

E. NEW BUSINESS

12. Review of Plat Committee Decision

Scenic Ridge Lee Addition; KPB File 2022-075

McLane Consulting Group / Bureau of Indian Affairs & Lee

Location: Ken Street & Margaret Drive

Nikiski Area

**Kenai Peninsula Borough Plat Committee
Hearing and Review Procedures**

TO: Kenai Peninsula Borough Planning Director

FROM: RICHARD AND KAREN MCGAHAN

ADDRESS (Mailing): 54025 Kenai Spur Hwy.
Kenai, Alaska 99601

Daytime Phone: 907-252-1136

Hearing and review procedures of Plat Committee decisions are governed by KPB 2.40.080.

Review of a decision of the plat committee may be heard by the planning commission acting as the platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for review shall be filed within 10 days after notification of the decision of the plat committee by personal service or service by mail.

A request for review may be filed by any person or agency that participated at the plat committee hearing either by written or oral presentation. The request must have an original signature; filing electronically or by facsimile is prohibited.

The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based. Notice of the review hearing will be issued by staff to the original recipients of the plat committee public hearing notice.

Cases reviewed shall be heard de novo by the planning commission acting as the platting board.

(Ord. No. 2007-34, § 1, 11-20-07; Ord. No. 2002-07, § 1, 4-18-02; Ord. No. 93-51, § 2, 1993; Ord. No. 73-34, §§ 1(part) and 2(part), 1973; KPC § 20.10.005(h))

I am requesting a review of a decision of the Kenai Peninsula Borough Plat Committee as set forth below.

1. Date of written notice of Plat Committee decision: JUNE 28, 2011

2. Brief description of the Plat Committee decision for which you are requesting review by the Planning Commission. (Example: Approval of the preliminary plat of Smith Subdivision.)

APPROVAL OF SCENIC RIDGE LEE ADDITION PRELIMINARY
PLAT KID FILE NUMBER 2022-015 ACCESS ON KEN ST.

3. List errors in the Committee's findings of fact or decision(s), including the sections of the borough code violated by the decision.

KEN ST. IS NOT A LEGAL ACCESS TO THE Spur Hwy
(NO ENTRANCE - NO EVID) THE SUPERVISOR IN THE RECORDER'S
OFFICE DID AN EXTENSIVE SEARCH FOR US THERE IS NO RECORDED
ACCESS TO KEN ST.

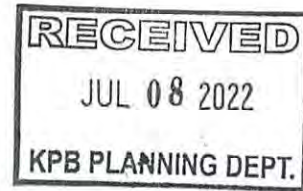
4. State the relief you are requesting from the Planning Commission including whether you want the Plat Committee's decision reversed or modified.

WE WERE ASSURED BY THE PREVIOUS STAFF IN THE PLANNING
DEPT. THAT KEN ST. COULD NEVER BE UTILIZED FOR ACCESS TO THE
B.I.A 80 ACRES NEXT TO US. IT'S NOT A LEGAL ACCESS AND THE
TOPOGRAPHY MAKES IT IMPOSSIBLE FOR A ROAD WITH VEHICLE
USE. THIS WHOLE PLOT WAS PART OF RICHARDS PARENTS
HOME STEAD. WE HAVE LIVED HERE SINCE 1955 AND ARE
VERY FAMILIAR WITH THE PROPERTY. WE DO NOT WANT KEN ST.
RECOMMENDED AS AN ACCESS. THE EDGE ALSO IS TOO CLOSE TO
A LAKE

Richard D. McArthur
Signature (ORIGINAL SIGNATURE REQUIRED)

JULY 12, 2022
Date

Planning Department
144 N. Binkley Street
Soldotna, Alaska 99669



July 5, 2022

To Whom It May Concern:

Re: Review by Planning Commission

Scenic Ridge Lee Addition Preliminary Plat
KPB File Number 2022-075

We received a notice that we may request a review by the Planning commission of a decision by the Plat Committee.

The notice was dated June 28, 2022 and stated that we must request this review in writing Within 15 days of the notification, in accordance with borough ordinances.

We are requesting that review and request that we may testify before the Planning Commission regarding our concerns.

Thank you,

Two handwritten signatures in blue ink. The first signature is "Richard J. McGahan" and the second is "Karen L. McGahan".

