

## **C. CONSENT AGENDA**

### **\*7. Minutes**

#### **a. June 27, 2022 Planning Commission Meeting**

# 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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**JUNE 27, 2022  
7:30 P.M.  
UNAPPROVED MINUTES**

## **AGENDA ITEM A.      CALL TO ORDER**

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

Chair Martin asked Ms. Shirnberg to administer the oath of office to the new planning commissioner representing the City of Seward, Troy Staggs.

## **AGENDA ITEM B.      ROLL CALL**

### *Commissioners Present*

Syverine Abrahamson-Bentz, District 9 – South Peninsula  
Jeremy Brantley, District 5 – Sterling/Funny River  
Diane Fikes, City of Kenai  
John Hooper, District 3 – Nikiski  
Michael Horton, District 4 – Soldotna  
Blair Martin, District 2 – Kenai  
Virginia Morgan, District 6 – East Peninsula  
Troy Staggs, City of Seward  
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  
Samantha Lopez, Planner Manager  
Ann Shirnberg, Planning Administrative Assistant

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

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

- a. Duncan Subdivision No. 5; KPB File 2021-142
- b. Folz Subdivision 2021 Addition; KPB File 2021-036
- c. Gold Acres Subdivision 2022 Replat; KPB File 2022-014
- d. Poachers Cove PDM 2022 Replat; KPB File 2022-002

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

- a. Riverview Deluxe Subdivision; KPB File 2022-012
- b. Seward Original Townsite 2021 Replat; KPB File 2021-105
- c. Soldotna Junction Subdivision Creekside Estates; KPB File 2022-049

**\*6. Commissioner Excused Absences**

- a. Pamela Gillham, District 1 – Kalifornsky
- b. District 7 – Central, Vacant
- c. City of Seldovia, Vacant

**\*7. Minutes**

- a. June 13, 2022 Planning Commission meeting minutes.

Chair Martin asked if anyone wished to speak to any of the items on the consent agenda. Hearing no one wishing to comment he asked Ms. Shirnberg to read into the record the consent agenda items.

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

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

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 11	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest
Absent - 1	Gillham

Commissioner Venuti, attending via Zoom, lost connection and did not participate in the vote regarding the approval of the consent and regular agendas. He rejoined the meeting several minutes later at 7:34 PM.

**AGENDA ITEM E. NEW BUSINESS**

**ITEM E1 – UTILITY EASEMENT ALTERATION  
BRUHN SUBDIVISION LOT 4 BLOCK 2**

<b>KPB File No.</b>	2022-070V
<b>Planning Commission Meeting:</b>	June 27, 2022
<b>Applicant / Owner:</b>	Tanley Martinez of Sterling, AK
<b>General Location:</b>	Bruhn Road, Sterling

Chair Martin asked Ms. Shirnberg to read into the record the rules for public hearing.

Staff report was given by Platting Specialist Julie Hindman.

Chair Martin opened the item for public comment.

Greg Pickens; 8411 Blackberry Street, Anchorage, AK 99502: Mr. Pickens is a neighboring landowner and the applicant has numerous encroachments on to his land in the area where the utility easement is being vacated. These encroachments do not allow him to develop his land in the way he wants to. He would like to see the encroachments resolved before he supports this utility easement vacation.

Sharon Brown; 211 W. 123<sup>rd</sup> Ave., Anchorage, AK 99515: Ms. Brown is a neighboring landowner. Ms. Brown supports Mr. Pickens' request that the encroachments on to his property be resolved before approving the vacation of the utility easement.

Kevin Brown; 211 W. 123<sup>rd</sup> Ave., Anchorage, AK 99515: Mr. Brown is a neighboring landowner. Mr. Brown supports Mr. Pickens' request that the encroachments on to his property be resolved before approving the vacation of the utility easement.

