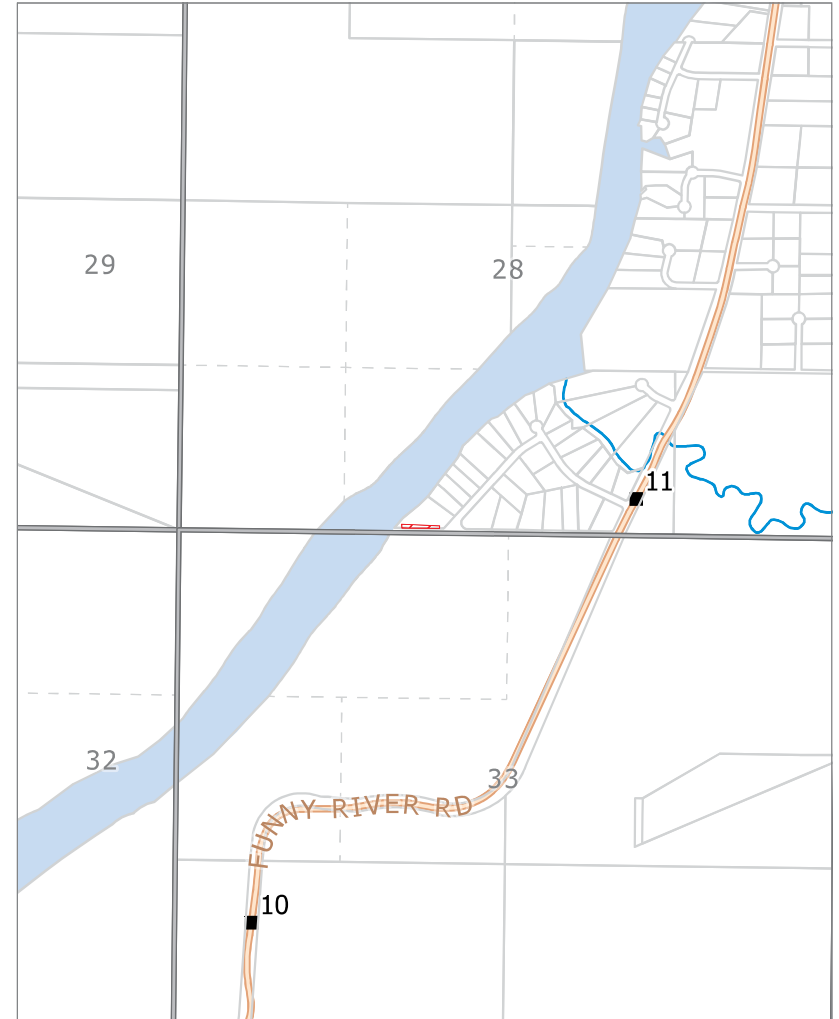
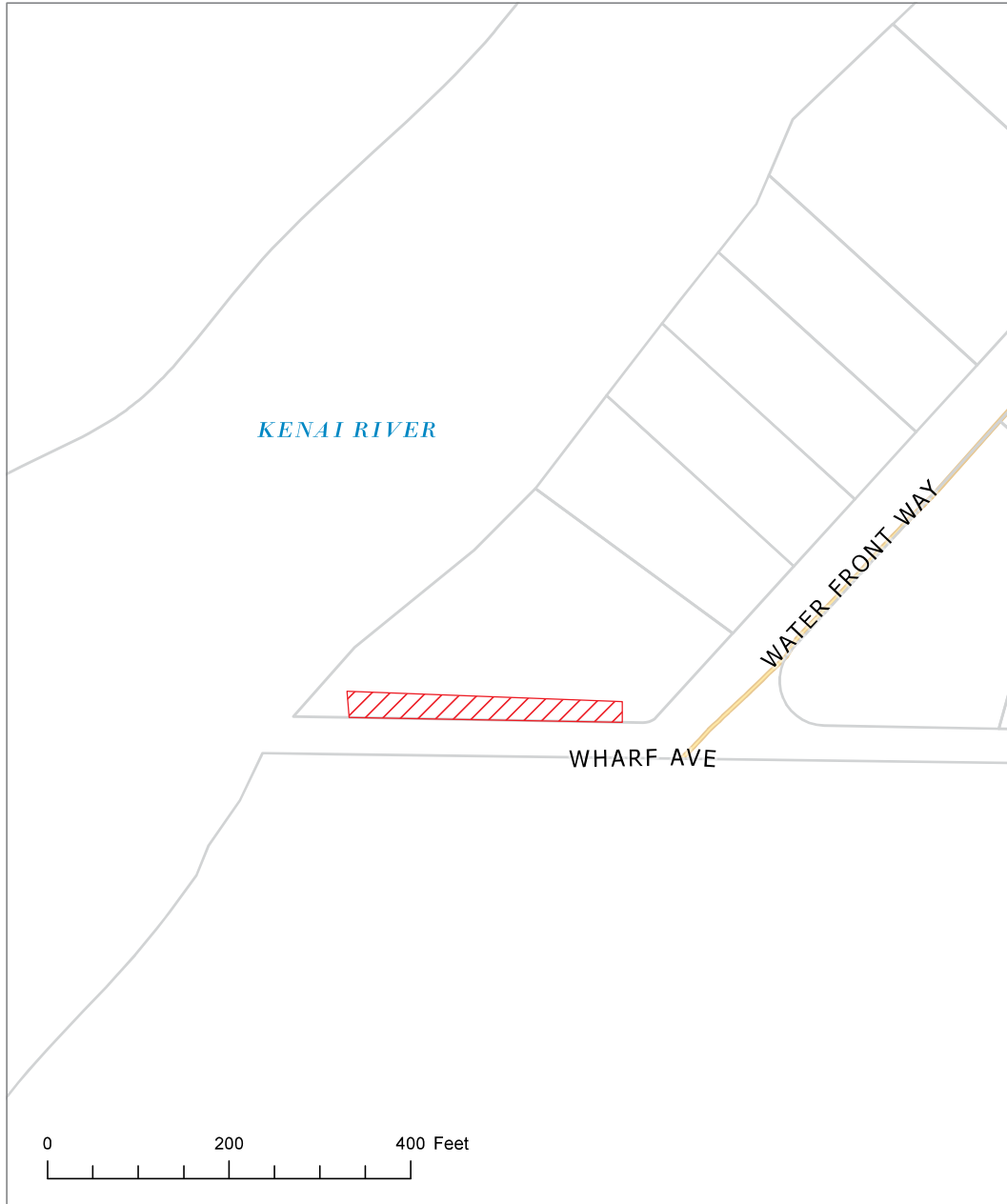