Richard and Karen McGahan
54025 Kenai Spur Hwy.
Kenai, Alaska 99611

Physical address: Mile 29.3 Kenai Spur Hwy.
Nikiski, Alaska 99635

Email: boulderpoint@alaska.net
Phone: 907 252 1136



Planning Department

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

Charlie Pierce
Borough Mayor

June 28, 2022

NOTICE OF DECISION KENAI PENINSULA BOROUGH PLAT COMMITTEE MEETING OF JUNE 27, 2022

Re: Scenic Ridge Lee Addition Preliminary Plat
KPB File Number: 2022-075

The Plat Committee reviewed and granted conditional approval of the subject preliminary plat during their regularly scheduled meeting of June 27, 2022 based on the findings that the preliminary plat meets the requirements of the Kenai Peninsula Borough Code 20.25, 20.30, 20.40 and must comply with 20.60.

AMENDMENT A MOTION

An amendment motion to grant exception to KPB 20.30.030 – proposed street layout requirements, continuation or projection of right-of-way and KPB 20.30.170 blocks-length requirements, passed by unanimous vote based on the following findings of fact.

Findings

1. There are areas of steep terrain throughout the subdivision.
2. Access from the south may be limited due to access questions and concerns.
3. Developed roads to the west, along with section line easements, provide a northern access.
4. The tracts are proposed to be large acreage tracts.
5. There are wetlands present in the northeast portion of the subdivision.
6. The land could be subdivided again in the future.
7. Lot 1 will be accessed through Tract A to the south.

AMENDMENT B MOTION

An amendment motion for Lot 1 to grant exceptions to KPB 20.30.200 – Lots-Minimum Size, KPB 20.30.210 – Lots-Access to Street, and KPB 20.40 – Wastewater Disposal, requirement for soils analysis, passed by unanimous vote based on the following findings of fact.

Findings

2. Lot 1 will be accessed through Tract A to the south.
3. Leaving Lot 1 from this plat will result in a gap in KPB parcel data and will leave a portion of land we do not recognize.
4. The BIA has recorded their own record at the federal level that created the lot.
5. The lot was created to fix an encroachment issue.

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.

For additional information please contact the Planning Department, 907-714-2200 (1-800-478-4441 toll free within the Kenai Peninsula Borough).

Notice was emailed on June 28, 2022 to:

BBenson <BBenson@mclanecg.com>; Cody McLane <crmclane@mclanecg.com>; James Hall
(jhall@mclanecg.com)

Notice was mailed on June 28, 2022 to:

West Central AK Field Office
Bureau of Indian Affairs
3601 C St Ste 1100
Anchorage, AK 99503-5947

Traci Lee
PO Box 3501
Kenai, AK 99611

Karen and Richard McGahan
54025 Kenai Spur Highway
Kenai, AK 99611

ITEM E1 – HAPPY CREEK REPLAT

KPB File No.	2022-077
Plat Committee Meeting:	June 27, 2022
Applicant / Owner:	Clifford and Jana Johnson Investments, LLC of Mesa, Arizona and Rosemary Johnson of Anchor Point, Alaska
Surveyor:	Jason Young, Mark Aimonetti / Edge Survey and Design LLC
General Location:	Hanks Mill Road, Sterling Highway / Happy Valley / Anchor Point APC

Parent Parcel No.:	159-112-01, 159-112-02, and 159-112-03
Legal Description:	Government Lots 1 and 2 lying west of the Old Sterling Highway, Portion of Government Lot 1 lying east of the Old Sterling Highway and Portion of NW1/4 NW1/4 in Section 8, portions of Government Lots 1 and 2 in section 7 and NW1/4 NW1/4 in Section 8.
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

Staff report was given by Platting Specialist Julie Hindman.

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

MOTION: Commissioner Horton moved, seconded by Commissioner Fikes to grant preliminary approval to Happy Creek Replat, based on staff recommendations and compliance to borough code.