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

**MOTION:** Commissioner Brantley moved, seconded by Commissioner Fikes to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

Commissioner Stutzer stated that the vacation of the utility easement is not the main issue here. The applicant has several structures encroaching on the neighbor's property that he believes should be resolved first. He would not support the vacation request until the encroachments are remedied.

Chair Martin asked staff if the commission would need to develop findings if they chose to deny the vacation request. Ms. Hindman replied that the applicant is in violation of multiple KPB codes and those violations have not been resolved at this time. She noted some of the encroachments do go into the neighbor's utility easement. A denial in this case would not require findings, but if this matter were to be reviewed at a later date, any findings the commission has to support their denial would be appreciated.

Commissioner Horton asked staff if the applicant would still be required to petition for a vacation if they purchased the lot they are encroaching on. Ms. Hindman replied should the applicant purchase the neighboring lot they would not be required to petition for the vacation. They could choose not to put any utilities in those easements. Where there would be issues is if they were to seek bank financing, the bank may require that the encroachments into the utility easements be resolved before financing the purchase.

Director Ruffner noted when it comes to quasi-judicial matters like these it is helpful for the commission to attach findings to support their decision. The commission could review and cite findings supplied by staff to support their decision, but it also could be helpful for the commission to develop additional findings, should a decision be appealed. The commission could vote on the motion on the floor now, and if needed could go into an adjudicative session to develop additional findings or the commission could develop additional findings on the floor.

Commissioner Brantley noted that findings 7 & 8 from the staff report support a denial.

Commissioner Bentz added an additional finding that the neighboring owner on Lot 5 objects to the vacation as the encroachments negatively impact the utility easement on his property.

Commissioner Brantley moved, seconded by Commissioner Fikes to attach the following findings in support of a denial.

- i. Several violations to KPB Code exist due to the shed shown within Bruhn Road, the building setback, and the utility easement.
- ii. Encroachments appear to exist within Lot 5.
- iii. The owner of neighboring lot, Lot 5, objects as the encroachments effect his ability to bring utilities on to his property.

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

**MOTION FAILED BY UNANIMOUS VOTE:**

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

**ITEM E2 - RIGHT OF WAY VACATION  
VACATE A PORTION OF HOUGH ROAD AND ASSOCIATED UTILITY EASEMENTS**

<b>KPB File No.</b>	2022-076V
<b>Planning Commission Meeting:</b>	June 27, 2022
<b>Applicant / Owner:</b>	C. Michael and Shila A. Hough of Homer Alaska
<b>Surveyor:</b>	Stephen Smith / Geovera, LLC
<b>General Location:</b>	East End Road, Hough Road, City of Homer
<b>Legal Description:</b>	Hough Road, Tract F of Stream Hill Park Unit 2, HM 2008-048 and Tract 1 of Christensen Tracts 2009 Addition, HM 2006-44, Section 16, Township 6 South, Range 13 West.

Staff report was given by Platting Specialist Julie Hindman.

Chair Martin open 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 Horton moved, seconded by Commissioner Fikes to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, 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	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent - 1	Gillham

**ITEM E3 - RIGHT OF WAY VACATION  
VACATE PORTION OF HANKS MILL ROAD (FORMALLY OLD STERLING HIGHWAY)**

<b>KPB File No.</b>	2022-077V
<b>Planning Commission Meeting:</b>	June 27, 2022
<b>Applicant / Owner:</b>	Rosemary Johnson of Anchor Point, Alaska and Cliff and Jana Johnson of Mesa, Arizona
<b>Surveyor:</b>	Jason Young, Mark Aimonetti / Edge Survey and Design, LLC
<b>General Location:</b>	Hanks Mill Road, Natascha Avenue, Sterling Highway / Happy Valley, Anchor Point, APC
<b>Legal Description:</b>	Hanks Mill Road, formally known as Old Sterling Highway, within Section 7, Township 3 South, Range 14 West.

Staff report was given by Platting Specialist Julie Hindman.

Chair Martin open the item for public comment.