E. NEW BUSINESS

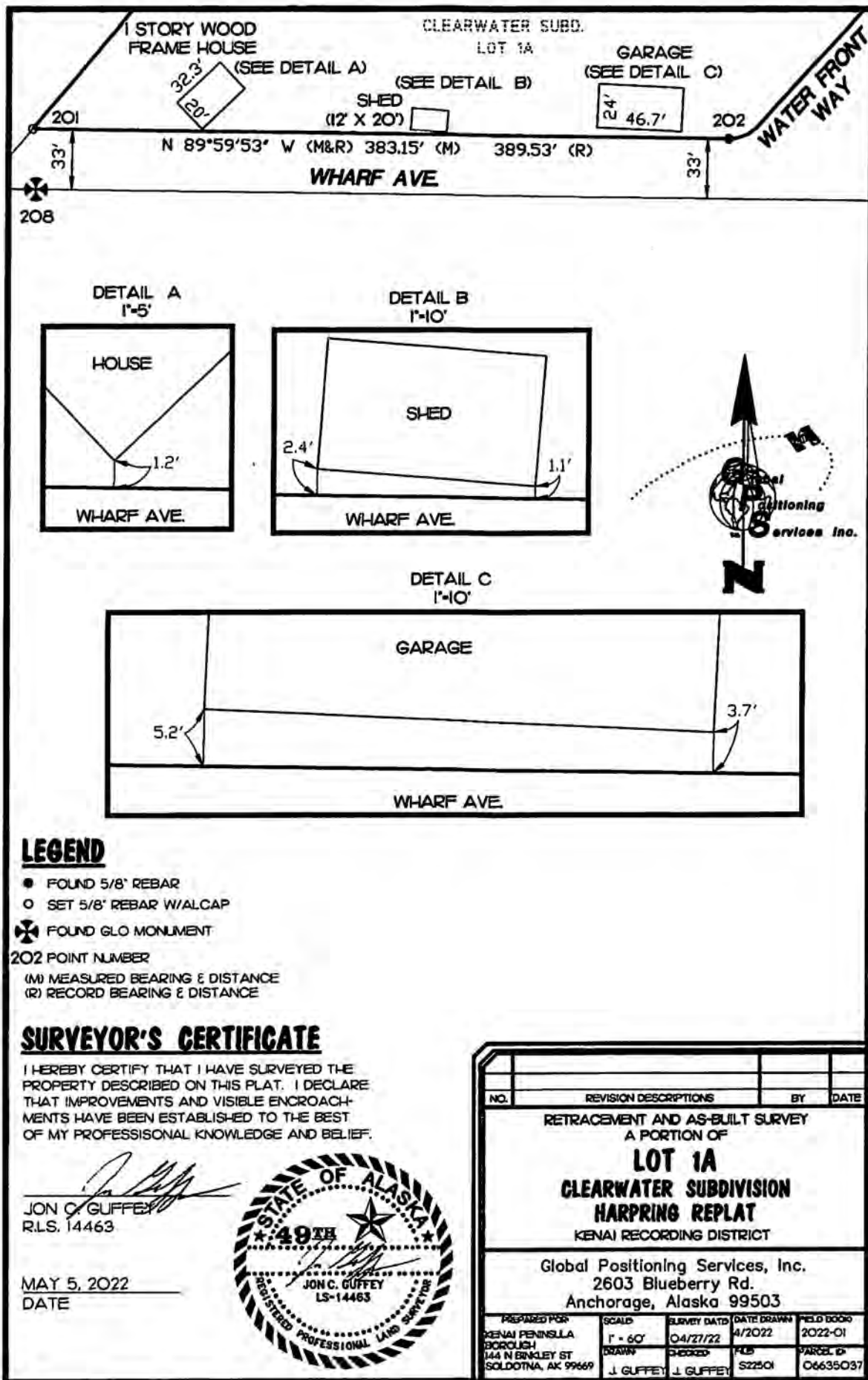
- 6. Building Setback Permit; KPB File 2022-098; PC RES 2022-37
Lot 1A, Block 1, Clearwater Subdivision Harpring Replat; Plat
KN 2005-126
No Surveyor / Harpring
Funny River Area**