Seeing and hearing no objection or discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE

Yes	5	Brantley, Fikes, Horton, Martin, Morgan
No	0	

ITEM E2 – SCENIC RIDGE LEE ADDITION

KPB File No.	2022-075
Plat Committee Meeting:	June 27, 2022
Applicant / Owner:	Bureau of Indian Affairs, Alaska and Traci Lee of Kenai, Alaska
Surveyor:	James Hall / McLane Consulting Inc.
General Location:	Margaret Drive / Nikiski

Parent Parcel No.:	013-145-02
Legal Description:	E1/2 NW1/4 of Section 32 Township 8 North Range 11 West
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

Staff report was given by Platting Specialist Julie Hindman.

Chair Brantley opened the item for public comment.

Karen McGahan; 54025 Kenai Spur Hwy., Kenai, AK 99611: Mrs. McGahan requested that a note be placed on the plat that Ken Street is a private road and should not be considered a legal access for the property.

Richard McGahan; 54025 Kenai Spur Hwy., Kenai, AK 99611: Mr. McGahan requested that a note be placed on the plat that Ken Street is a private road and should not be considered a legal access for the property.

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

MOTION: Commissioner Martin moved, seconded by Commissioner Fikes to grant preliminary approval to Scenic Ridge Lee Addition, based on staff recommendations and compliance to borough code.

AMENDMENT MOTION A: Commissioner Martin moved, seconded by Commissioner Fikes, to grant exception request to KPB 20.30.030(A) – Proposed Street Layout Requirements, continuation or projection of right-of-way, and KPB 20.30.170 – Block Length Requirements, citing findings 1-7 in support of standards one, two and three.

Commissioner Horton asked staff if this exception request was directly related to the issue of legal access to the property. Ms. Hindman replied this exception was requested so that the landowners would not be required to continue dedication of Ken Street & Margaret Drive, beyond what they are proposing. They would also not be required to have an east/west dedication to make the block compliant.

Chair Brantley asked staff to confirm that this platting action has nothing to do with Margaret Drive or Ken Street access issues. Ms. Hindman replied that is correct. She then noted that she had found the deed that refers to the Ken Street access and she would recommend anyone wishing to use Ken Street for access have legal counsel review the deed to verify that it is a legitimate access.

Seeing and hearing no objection or discussion, the motion was carried by the following vote:

AMENDMENT MOTION A PASSED BY UNANIMOUS VOTE

Yes	5	Brantley, Fikes, Horton, Martin, Morgan
No	0	

AMENDMENT MOTION B: Commissioner Martin moved, seconded by Commissioner Fikes to grant exception request to KPB 20.30.200 – Lots, Minimum Size and KPB 20.30.210 – Lots, Access to Street and KPB 20.40 – Wastewater Disposal, requirement for soils analysis report for Lot 1, citing findings 2-5 in support of standards one, two and three.

Seeing and hearing no objection or discussion, the motion was carried by the following vote:

AMENDMENT MOTION B PASSED BY UNANIMOUS VOTE

Yes	5	Brantley, Fikes, Horton, Martin, Morgan
No	0	

Seeing and hearing no objection or discussion, the motion was carried by the following vote:

MOTION PASSED AS AMENDED BY UNANIMOUS VOTE

Yes	5	Brantley, Fikes, Horton, Martin, Morgan
No	0	

F. PUBLIC COMMENT - None

G. ADJOURNMENT

Commissioner Martin moved to adjourn the meeting 6:58 P.M.

Ann E. Shirnberg
Administrative Assistant

Quinton, Madeleine

From: James Hall <jhall@mclanecg.com>
Sent: Monday, July 25, 2022 9:21 AM
To: Quinton, Madeleine; Piagentini, Vincent
Subject: <EXTERNAL-SENDER>FW: Notice of Decision KPB 2022-075
Attachments: Notice of Decision KPB File 2022-075.pdf; IMG_8643.heic; Oct 2004.PNG; Aug 1996.PNG; Nov 2004.PNG; B42-Pg128 KRD.pdf

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

I received an auto-reply from Julie, please find information below supporting the Scenic Ridge Subdivision plat KPB File No. 2022-075

Thank you
James

From: James Hall
Sent: Monday, July 25, 2022 9:18 AM
To: 'jhindman@kpb.us' <jhindman@kpb.us>
Subject: FW: Notice of Decision KPB 2022-075

Good Morning,

I was informed by my client the plat is being contested and on schedule for review by the planning commission. I humbly request that we are informed when a plat is contested and on the agenda for review. This allows us to prepare information needed to defend the subdivision plat.