Jason Young, Edge Survey & Design; P.O. Box 208, Kasilof, AK 99610: Mr. Young is the surveyor for this project. He noted this section is part of an old historic right-of-way (ROW) and is not used any more. The culverts are washed out. It drops over 50' down to the creek and is basically not safe to use. This section of Hanks Mill Road dead ends onto his client's property. There is a history of trespass related to this road. There is a waterfall on Happy Creek. The public will park on this section of road and trespass across the owner's property to get to the falls. His clients wish to vacate this section of the ROW to reduce the amount of trespass occurring on their property.

Chair Martin asked Mr. Young if he knew what year the new section of the Sterling Highway, which replaced this old section, was constructed. Mr. Young replied he thought it was sometime in the 1950s. He again noted that no one has used this section of ROW for many years.

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

**MOTION:** Commissioner Brantley moved, seconded by Commissioner Fikes to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, 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	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent - 1	Gillham

### E4 – CONDITIONAL USE PERMIT PC RESOLUTION 2022-24

<b>PC Resolution</b>	2022-24
<b>Planning Commission Meeting:</b>	June 27, 2022
<b>Applicant</b>	Alaska Department of Transportation and Public Facilities
<b>Mailing Address</b>	PO Box 196900, Anchorage, AK 99519-6900
<b>Legal Description</b>	NA
<b>Physical Address</b>	Alaska Department of Transportation Right of Way
<b>KPB Parcel Number</b>	NA

Staff report given by Planner Morgan Aldridge.

Chair Martin open 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 Brantley moved, seconded by Commissioner Fikes, to adopt PC Resolution 2022-24, granting a conditional use permit pursuant to KPB 21.18 for the construction of bank stabilization within the 50-foot Habitat Protection District of the Kenai River, Anchor River & Two Moose Creek.

Commissioner Stutzer noted the permit does not note any seasonal time period restrictions related to when work can be done. For instance, time restrictions related to salmon spawning times or eagle nesting times. Ms. Aldridge replied that borough permits do not typically have restrictions related to when work can be done. Permitting related to these types of projects are multi-agency. While the borough does not address this in their permit, the Department of Fish & Game's permit would address those types of issues. Commissioner Stutzer then asked if DOT was going to be doing any work in the water, such as placing riprap in the river. Director Ruffner clarified that the Borough has permitting authority for the land within the 50-foot Habitat Protection District. The Alaska Department of Fish and Game permits activities occurring within the water.

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

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 11	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent - 1	Gillham

### E5 – ORDINANCE 2022-XX

#### AN ORDINANCE AMENDING KPB CHAPTER 21.50 RELATING TO STOP-WORK ORDERS AND FINE AMOUNTS IN STIPULATED AGREEMENTS

Staff report was given by Planning Director Robert Ruffner.

Chair Martin open 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 Venuti moved, seconded by Commissioner Fikes, to forward to the Assembly a recommendation to adopt Ordinance 2022-XX amending KPB Chapter 21.50 relating to stop-work orders & fine amounts in stipulated agreements.

Commissioner Horton noted that he will be supporting the recommendation to adopt this ordinance. He then asked if he was correct in understanding that this ordinance would get rid of the ½ day fine limitation and grants stop work authority for activities that break code. Director Ruffner replied that is correct, however this ordinance would still allow the director discretion when setting fines. This ordinance will not prohibit the borough from having a soft approach to code violations, if that is what is warranted. It also will allow for code violations to have more “teeth” should the situation be warranted.

Commissioner Hooper asked if this ordinance put any limits on penalties. Director Ruffner replied that the

schedule for fines is included with the ordinance. The penalties can add up per day as well as the individual could have several violations that could be fined at the same time. Again, the director would have discretion depending on the situation. The goal is not to use a giant hammer when a small one would accomplish the same outcome.