KPB File # 2022-098
S28 T05N R09W
Funny River



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



AGENDA ITEM E. NEW BUSINESS

**ITEM 6. – BUILDING SETBACK ENCROACHMENT PERMIT
LOT 1A BLOCK 1 CLEARWATER SUBDIVISION HARPRING REPLAT, KN 2005-126**

KPB File No.	2022-098
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	Blaine D. Gilman / James Harpring
Surveyor:	Jon Guffey / Global Positioning Services, Inc.
General Location:	Wharf Avenue, Water Front Way, Funny River area / Funny River APC

Parent Parcel No.:	066-350-37
Legal Description:	Clearwater Subdivision Harpring Replat Lot 1A Block 1, KN 2005-126
Assessing Use:	Residential
Zoning:	Rural Unrestricted

STAFF REPORT

Specific Request / Purpose as stated in the petition: *This is a summary the entire request is included within the packet.* A request for a setback encroachment permit for three buildings within the 20 foot building setback along Wharf Avenue.

Site Investigation: There are numerous structures within the property lines of the subject parcel. Per the as-built provided, three of the structures are encroaching into the 20 foot building setback.

The property is on the corner of Water Front Way, a 60 foot wide dedicated right-of-way is not maintained by the borough, and Wharf Avenue. Wharf Avenue is a 33 foot wide dedication atop a section line easement. The only portion of Wharf Avenue that appears to be in use is what appears to be used as the driveway to the property. Wharf Avenue is not maintained by the borough and beyond the owner's entrance to his property it appears there may be a small clearing that ends at the Kenai River. The property south of Wharf Avenue is owned by the State of Alaska Department of Natural Resources and appears to be subject to a section line easement adjacent to the Wharf Avenue dedication.

Per the photos submitted there does not appear to be any sight distance issues.

Staff Analysis: The property was originally part of Government Lot 10, T5N, R9W, Section 28. Clearwater Subdivision, Plat KN 77-196, subdivided that government lot in addition to several others in the area. The plat created Lots 1 and 2 within Block 1. The plat also dedicated a 33 foot wide portion of Boundary Avenue, later changed to Wharf Avenue, and 60 foot wide Water Front Way. A 5 foot utility easement was placed along Boundary Avenue and Water Front Way with a depiction and label. Per the plat notes, "*All lots are subject to a 20' building set back along dedicated R/W's.*"

Clearwater Subdivision, Plat KN 77-196, was later amended and recorded as Clearwater Subdivision Amended, Plat KN 92-47. Per the surveyor's note, the correction was a bearing typo on the shared lot line between Lot 1 and Lot 2 of Block 1.

Mr. Harpring had the property replatted in 2005, Clearwater Subdivision Harpring Replat, KN 2005-126. The plat did not depict the setbacks or utility easements but did indicate they existed per the plat notes. Per plat note 2, "*Building Setback – A setback of 20 feet is required from all street Rights-of-Way unless a lesser standard is approved by resolution by the appropriate Planning Commission.*" Plat note 4 described the utility easements the

property was subject to, which is the code required minimum 10 feet along the dedicated rights-of-way. The minutes and the staff report presented did not address any possible issues with the setbacks or utility easements.

In 2013, Mr. Harpring petitioned to have the section line easement and the right-of-way dedication vacated. Staff reviewed the packets and staff reports from those meetings and there was no discussion specific to the setbacks or any possible encroachments.

Staff became aware that there was a possibility of right-of-way encroachments within Wharf Avenue and contacted Mr. Harpring. As the as-built provided indicates there is not any encroachments into the right-of-way but the structures in question do reside within the building setback that was put into place with Plat KN 77-196, shown on Plat KN 92-47, and carried over onto Plat KN 2005-126. There has not been an application received regarding the utility easement encroachments.

Per the as-built signed on May 5, 2022, the house is at an angle with the one corner 1.2 feet from the edge of the right-of-way resulting in an 18.8 feet encroachment. The as-built also shows a shed that is at an angle with one corner being 1.1 feet and the other corner 2.4 feet from the edge of the right-of-way, resulting in an 18.9 foot encroachment that lessens to 17.6 feet. The garage is also at a slight angle with one corner 3.7 feet and the other 5.2 feet from the edge of the right-of-way, resulting in a 16.3 foot encroachment that lessens to 14.8 feet. There was no indication of the encroaching structures foundation types.

Findings:

1. A setback was put into place by Clearwater Subdivision, Plat KN 77-196.
2. Through the years the property in question has been before the Plat Committee/Planning Commission with no discussion of possible encroachments per meeting minutes.
3. The property has a 20-foot building setback along the 33-foot dedicated Wharf Avenue.
4. Three structures are encroaching into the setback.
5. The status of the foundations is not known.
6. The house is 18.8 feet into the setback.
7. The shed is 18.9 feet into the setback.
8. The garage is 16.3 feet into the setback.
9. The right-of-way is not constructed beyond the owner's driveway.
10. The right-of-way is not maintained by the Kenai Peninsula Borough.
11. With section line easements present, there is an 83 foot wide access.
12. The KPB Roads Department provided a comment of no comment at this time.

