areas affect many right of ways. Local trails, although often crossing private lands, are used for physical access. Subsequent subdivisions have divided lands and provided right of way dedications in practical areas or where trails were already being used for access.

A plat waiver, PC Resolution 93-7, created the parent parcel located to the north of Arneson Avenue. Parent parcels Tract 3 and 4, south of Arneson Avenue, were created with the recording of Anna's Acres, HM 2007-126.

The portion of Arneson Avenue abutting the parcels within the subdivision is not constructed. There is currently a structure located within the dedicated right of way. The preliminary plat proposes to vacate the right of way and the associated utility easements as well as reconfigure the lots. The structure will be within proposed Tract 4A. The large parcel to the north will be subdivided into two parcels by the dedication of a right of way over the top of the existing driveway. Per KPB GIS imagery, Tracts 1-4 use the driveway for physical road. Neighboring Tract 1 and Tract 2 are owned by the subdividers.

The Planning Commission at their January 10, 2022 meeting heard the right of way vacation of a portion of Arneson Avenue and associated utility easements. The vacation was unanimously approved. The Kenai Peninsula Borough Assembly will be hearing the vacation at their February 1, 2022 meeting. They will have the opportunity to consent or veto the Planning Commission decision.

When a right of way is vacated, the vacated lands attach to the lot or land bordering from which the dedication came from, in most cases, in equal proportions. The preliminary plat shows the vacated area not being attached in equal proportions. The final plat will require owner acknowledgment that states they understand and agree to allow the vacated right of way to be attached to the neighboring parcels as depicted. **Staff recommends the certificate of ownership and dedication include the statement, "... all easements to the use shown and accept the vacated lands being apportioned as shown."**

KPB GIS imagery depicts multiple items on the lots within the subdivision. Staff is unable to determine how many are permanent structures. **Staff recommends when the field survey is performed, any encroachments be disclosed so they may be addressed and if encroachment exist staff requests a note be placed on the final plat to indicate that acceptance of the plat by the Borough does not indicate acceptance of any encroachments.**

The change in the right of way dedication and the creation of new building setbacks may result in structures within the 20 foot building setback limits. **Staff recommends any structures found to be within the new building setbacks during the field survey, they should be depicted and labeled on the plat. A plat note stating the structures pre-date the setback shall be added.**

Due to a delay with the title companies, the Certificate to Plat has not yet been delivered. In the interest of time, **Staff recommends that the planning commission concur that the plat can be reviewed at this time and Staff can review the certificate to plat when it is delivered. Staff will bring the plat back to the plat committee if there are any items in the report that need to be addressed.**

If a beneficial interest holder affects the property, then staff will send notice of the proposed plat to the beneficial interest holder. The beneficial interest holder will be given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

If the property is not affected by a beneficial interest holder, then notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states beneficial interest holders affect the property.

Tract A and Tract 4A exceed 200,000 square feet and a soils analysis report is not required. Tract B is 196,586 sq. ft. and Tract 3A is 184,694 sq. ft. A soils report was not prepared for the parent parcel Tract 3. KPB code requires a soils report for Tract B and Tract 3A, and an engineer will sign the final plat. An exception to a wastewater review has been requested. Appropriate notes will be required on the final plat.

The property is not within an advisory planning commission.

**Utility Easements** Right of Way Map, Plat HM 84-115, granted 10 foot utility easements adjoining all rights of way. Anna's Acres, Plat HM 2007-126, stated that in addition to the 10 feet adjacent to the rights of way, the full 20 foot setback was for utility easement purposes within 5 feet of all side lot lines.

The right of way vacation petition included the vacation of associated utility easements. Per plat note 1, there will be 10 foot utility easements, increasing to 20 feet within 5 feet of the side lot lines, on the new dedication and along the end of the right of way. The plat correctly depicts the utility easements and does note those being granted by this plat and those from parent plats.

If the Certificate to Plat identifies any additional easements of record then, **Staff recommends that the easements of record be depicted and noted on the plat.**

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

**Utility provider review:**

HEA	
ENSTAR	No comment or recommendations
ACS	
GCI	Approved as shown.

**KPB department / agency review:**

Addressing	<p>Reviewer: Haws, Derek  Affected Addresses:  17637 MATSON ST</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names:  MATSON ST  ARNESON AVE  MARQUIS ST</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: Yes</p> <p>List of Approved Street Names:  FREDDIE LN</p> <p>List of Street Names Denied:</p> <p>Comments:  17637 MATSON ST on TRACT B will be changed to a FREDDIE LN address.</p>
Code Compliance	<p>Reviewer: Ogren, Eric  Comments: No comments</p>
Planner	<p>Reviewer: Aldridge, Morgan  There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments:  There are not any material site issues with this proposed plat.</p>
Assessing	<p>Reviewer: Bruns, Matthew  Comments: No concern from Assessing Dept.</p>