My understanding is that the McGahan's are stumping that Ken Street is not a legal access point.

We would like to inform the Borough of the following:

- August 26, 1996 the McGahan's were granted a parcel waiver allowing creation of two parcels based on public legal access being provided by Ken Street easement.
- October 11, 2004 the McGahan's again subdivided the area and the Borough required the public access be shown on the plat along with existing travel ways. The preliminary plat was granted approval but was revised and again heard in November 2004.
- November 22, 2004 the revised preliminary plat again mentions the extension of the 100-foot access easement (Ken Street).
- June 27, 2022 the McGahan's protest and petition the planning commission for review based on Ken Street being a private road.

This evidence has been compiled from Borough public records and official minutes. Public access through this 100' easement to access parcels north of the Kenai Spur Highway was created by Book 42, Page 128 KRD as shown on the plat KN2005-14. The easement document is vague in nature of the intent of the easement but clear evidence through the years of showing its public access to subdivide parcels should clarify that this is intended as public access.

Let me know if you need any additional information or have any questions/concerns

James Hall, PLS
McLane Consulting, Inc.
907-283-4218 office
907-953-5886 cell

From: Hindman, Julie <jhindman@kpb.us>
Sent: Tuesday, June 28, 2022 11:19 AM
To: Ben Benson <BBenson@mclanecg.com>; Cody McLane <crmclane@mclanecg.com>; James Hall <jhall@mclanecg.com>
Subject: Notice of Decision

Please find attached the notice of decision for Scenic Ridge Lee Addition, KPB File 2022-075.

Once the approved minutes are available they can be found at <https://kpb.legistar.com/Calendar.aspx>

If you need unapproved minutes sooner please let me know.

Julie Hindman

Platting Specialist
Ph: (907) 714-2210
Fx: (907) 714-2378

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



STATUTORY WARRANTY DEED

The Grantors, KENNETH MCGAHAN and MARGARET E. MCGAHAN, husband and wife, of Route #1, Kenai, Alaska, for and in consideration of the sum of Ten Dollars (\$10.00), conveys and warrants to PAUL L. COSTA, a single man, and RONALD A. MIKA, a single man, to hold as tenants in common, the following described real property situated in the Kenai Recording District, State of Alaska, said property being more particularly described as follows:

A tract of land in Section Thirty-two (32), Township Eight North (T 8 N), Range Eleven West (R 11 W), Seward Meridian, Alaska, said tract being more particularly described as follows:

From the S $\frac{1}{2}$ corner of said Sec. 32, run N. 0°-07'-30" W. for 1011.28 feet to an intersection with the presently existing centerline of the North Kenai Highway for a Point of Beginning. Thence S. 68°-57'-30" W. along said centerline for 500 feet; thence N. 21°-02'-30" W. for 435.6 feet; thence N 68°-57'-30" E. for 1000.00 feet; thence S. 21°-02'-30" E. for 435.6 feet. to the centerline of the North Kenai Highway thence S. 68°-57'-30" W. along the centerline for 500.00 feet to the Point of Beginning, the whole comprising 10 acres more or less, excepting there from a right-of-way of 100 feet in width, said right-of-way being the northerly projection of Lamplight Road, and described as follows:

EXCEPT FOR THE FOLLOWING DESCRIBED REAL PROPERTY:
A tract of land situated in the E $\frac{1}{2}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32, T. 8 N., R. 11 W., S.M., Third Judicial District, State of Alaska, more particularly described as follows, to-wit:

Beginning at a point on the westerly line of the SE $\frac{1}{4}$, and the existing centerline of the North Kenai Road of Section 32, T. 8 N., R. 11 W., S.M., said point bears northerly along the said westerly line a distance of 1011.28 feet from the southerly quarter corner of said Section 32; thence northeasterly along the said existing centerline a distance of 500.00 feet; thence N. 21° 01' 15" W. a distance of 50.0 feet; thence S. 68° 58' 45" W. a distance of 848.45 feet; thence N. 21° 01' 15" W. a distance of 25.0 feet; thence S. 68° 58' 45" W. a distance of 151.55 feet; thence S. 21° 01' 15" E. a distance of 75.0 feet to a point on the said existing centerline; thence northeasterly along the said existing centerline a distance of 500.0 feet to the Point of Beginning.