20.10.110. – Building setback encroachment permits.

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

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

Findings 9-12 appear to support this standard.

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

Findings 9-12 appear to support this standard.

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

Findings 9-12 appear to support this standard.

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

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

KPB department / agency review:

KPB Roads Dept. comments	It doesn't appear that anything is in the ROW. The RSA has no comment at this time.
SOA DOT comments	No comment given
State of Alaska Fish and Game	
Code Compliance	Mr Harpring application has the support of Code compliance for a exception of the 20 ft set back. Although evidence shows he had knowledge of the setback each time he signed the plat. The as-built created depicts that the structures are built fully in the 20 ft.
Planner	
Advisory Planning Commission	The Funny River APC heard this at their July 12, 2022 meeting. Four members were allowed to vote on the item. The motion to support the permit was approved unanimously.

Utility provider review:

Addressing	
Code Compliance	
Planner	
Assessing	
Advisory Planning Commission	

RECOMMENDATION:

Based on the standards to grant a building setback encroachment permit, **staff recommends** to adopt Resolution 2022-37 subject to compliance with KPB 20.10.110 sections F and G.

NOTE:

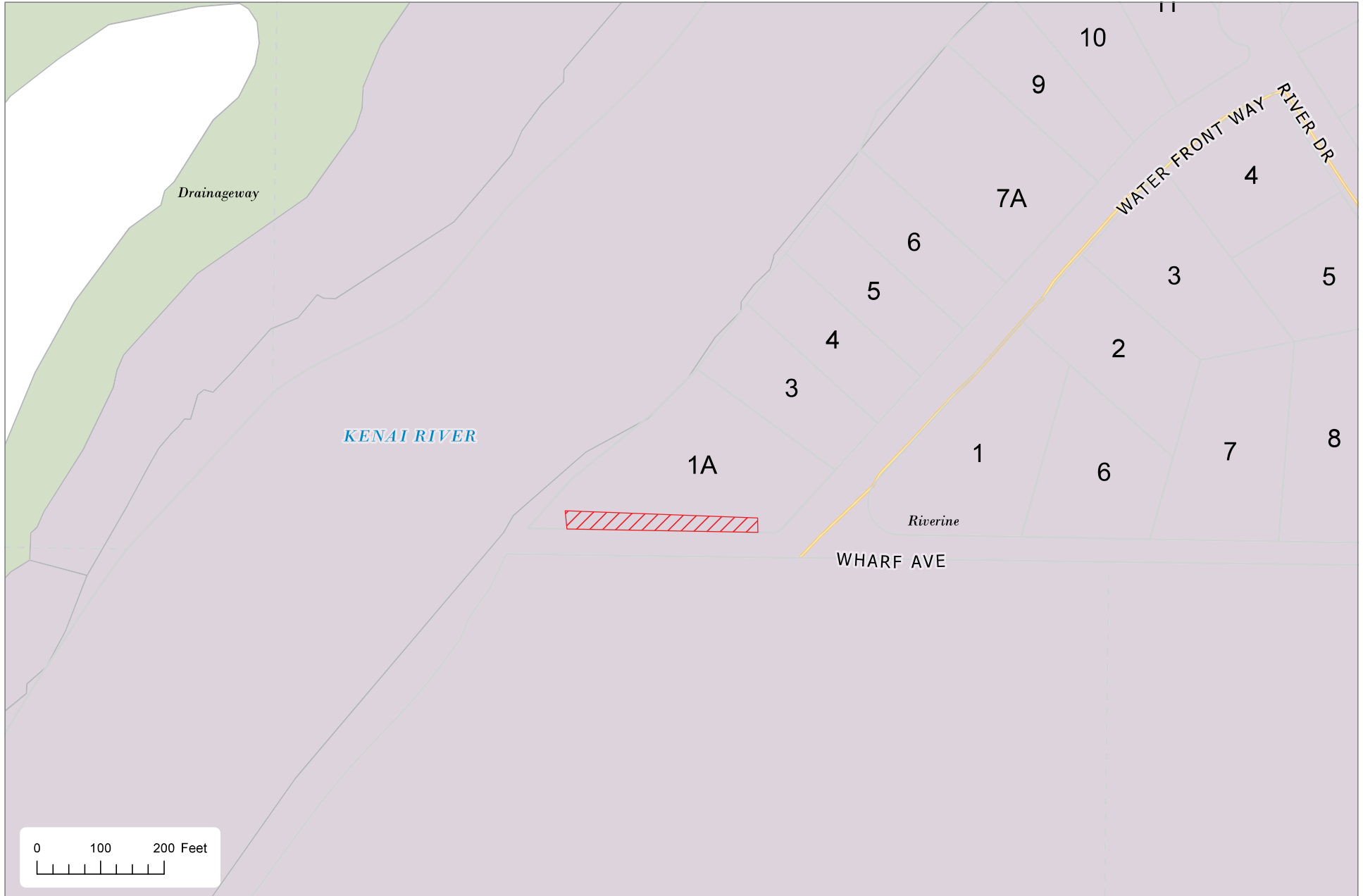
20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