Commissioner Stutzer asked Director Ruffner if he was correct in understanding that the fines listed in the schedule can accumulate on a per day basis. Director Ruffner replied that he was correct. He then noted that the Stop Work Order would make clear what the penalties would be if the violator continued with the infraction. Commissioner Stutzer then asked if the fines could be applied retrospectively. Director Ruffner replied that the ordinance limits the time period that they can go back to six years. However, he does not envision using this tool in that manner.

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

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 11	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Staggs, Stutzer, Taufest, Venuti
Absent - 1	Gillham

**E6 – ORDINANCE 2022-XX**

**AN ORDINANCE AMENDING KPB CHAPTERS 7.20, 7.30 AND 21.44 RELATING TO MARIJUANA ESTABLISHMENTS AND PROCESSING APPLICATIONS FOR MARIJUANA ESTABLISHMENTS.**

Staff report was given by Planning Director Robert Ruffner.

Chair Martin open 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 Horton moved, seconded by Commissioner Fikes, to forward to the Assembly a recommendation to adopt Ordinance 2022-XX, amending KPB Chapters 7.20, 7.30 & 21.44 relating to marijuana establishments and processing applications for marijuana establishments.

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

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 11	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Staggs, Stutzer, Taufest, Venuti
Absent - 1	Gillham

**E7 – ORDINANCE 2022-XX**

**AN ORDINANCE AMENDING KPB CHAPTER 20.65 RELATING TO FEDERAL PATENT EASEMENTS AND PUBLIC RIGHTS-OF-WAY**

Staff report was given by Planning Director Robert Ruffner. Director Ruffner noted that the Assembly had pulled this ordinance off their agenda to allow for additional time to address several concerns expressed by the public. Since this item had been advertised as having a he would request that the commission open public to see if anyone wished to comment and the move to table the item.

Chair Martin open the item for public comment.

Kristine Schmidt: Ms. Schmidt is a local attorney and has a number of concerns related to this ordinance. she would like to action on this ordinance postpone to allow for additional review and to address concerns.

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

**MOTION:** Commissioner Brantley moved, seconded by Commissioner Fikes, to table action on this item until it is brought back by staff.



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

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 11	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Staggs, Stutzer, Taufest, Venuti
Absent - 1	Gillham

**E8 – ORDINANCE 2022-XX**

**AN ORDINANCE AMENDING KPB 21.25 TO ADD DEFINITION OF “AGGRIEVED PARTY” AND AMENDING KPB 21.29 TO REMOVE THE TERM “IMPARTIAL”, TO CLARIFY THE WELL-MONITORING TIMELINE, TO DEFINE “QUARTERLY”, AND TO ADD A “DEFINITIONS” SECTION**

Staff report was given by Planning Director Robert Ruffner.

Chair Martin open 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 Brantley moved, seconded by Commissioner fikes, to forward to the Assembly a recommendation to adopt Ordinance 2022-XX, amending KPB 21.25 to add definition of “Aggrieved Party”, and amending KPB 21.29 to remove the term “Impartial”, to clarify the well monitoring time, to define “Quarterly”, and to add a “Definitions” section.

Commissioner Brantley stated that he would be supporting the recommendation to adopt this ordinance. He believes this ordinance will clean up a few issues the commission has had with the material site ordinance.

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

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 11	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Staggs, Stutzer, Taufest, Venuti
Absent - 1	Gillham

**AGENDA ITEM F. PLAT COMMITTEE REPORT**

Commissioner Brantley reported the plat committee reviewed and granted preliminary approval to two plats.

**AGENDA ITEM G.**

1. Plat Committee – July 18, 2022

- Brantley
- Fikes
- Horton
- Morgan
- Venuti

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

Chair Martin 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 I. DIRECTOR’S COMMENTS**

**AGENDA ITEM J. COMMISSIONER COMMENTS**



**AGENDA ITEM K.**      **ADJOURNMENT**

Commissioner Brantley moved to adjourn the meeting at 8:54 PM.

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Ann E. Shirnberg  
Administrative Assistant

UNAPPROVED