SUBJECT TO:

(1) A reservation to the Grantors of all oil and gas mineral rights, if in fact said mineral rights are

FISHER & HORNADAY
ATTORNEYS
TRADE BUILDING
P. O. BOX 397
KENAI, ALASKA 99611
TELEPHONE 283-7568

vested in Grantors.

(2) A restriction in favor of the Grantors, restricting Grantees from removing or selling gravel from the afore-described real property.

DATED at _____, Alaska, _____ day of October, 1966.



Kenneth McGahan
KENNETH MCGAHAN

Margaret E. McGahan
MARGARET E. MCGAHAN

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
3rd JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 4 day of ^{NOV}September 1966 KENNETH MCGAHAN personally appeared before the undersigned notary public and acknowledged the foregoing Statutory Warranty Deed as his voluntary act.

Stanley F. Thompson
Notary Public in and for Alaska
Commission Expires: 3/21/68

STATE OF ALASKA)
) ss.
3rd JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 4 day of ^{NOV}September 1966 MARGARET E. MCGAHAN personally appeared before the undersigned notary public and acknowledged the foregoing Statutory Warranty Deed as her voluntary act.

Stanley F. Thompson
Notary Public in and for Alaska
Commission Expires: 3/21/68

FIGHER & HORNADAY
ATTORNEYS
TRADE BUILDING
P. O. BOX 397
KENAI, ALASKA 99811
TELEPHONE 283-7565

RECORDED - FILED	
<u>Kenai</u> REC. DIST.	
DATE	<u>11-18</u> 19 <u>66</u>
TIME	<u>3:00</u> P M
Requested by	<u>Porter</u>
Address	<u>Box 441</u> <u>Kenai</u>

167597
B4441
10/11/66

The August 26, 1996 Planning Commission minutes indicate property subdivided by Plat Waiver 96-29 had public access by a document recorded in the Kenai Recording District. **Staff recommends** all easements affecting the subject subdivision be shown and labeled on the plat.

The property is not within an advisory planning commission.

Development within the subdivision may be subject to the administrative policies and/or enforceable policies of the KPB Coastal Zone Management Program (Ordinance 90-20).

The Certificate to Plat was provided in accordance with Planning Commission Resolution 2000-25. The Certificate to Plat indicates beneficial interests affect this property. The beneficial was notified and 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.

Exception Requested: Partial survey and monumentation. The submittal states that the north 10-acre portion of Tract C was Parcel 1 of KPB Plat Waiver Resolution 96-29 and is being added to the 28-acre parcel to the south. All of the corners to the 28-acre portion of the parcel exist or will be set.

Subdivisions may be exempt from survey and monumentation requirements of Section 20.16.160 provided an application is submitted with sufficient evidence to support findings in accordance with KPB 20.04.040 (C):

1. The subdivision will not create more than four parcels.

1. P/W McGahan, Richard Sr. & Karen S.
KPBPC Resolution 96-29
KPB File 96-167

Location: Westerly of North Kenai Road and Daniels Lake

Staff report as read by Lisa Parker.

PC Meeting 08/26/96

The applicants propose to divide an existing 34 acre m/l parcel into two parcels. One parcel will be ten acres, and the other parcel will be 24 acres.

Access is available through dedicated rights-of-way and public access granted by a document recorded in the Kenai Recording District.

Staff finds this petition meets the conditions of AS 29.04.090.

STAFF RECOMMENDATIONS: Adopt Planning Commission Resolution 96-29, thereby granting the platting waiver.

END OF STAFF REPORT

MOTION: Commissioner Hensley moved, seconded by Vice Chairman Bryson, to adopt Planning Commission Resolution 96-29, thereby granting the platting waiver per staff recommendations.

VOTE: The motion passed by unanimous consent. **E12-13**

1. Margaret E. McGahan Homestead No. 3 (Revised Preliminary)
KPB 2004-256; Integrity/McGahan, Davidson

Staff Report as read by Patti Hartley

Plat Committee Meeting: 11/22/04

Location:	North of North Kenai Road in Nikiski
Proposed Use:	Residential, Recreational, Commercial, Agricultural
Zoning:	Unrestricted
Sewer/Water:	On-site
Assessing Use:	Residential, Mobile Home

Supporting Information:

The Plat Committee granted conditional approval to the preliminary plat on October 11, 2004. The preliminary subdivided four tracts from Parcel 1 of Plat Waiver Resolution 96-29.