END OF STAFF REPORT

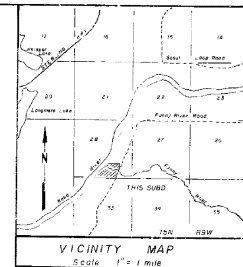
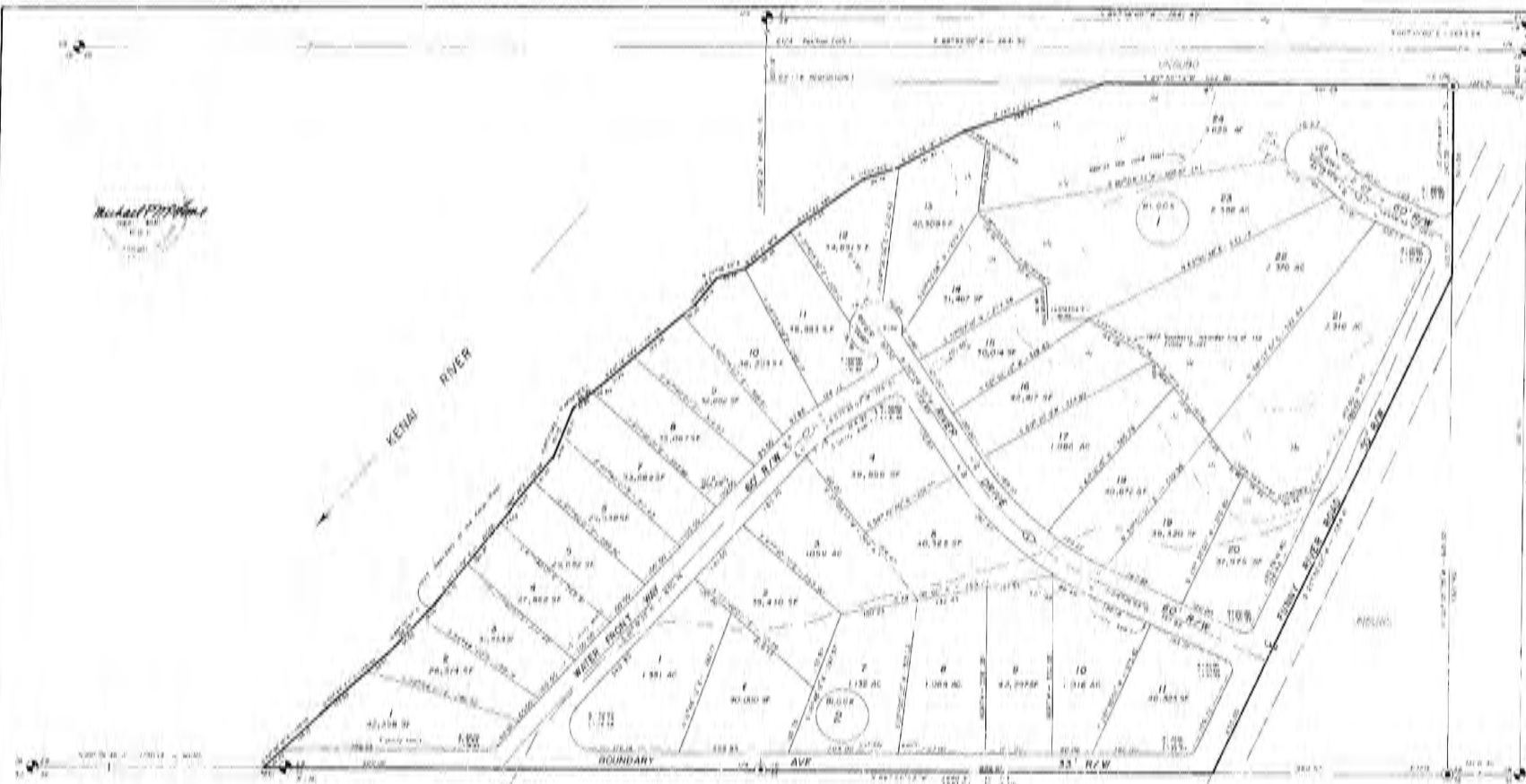




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LEGEND AND NOTES

- 1. Liquid USGLO brass cap monument
- 2. Final official survey brass cap monument (C.L.P.)
- 3. Final official survey Al. monument (3932 - S, 1977)
- 4. 301 1/2" X 24" steel rebar or all lat corners 6 w.c.
- 5. 1/4" rebar pin
- 6. All bearings refer to the East boundary of Sec. 28 as being N 00° 05' 00" E G.L.O. datum
- 7. All lots are subject to a 20' building set back along designated R/W's
- 8. All waste water disposal systems shall comply with existing law at time of construction
- 9. The first finished floor of any dwelling shall be maintained at a minimum of 5' above the Standard Flood Level as determined by the US Corps of Engineers
- 10. The boundary lines as shown are for survey purposes only. The mean high water line of the Kenai River is the official boundary of those lots that front on said river. The width of the stream shall be the boundary for those lots flowing on the Kenai River. The stakes set along the boundary lines are witness corners.