The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

## **STAFF RECOMMENDATIONS**

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### **KPB 20.25.070 – Form and contents required**

**Staff recommendation:** *final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.*

A. Within the Title Block

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

**Staff recommendation:**

- *Revise the title block to show the parent parcel as follows, 'Parcel 1, Plat Waiver resolution 93-7 (HM 93-15) and Tracts 3 and 4, Anna's Acres, Plat HM 2007-126.'*
- *Include in the title block that this plat is finalizing a right of way vacation.*
- *Add Freddie's Roadhouse, Inc. as one of the owners. (Pending Certificate to Plat)*

G. The status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the propose subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

**Staff discussion:** *The surrounding parcels have been identified with lot numbers per HM 84-115. The aliquot lot descriptions can remain as is, or can be replaced with the lot numbers per HM 84-115. This is at the surveyor's discretion.*

H. Approximate locations of low wet areas, areas subject to inundation, areas subject to flooding or storm water overflow, and the line of ordinary high water. This information may be provided on an additional sheet if showing these areas causes the preliminary plat to appear cluttered and/or difficult to read;

**Staff recommendation:** *Provide a label for the low wet areas that are depicted on the plat.*

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

**Staff recommendation:** *Structure is within the dedicated right of way. The plat will correct the encroachment. Other encroachments may be present and plat notes shall be added if additional encroachments are determined during the field survey.*

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### **KPB 20.30 – Subdivision Design Requirements**

**Staff recommendation:** *final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.*

20.30.150. Streets-Intersection requirements.

A. Street intersections shall be as nearly at right angles as possible, and no intersection shall be at an angle of less than 60 degrees. Where acute street intersections are designed, a minimum 50-foot radius corner at the right-of-way line of the acute angle shall be provided.

B. Offset intersections are not allowed. The distance between intersection centerline shall be no less than 150 feet.

C. Intersections of access streets with arterial streets or state maintained roads shall be limited to those intersections required for safe access consistent with KPB Title 14.

D. Intersections of access streets with arterial streets or state maintained roads must be designed to the American Association of State Highway and Transportation Officials (AASHTO) standards.

**Staff recommendation:** *Provide a 50 foot radius on the southerly right of way boundary at intersection of Freddie Lane and Matson Street.*

20.30.190. Lots-Dimensions.

A. The size and shape of lots shall provide usable sites appropriate 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. Generally, lots shall be square or rectangular. Lots shall be at least 60 feet wide on the building setback line. The minimum depth shall be no less than 100 feet, and the average depth shall be no greater than three times the average width.

B. The access portion of a flag lot shall not be less than 20 feet wide. A flag lot with the access portion less than 60 feet wide may be subject to a plat note indicating possible limitations on further subdivision based on access issues, development trends in the area, or topography. If the access portion is less than 60 feet wide, it may not exceed 150 feet in length. The access portion may not be used for permanent structures or wastewater disposal area, must meet the design standards of KPB 20.30.030(A) and 20.30.090 for access, and, if at least 60 feet wide, will be subject to the building setback restrictions of KPB 20.30.240.

**Staff Discussion:** *The proposed design will result in Tract 3A having 30 foot wide frontage to a dedicated right of way. Extending Arneson Avenue to increase the frontage distance will result in a portion of a parking lot being included within the right of way. The current design is an attempt to incorporate the existing improvements to be within the lot boundaries. Per the submittal, only 1.1 acres of Tract 3A is developable.*

**Staff recommendation:** *Concur that a 30 foot wide frontage is acceptable for Tract 3A and provide a plat note that states, "Tract 3A may have possible limitations on further subdivision based on access issues, development trends in the area, or topography."*

20.30.290. Anadromous Waters Habitat Protection District. If any portion of a subdivision or replat is located within an anadromous waters habitat protection district, the plat shall contain the following note:

ANADROMOUS WATERS HABITAT PROTECTION DISTRICT NOTE:

Portions of this subdivision are within the Kenai Peninsula Borough Anadromous Waters Habitat Protection District. See KPB Chapter 21.18, as may be amended, for restrictions that affect development in this subdivision. Width of the habitat protection district shall be in accordance with KPB 21.18.040.

*Platting Staff Comments: Silver Salmon Creek habitat protection district affects the southern portion of proposed Tract 3A.*

**Staff recommendation:** *Depict and label the habitat protection district and add the required plat note and comply with 20.30.290.*

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**KPB 20.40 – Wastewater Disposal**

**Staff recommendation:** *final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.*

20.40.010 Wastewater disposal.

*Platting Staff Comments: Exception for wastewater review has been requested*

**Staff recommendation:** *comply with 20.40.*

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**KPB 20.60 – Final Plat**

**Staff recommendation:** *final plat submittals must comply with 20.60. Additional information, revisions, and/or corrections are required as noted below.*

20.60.180. Plat notes.

A. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.

B. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required, Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

**Staff recommendation:** *Place the following notes on the plat.*

- *Add the anadromous note as stated in the staff report.*
- *Any other items that may be found on the Certificate to Plat.*
- *Additional notes may be required once the field survey is completed and the status of structures is determined.*
- *Multiple wastewater review notes will be required. Each note should state which tracts the note applies.*

20.60.190. Certificates, statements, and signatures required.

**Staff recommendation:**

- *Add the certificate of ownership on behalf of the Freddie's Roadhouse and the notary acknowledgment for the corporation signatory.*
- *The vacated right of way is not being added back to the lands per the standard procedure. Address in the certificate of ownership or add an additional statement with additional signatures required.*
- *Comply with 20.60.190.*

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**EXCEPTIONS REQUESTED:**

**A. KPB 20.30.190 – Lots-Dimensions** (3:1 depth to width for Tract 3A)

Surveyor's Discussion: The shape and width to depth ratio of Tract 3A is not changing significantly from its previous layout, which was approved as Tract 3, HM 2007-126. The majority of the lot is located on a steep slope that leads down to a swampy area. This portion of the property is unlikely to ever see any development. The usable area of the lot is approximately 1.1 acres. The depth to width ratio of the usable area is approximately 1.4:1.

Staff Discussion: The lot design is being adjusted to allow the structure located within the Arneson Avenue right of way to be within Tract 4A. This is requiring a narrowing of Tract 3A along the northern boundary.

**Findings:**

1. The intent of the plat is to correct an encroachment issue.
2. The northern lot boundary is being reduced by 119 feet.
3. The parent parcel, Tract 3, was granted an exception for 3:1 by the Planning Commission on May 14, 2007.
4. The depth to width ratio for the lot is 3.7:1.
5. Per the submittal, only 1.1 acres is usable.
6. The depth to width ratio for the useable acreage is 1.4:1.
7. The tract is subject to steep slopes, wetlands, and habitat protection area.
8. Per KPB GIS Imagery, improvements (three cabins) appear to be within the lot.
9. A driveway appears to access the property from Arneson Avenue within the proposed frontage area.

Staff reviewed the exception request and recommends granting approval.

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

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

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

1. That special circumstances or conditions affecting the property have been shown by application;  
**Findings 1, 3, 5-7, 9 appear to support this standard.**
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;  
**Findings 1, 3, 5-7, 9 appear to support this standard.**
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.  
**Findings 1, 3, 5-7, 9 appear to support this standard.**

**Staff recommendation:** place notes on the final plat indicating any exceptions granted by the Plat Committee with the meeting date.

#### **EXCEPTIONS REQUESTED:**

#### **B. KPB 20.40 – Wastewater Disposal** (Wastewater Review)

**Surveyor's Discussion:** This plat is located in a remote area near the end of Oil Well Road. A soils analysis was not prepared for the parent subdivision. Tract B (4.5 acres) and Tract 3A (4.2 acres) are both near the minimum required size of 5 acres. Tract B has a functioning septic system. Both parcels have more than 20,000 square feet of contiguous area for septic installation.

**Staff Discussion:** The exception requested will apply to Tract B and Tract 3A. Tract A and Tract 4A are larger than 200,000 square feet. Tract 3A is decreasing in size from 4.609 acres to 4.240 acres (184,694 square feet). Tract B will be a new lot created by the right of way dedication splitting the parent parcel. Tract B is proposed to be 4.513 acres (196,586 square feet). The southern half of Tract 3A contains steep slopes, wetlands, and an anadromous waters habitat protection district.

The Caribou Hills is considered a recreational area. Many of the lots in the area do not use conventional wastewater disposal systems. All septic system installation must be approved by State of Alaska DEC.

#### **Findings:**

1. Proposed Tract B is 196,586 square feet.
2. Proposed Tract 3A is 184,694 square feet.
3. Wastewater review was not required for parent Tract 3 as it was greater than 200,000 sq. ft.
4. Per the submittal, the useable area for Tract 3A is about 1.1 acres (47,916 square feet).
5. Tract B has a functioning septic system.
6. Proposed Tract B and Tract 3A have more than 20,000 sq. ft. of continuous area available for wastewater disposal installation.
7. The intent of the subdivision is to correct an encroachment and dedicate atop a constructed roadway.
8. The design of Tract 3A is similar to parent design with a change in the lot line to accommodate a structure.

Staff reviewed the exception request and recommends granting approval.



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

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

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

1. That special circumstances or conditions affecting the property have been shown by application;  
**Findings 5-8 appear to support this standard.**
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;  
**Findings 5-8 appear to support this standard.**
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.  
**Findings 5-8 appear to support this standard.**

**Staff recommendation:** place notes on the final plat indicating any exceptions granted by the Plat Committee with the meeting date.

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**RECOMMENDATION:**

**SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:**

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

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

**A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.**

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

**END OF STAFF REPORT**