The revised preliminary plat creates five tracts. All tracts are larger than five acres; a soils report will not be required.

A 60-foot wide right-of-way is proposed through the subdivision, extending a 100-foot easement accessing the south of the subdivision. **Staff recommends** the existing travel way be shown within the dedication. **Staff recommends** the topography be shown or it be otherwise demonstrated that a road can be constructed within the proposed dedication to meet Borough grade requirements. **Staff recommends** the east-west travel way on or near the common lot line between Tracts A and B be shown and labeled with use.

There is a travel-way and structure located on Tract C. **Staff recommends** the travel way be shown and labeled on the plat.

AGENDA ITEM E. NEW BUSINESS

ITEM E12 - SCENIC RIDGE LEE ADDITION

KPB File No.	2022-075
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	Bureau of Indian Affairs, Alaska and Traci Lee of Kenai, Alaska
Surveyor:	James Hall / McLane Consulting Inc.
General Location:	Margaret Drive / Nikiski

Parent Parcel No.:	013-145-02
Legal Description:	E1/2 NW1/4 of Section 32 Township 8 North Range 11 West
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

STAFF REPORT

Summary

This item was originally heard by the Plat Committee on June 27, 2022. Several exceptions had been requested. The exception requests to KPB Code 20.30.030(A) - proposed street layouts for a continuation or projection of rights-of-way and KPB 20.30.170 - block length requirements were grouped together. The other exceptions, KPB 20.30.200 - lots-minimum size, KPB 20.30.210 – lots-access to street, and KPB 20.40, wastewater disposal requirements for a soils analysis report, were also grouped together as they all pertained to Lot 1. The exception requests and the preliminary design subject to staff recommendations and compliance with KPB Code were approved.

A request for a Planning Commission review of the Plat Committee decision, in accordance with KPB Code, was received on July 8, 2022 from Richard and Karen McGahan. The request is presented in the packet.

Per KPB 2.40.080(C), the Planning Commission sitting as the platting board reviews cases *de novo*. This means the Planning Commission is not required to give deference to the plat committee's decision. The packet will contain the information presented to the Plat Committee and any additional information or comments that have been received in response to the scheduling of this meeting. Following is the staff report as prepared for the June 13, 2022 meeting.

Please note that under KPB 20.25.120, **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.**

Report from June 27, 2022 Plat Committee Meeting

Specific Request / Scope of Subdivision: The proposed plat will subdivide an 80 acre parcel into two tracts and one lot. The tracts will be 26 and 52.915 acres. The lot will be 22,142 square feet. A matching 30 foot dedication is proposed.

Location and Legal Access (existing and proposed): The subdivision is located near mile 28.5 of the Kenai Spur Highway. Margaret Drive is a 60 foot wide right-of-way that provides access from Kenai Spur Highway. It will provide access to Tract A-2. There is a private non-exclusive easement for a 20 foot wide road through Tract A located to the south to provide access to the tract being subdivided. It appears that Margaret Drive is not constructed fully within the right-of-way and the easement is granting permission to travel outside of the dedication due to some terrain restraints.

Ken Street is a dedicated right-of-way with varying widths. The plat is proposing to dedicate a 500 foot length of Ken Street at 30 feet wide to provide a matching dedication to the eastern portion already dedicated and to continue north to provide access to the northern Tract. There are some concerns regarding if Ken Street connects to the Kenai Spur Highway. There is a deed with a description of land that has been labeled as access on past plats. The deed makes reference to a 100 foot wide northern projection of Lamplight Road. A legal determination will need to be made. If the owners wish to use this for access staff recommends they contact an attorney to help determine if there is legal access. If it is determined that there is not a connection the owners will need to be aware that they will not be able to access the property from Ken Street.

Access from section line easements are available. Rounds Road, Charlies Way, and section line easement provide access from the west and then the north to the northern proposed tract.

Neighbors have informed staff that there are many private travel ways in this area. They constructed these roads to be private and intentionally did not place them within the dedications. Prior to using any of the existing travel way, staff recommends the owners have any travel ways they intent to use surveyed prior to use to make sure they are not trespassing. If any of the private roads fall within dedications they may be used by members of the public.