CERTIFICATE OF DIMENSION AND LOCATION

We hereby certify that we are the owners of said property and require the removal of this plat showing said dimensions for public utility, easements, and as shown indicated by us for public use.

[Signature]
 Notary Public for the State of Alaska
 My commission expires 12/1/80

Notary Public for the State of Alaska

PLAT APPROVAL

This plat having been approved by the Kenai Peninsula Borough Planning Commission as required in the official minutes of the meeting of October 1, 1977, is hereby acknowledged and accepted as the official plat, subject to any and all conditions and requirements of ordinances and law governing thereon.

KENAI PENINSULA BOROUGH
 By: *[Signature]*

NOTARY'S ACKNOWLEDGMENT
 Subscribed and sworn to before me this 29th day of December, 1977.
 My commission expires 12/1/80
[Signature]
 Notary Public for the State of Alaska

Q	CURVE	DATA
1	100' R	100' R
2	100' R	100' R
3	100' R	100' R
4	100' R	100' R
5	100' R	100' R
6	100' R	100' R
7	100' R	100' R
8	100' R	100' R
9	100' R	100' R
10	100' R	100' R
11	100' R	100' R
12	100' R	100' R
13	100' R	100' R
14	100' R	100' R
15	100' R	100' R
16	100' R	100' R
17	100' R	100' R
18	100' R	100' R
19	100' R	100' R
20	100' R	100' R
21	100' R	100' R
22	100' R	100' R
23	100' R	100' R
24	100' R	100' R

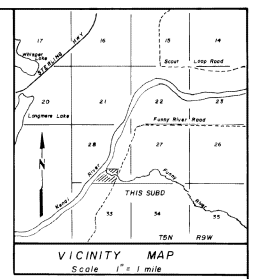
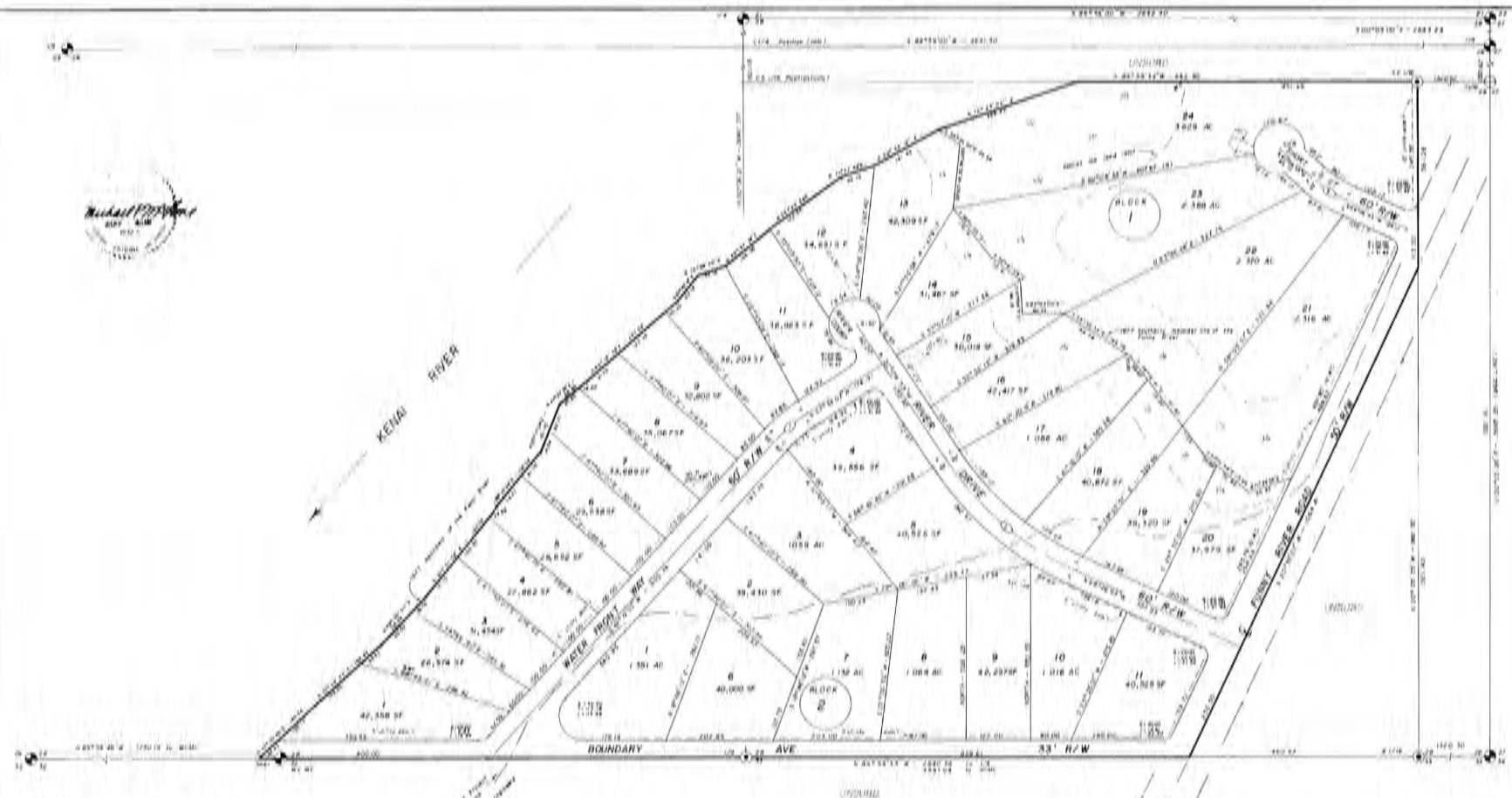
CLEARWATER SUBDIVISION

Model Building et al., owners
 Map No. 1, Homer Ak. 99603
 99.991 ACRES SITUATED IN GOVT LOTS 10, 16, 17, 18, 20, 21, 22, 23 SEC 28, T5N, R5W S.M. AK AND THE KENAI PENINSULA BOROUGH.