Due to the size of the subdivision, the block is not compliant. Exceptions have been requested for dedications and block length.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	No comment

Site Investigation: There are some low wet areas present within the northeast portion of Tract A-1. They are depicted on the plat and ***staff recommends the wetland depiction remain and the wetland determination note be added.***

Contours are shown on the plat with shading for the steep slopes. Steep areas are present throughout the plat. Some steep slopes are within the proposed dedication and appear to be approximately 22 percent. This dedication is to provide a match to already granted right-of-way. North of the proposed dedication the terrain gets steeper and has approximate slopes of 37 percent.

There are encroachments from the lot to the south onto the property. The encroachments will be contained within the proposed Lot 1.

KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments
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	B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments C. State Parks Reviewer: Russell, Pam Comments: No Comments
State of Alaska Fish and Game	No objections

Staff Analysis This is a proposed plat of native lands. Bureau of Indian Affairs has already recorded a subdivision, BIA #975-1183, to create a Tract A and Lot 1 of Scenic Ridge. This was recorded at the federal level and not reviewed by the planning department. This is something that is allowable but the borough does not recognize the changes of property lines and we currently show the property as an aliquot piece of property.

Lot 1 was created to resolve some encroachment issues. The native allotment owners transferred the interest over for that lot but as the borough does not recognize that lot we have no record of an ownership change. Staff is requesting that Lot 1 of the BIA subdivision, Scenic Ridge, be included in this platting item to create the lot and once there is a deed recorded the owner of the lot may combine his property if chosen. Several exceptions will be required.

A soils report will not be required for the tracts and an exception has been requested for the lot. The correct plat notes will be required.

Per the preliminary Certificate to Plat, beneficial interest holders do not affect the proposed plat. Notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states the property is affected by beneficial interest holders.

The property is not within an advisory planning commission.

Utility Easements The property had not been previously platted. 10 foot wide utility easements are proposed along the dedications.

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	No comment
ENSTAR	No comments or recommendations
ACS	No objections
GCI	Approved as shown

KPB department / agency review:

Addressing	Reviewer: Haws, Derek Affected Addresses: None Existing Street Names are Correct: Yes List of Correct Street Names: MARGARET DR
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	<p>KEN ST</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: No addresses affected by this subdivision.</p>
Code Compliance	<p>Reviewer: Ogren, Eric</p> <p>Comments: No comments</p>
Planner	<p>Reviewer: Raidmae, Ryan</p> <p>There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Conditional Land Use Permit CLUP Resolution Number: 2015-09 CLUP Approval Date: 4/14/2015 Material Site Comments: CLUP 2015-09 is located Southeast of subject parcel at PID 013-300-52. Across Ken St.</p>
Assessing	<p>Reviewer: Wilcox, Adeena</p> <p>Comments: No comment</p>

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

STAFF RECOMMENDATIONS **CORRECTIONS / EDITS**

Depict the setback and utility easements or provide a typical detail.

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 to be a subdivision of the E1/2 NW1/4 of Section 32, also known as Lot 1 and Tract A of Scenic Ridge (BIA Document No. 975 1183)*
- J. Block and lot numbering per KPB 20.60.140, approximate dimensions and total numbers of proposed lots;
- Staff recommendation:** *Lot 1 will need to have a new lot number.*

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.

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: The tracts are larger than 200,000 square feet and do not require a wastewater review. Lot 1 – an exception has been requested. Add correct plat notes.

Staff recommendation: comply with 20.40.

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.

20.60.040. Dedication of public use lands. Any land shown on a plat as a street, public park or other public area must be dedicated on the final plat to a tax exempt governmental entity. If the governmental entity is not the Kenai Peninsula Borough, the governmental entity shall be required to execute an acceptance of the dedication on the plat.

Staff recommendation: Acceptance of any dedications is required.

20.60.130. Boundary of subdivision. The boundary of the subdivision shall be designated by a wider border and shall not interfere with the legibility of figures or other data. The boundary of the subdivided area shall clearly show what survey markers, or other evidence, was found or established on the ground to determine the boundary of the subdivision. Bearing and distance ties to all survey markers used to locate the subdivision boundary shall be shown.

Staff recommendation: The boundary must be updated to include Lot 1.

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.

- Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program (KPB 14.06).
- Add a note for any exceptions granted.
- WASTEWATER DISPOSAL (Tracts A-1 and A-2): Lots which are at least 200,000 square feet in size may not be suitable for onsite wastewater treatment and disposal. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation.
- If the exception is granted, "WASTEWATER DISPOSAL (Lot 1): Conditions might not be suitable for onsite wastewater treatment and disposal systems. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation."

- Any person developing the property is responsible for obtaining all required local, state, and federal permits, including a U.S. Army Corps of Engineers wetland determination if applicable.

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: Comply with 20.60.190.

EXCEPTIONS REQUESTED:

A. KPB 2030.030(A) – Proposed street layout-Requirements, continuation or projection of right-of-way and KPB 20.30.170 – Blocks-Length Requirements

Staff Discussion: Staff grouped the two exceptions. If the planning commission wishes to discuss or vote on the code exceptions separately, two motions will be required.

Per code the continuation of Ken Street and Margaret Drive should continue into this subdivision. Additional rights-of-way would be required to bring the block into compliance.

The intent of this subdivision is to divide a large acreage parcel into two large acreage parcels. A dedication is proposed to match the current 30 foot width of Ken Street and to provide a connection to the northern tract. The plat has access from section line easements to the north. The subdivision has areas of steep terrain. The property would benefit at this time from not being required to dedicate rights-of-way or continuations to allow any future roads to be planned with an overall design that will allow the rights-of-way to be created in areas where construction feasibility will be higher.

Findings:

1. There are areas of steep terrain throughout the subdivision.
2. Access from the south may be limited due to access questions and concerns.
3. Developed roads to the west, along with section line easements, provide a northern access.
4. The tracts are proposed to be large acreage tracts.
5. There are wetlands present in the northeast portion of the subdivision.
6. The land could be subdivided again in the future.
7. Lot 1 will be accessed through Tract A to the south.
8. The block is incomplete and is longer than allowable limits.
9. Proper continuation and projections would require extensions of Ken Street and Margaret Drive.

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 1-7 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 1-7 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 1-7 appear to support this standard.

B. KPB 20.30.200 – Lots-Minimum Size, KPB 2030.210 – Lots-Access to Street, and KPB 20.40 – Wastewater Disposal, requirement for soils analysis report All for Lot 1

Staff Discussion: Staff grouped the three exceptions. If the planning commission wishes to discuss or vote on the code exceptions separately, three motions will be required.

Lot 1 was created by BIA to resolve encroachment issues from the owner of Tract A, KN 90-61. They have recorded a deed to transfer the ownership. The KPB does not recognize the property line change as it did not go through the platting process. Allowing these exceptions to be granted and to create Lot 1 will provide an opportunity for the property to get the title issues worked out. The owner of Tract A would be able to work on combining the lot with their current tract if they wish and all requirements for BIA are met.

Findings:

1. Lot 1 will be 22,142 square feet.
2. Lot 1 will be accessed through Tract A to the south.
3. Leaving Lot 1 from this plat will result in a gap in KPB parcel data and will leave a portion of land we do not recognize.
4. The BIA has recorded their own record at the federal level that created the lot.
5. The lot was created to fix an encroachment issue.

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 2-5 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 2-5 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 2-5 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.

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

Kenai Peninsula Borough Planning Commission
planning@kpb.us

To whom it may concern:

I am a property owner affected by the proposed access to a proposed plat creating 2 tracts from one large parcel.

Re: KPB File No. 2022-075. Scenic Ridge Lee Addition Preliminary Plat

I was surprised that the Plat Committee did not delete Ken St. from consideration access to the proposed plat. I was raised on the property and Ken McGahan was grandfather. There is no legal access to Ken St. from the Spur Highway. The north St. topography is not suitable to build a road.

My parents, several years ago, were assured by the Kenai Peninsula Borough Planning Department that Ken St. could never be used as an access. My siblings and I own to the east of Ken St. and we would be impacted by any traffic.

My request is that the Planning Commission recommend using the legal access lines.

Signed,



Terry R. McGahan
P.O. Box 2249
Kenai, Alaska 99611