Surveyed by: McLane and Associates
 Soldotna, Alaska

Date of Survey: 7/28/75 Scale: 1" = 100' BK. NO. 76-05

77-196
 Kenei
 Dec 29 38
 3:53 PM



- LEGEND AND NOTES**
- Found USGLO brass cap monument
 - Found official survey brass cap monument (C.L.P.)
 - Set official survey AL monument (3932-S, 1977)
 - Set 1/2" x 24" steel rebar at all lot corners & w.c.
 - (R) Radial line
 - All bearings refer to the East boundary of Sec. 28 as being N 00° 05' 00" W G.L.O. datum
 - All lots are subject to a 20' building set back along delineated R/W's
 - All waste water disposal systems shall comply with existing law at time of construction.
 - The first finished floor of any dwelling shall be constructed at a minimum of 3' above the Standard High Flood Level as determined by the US Corps of Engineers.
 - The meander lines as shown are for survey computations only, the mean high water line of the Keweenaw River in the vicinal boundary of those lots that front on said river, the thread of the stream shall be the boundary for those lots fronting on the Keweenaw River. The stakes set along the meander lines are witness corners.

CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of said property and request the approval of this plat showing such easements for public utilities, roadways, and all streets indicated by us for public use.

Michael P. Dwyer
 Michael P. Dwyer, 77th Avenue SE 99002
 Robert A. Dwyer, 77th Avenue SE 99002

RECORDED & FILED
 Keweenaw
 77-196
 DEC 29 1978
 3:58 PM

77-196
 DEC 29 1978
 3:58 PM

AMENDED PLAT

AMENDED PLAT to correct the bearing between Lot 1 and Block 1 from S 89° 40' 00" E to S 89° 40' 17" E.

The above correction constitutes the sole change made to the plat aside from its location on the plat. The above correction does not alter lot areas and does not affect, or influence, any change of ownership, drainage facilities, right of way, or any other item which would adversely affect this or adjacent properties. I am therefore submitting this plat for ratification as corrected.

Date, Sept 24, 1992
Michael P. Dwyer
 Michael P. Dwyer, P.L.S.

CURVE DATA				
CURVE	Δ	R	Δ	Δ
1	175.12°	500.00	40.00	75.70
2	82° 00' 00"	500.00	77.00	75.70

AMENDED PLAT

CLEARWATER SUBDIVISION

Robert Dwyer, et al., owners
 77th Ave., Home A-99002

DESCRIPTION

48.51 ACRES SITUATED IN GOVT LOTS 10, 16, 17, 18, 19, 21, 22, 23 SEC. 28, T5N, R10W S.M. AK. AND THE KEWEENAW PENINSULA BOROUGH.

Prepared by: McLane and Associates
 Soldotna, Alaska

Date of Survey: 7/78 - 8/31/75
 Scale: 1" = 100'
 SK. NO. 76-09



NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn before me this 29th day of December, 1977.

My commission expires 12/31/1981.

Michael P. Dwyer
 Notary Public - Alaska

PLAT APPROVAL

This plat having been reviewed by the Keweenaw Borough Planning Commission is approved in the original minutes of the meeting of 12/28/77.

is hereby acknowledged and accepted by the official city subject to the city's conditions and requirements of ordinances and the governing thereof.

Keweenaw Peninsula Borough
 By: *Robert A. Dwyer*

LEGEND:

- MONUMENT (FOUND THIS SURVEY)
- REBAR (FOUND THIS SURVEY)
- RECORD DATUM FROM PLAT 92-47 KRD.

NOTES:

- 1) Basis of bearing taken from Clearwater Subdivision (Amended), Plat 92-47, Kenai Recording District.
- 2) Building Setback-A setback of 20 feet is required from all street Rights-of-Way unless a lesser standard is approved by resolution by the appropriate Planning Commission.
- 3) All waste disposal systems shall comply with existing laws at the time of construction.
- 4) Front 10 feet of the building setback and the entire setback within 5 feet of the side lot lines is also a utility easement. No permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement.
- 5) Existing underground powerline is the centerline of a 15 foot wide electrical distribution line easement.
- 6) Portions of this subdivision are within the Kenai Peninsula Borough 50-Foot Anadromous Stream Habitat Protection Area. See Chapter 21.18 Borough Code of Ordinances for restrictions that affect development of this subdivision.
- 7) An exception to KPB 20.14 was granted by the Plat Committee at the meeting of 24 October, 2005.
- 8) **WASTEWATER DISPOSAL:** No engineer's Subdivision and Sales report is available for this subdivision. Soil conditions may be unsuitable for onsite wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation. The purpose of this platting action is to combine 2 lots into 1 which will provide greater available wastewater disposal area as described by KPB 20.14.040(c).

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF 24 OCTOBER, 2005.

KENAI PENINSULA BOROUGH

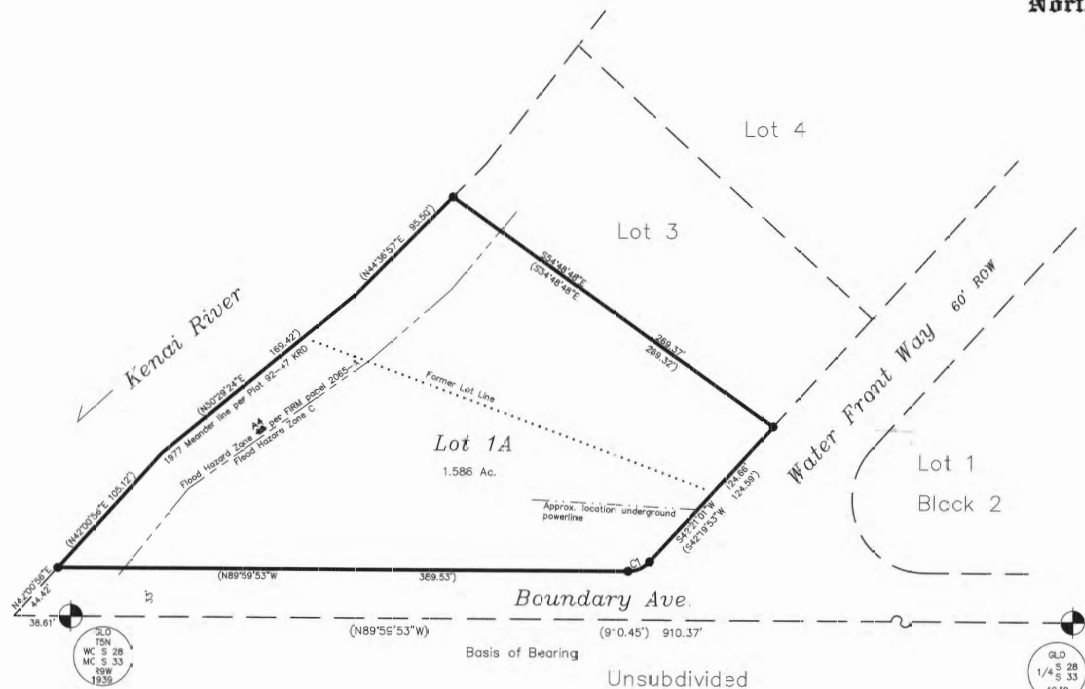
Pauline L. Loh
AUTHORIZED OFFICIAL



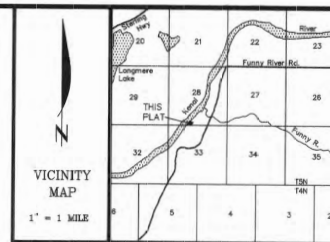
SURVEYOR'S CERTIFICATE

I hereby certify that: I am properly registered and licensed to practice land surveying in the State of Alaska, this plat represents a survey made by me or under my direct supervision, the monuments shown herein actually exist as described, and all dimensions and other details are correct.

Date *2/12/05*



CURVE TABLE					
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD
01	17°40'25"	261.00	16.64	8.84	16.17



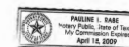
CERTIFICATE of OWNERSHIP and DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT WE HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY OUR FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

James L. Harping *Virginia Harping*
JAMES L. HARPING VIRGINIA HARPING
P.O. BOX 2036
SOLDOTNA, AK 99669

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN BEFORE ME THIS *24th* DAY OF *October*, 2005
FOR *James L. Harping & Virginia Harping*



Pauline L. Loh
NOTARY PUBLIC FOR *the State of Alaska*
MY COMMISSION EXPIRES *April 15, 2009*

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN BEFORE ME THIS *24th* DAY OF *October*, 2005
FOR *Virginia Harping*



Pauline L. Loh
NOTARY PUBLIC FOR *the State of Alaska*
MY COMMISSION EXPIRES *April 15, 2009*

2005-136
RECORDED *20*
KENAI REC. DIST.
DATE: *12-30-05*
TIME: *12:25* A.M.
REQUESTED BY:
SEGESSER SURVEYS
30485 ROSLAND ST.
SOLDOTNA, AK 99669

KPB FILE No. 2005-280

Clearwater Subdivision Harping Replat

A resubdivision of Lots 1 and 2, Block 1, Clearwater Subdivision (Amended), Plat 92-47, KRD.

Located within the SE1/4 SW1/4 Section 28, T5N, R9W, S14E, Kenai Recording District, Kenai Peninsula Borough, Alaska.

Containing 1.586 Ac.

SEGESSER SURVEYS

30485 Rosland St.
Soldotna, AK 99669

JOB NO.	35136	DRAWN:	2-15-C5
SURVEYED:	July, 2001	SCALE:	1"= 40'
FIELD BOOK:	01-1	SHEET:	1 of 1