

E. NEW BUSINESS

13. Review of Plat Committee Decision

East Oyster Cove Subdivision; KPB File 2022-047R1

Fixed Height LLC / Alaska Mental Health Trust Authority

Location: Oyster Cove REM SW

Remote Area

REC.)
JUL 08 2022

KPB PLANNING DEPT.

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

TO: Kenai Peninsula Borough Planning Director

FROM: Donald McClintock on behalf of Phillip Brudie

ADDRESS (Mailing): c/o Donald McClintock, Ashburn & Mason, P.C., 1227 W. 9th Ave. Ste. 200, Anchorage, Alaska 99501

Daytime Phone: 907-276-4331

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, 4-16-02; 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 23, 2022

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.)

East Oyster Cove Subdivision Preliminary Plat approved by Notice of Decision dated June 23, 2022 KPB 2022-047R1

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

Please see attached letter dated 7-07-2022 from Ashburn & Mason, P.C.

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

Plat denied and Petitioner to re-submit.

Signature **(ORIGINAL SIGNATURE REQUIRED)**

07/07/2022

Date

ASHBURN & MASON P.C.

LAWYERS

LAURA C. DULIC • MATTHEW T. FINDLEY • BENJAMIN J. FARKASH • EVA R. GARDNER • REBECCA E. LIPSON
DONALD W. MCCLINTOCK III • JEFFREY W. ROBINSON • MICHAEL S. SCHECHTER • ASHLEY K. SUNDQUIST • THOMAS V. WANG
OF COUNSEL JULIAN L. MASON III • A. WILLIAM SAUPE

July 7, 2022

Kenai Peninsula Borough
Planning Commission
144 N. Binkley street
Soldotna, Alaska 99669

Re: Appeal to the Planning Commission Per Kenai Peninsula Borough Code
Section 2.40.080; East Oyster Cove Subdivision Preliminary Plat
KPB File Number 2022-047R1

Dear Commissioners:

This is a request for de novo review of the platting committee approval of the above plat pursuant to KPB 2.40.080. This firm represents Phil Brudie who submitted comments at both hearings scheduled on this plat.

A. Background.

This matter was heard on June 13, 2022. The Notice of Decision was issued on June 23, 2022. This matter is timely filed on June 8, 2022. The hearing was the second scheduled on this plat. The first was heard on May 9th when the plat was heard and failed due to a lack of a second. The community presented many significant comments at the hearing. No contact was made by the petitioner to try to resolve any of the comments at hearing with those who spoke. Instead, a revised plat was submitted which included several new access easements along the water frontage of several of the lots.

The plat should be denied (to be resubmitted), or additional conditions to plat be imposed for the following reasons:

1. The Plat should reflect existing drinking water appropriations of record so that lot purchasers will know that their water rights are subject to prior rights and also to avoid polluting known drinking water sources. KPB Code 20.01.010; and KPB 20.40.060.

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2. The access easements as drawn are not practical, interfere with the most likely building sites, and do not provide practical access to the lots. No findings were made that addressed whether water access to all of the lots is both practical and feasible. KPB 20.30.050.B.1.
3. The record of decision makes no actual finding adopting any of the staff recommendations. Several of those are significant to avoid contaminating the waters of this lovely area. KPB 20.10.120.

B. Discussion.

1. Water Rights.

Phil Brudie lives in Homer and has a recreational cabin adjacent to the proposed Lot 1. At both hearings he submitted evidence of his Certificate of Appropriation (LAS 11231) recorded at Book 30 Page 223 Seldovia Recording District on November 21, 1988. He perfected his rights to water coming of the petitioned land in the vicinity of Lots 1 and 2 of the proposed plat. The actual water course is not mapped but likely affects Lot 3 and uphill Lots 10 and 11. He and two other neighbors have relied on that water source for safe drinking water.

The right to appropriate water is memorialized in Article 8, Section 13 of the Alaska Constitution.¹ Brudie has a prior right to the waters flowing from this water source over the other future users of the lots to be created by this proposed plat.²

Brudie's request was to have this right memorialized in the plat notes and to require that the stream be surveyed and located on the plat. There are two rights implicated by this requirement. First, it would put the future owners of the lots that are appurtenant to the stream on notice that their rights to appropriate the water are subject to Brudie's prior rights. Putting this information on the plat can help avoid future disputes and confusion. Second, it implicates serious public safety concerns so that all owners in the area of the stream are on notice of its location and the need to locate the sewage

¹ "All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right...."

² AS 46.15.050 (a) "Priority of appropriation gives prior right."

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systems at the requisite DEC distances from the stream and its outfall and collection by Brudie.

The Record of Decision makes no findings on this request. There appeared to be a belief by staff that these actions are not required by the Kenai Code. However, KPB 20.01.010 contemplates the purpose of the Subdivision Code is “to protect and improve the health, safety and general welfare of the people.” In this case staff recommended that the marine outfall provisions of KPB 20.40.060 be complied with and the plat state that the marine outfalls for each lot meet the requirements of the Alaska Department of Environmental Conservation. However, without the notice of the appropriation of drinking water on the plat and the location of the stream on the plat, how will either the ADEC or the land owners know whether they are building their waste systems too close to the stream or the outfall where the water is collected? 18AAC 72.020(c) requires a 100-foot separation of the waste system from the drinking water source.

This simple requirement is appropriate to place on the developer to prevent future injury and conflict. Not requiring the information on the plat will allow either the unwary or the unscrupulous to encroach on these setbacks. Not requiring it now will invite future and unnecessary disputes. The following is a reasonable requirement to impose on the developer: Provide a plat note noting recorded (Brudie’s and any others of record) prior appropriation rights to the water and also requiring the stream outfall and water course be surveyed and noted on the plat with a requirement that any marine outfall system be 100 feet from the stream and its outfall.

2. Access and Easements.

The staff recommended that water access be allowed and that land access and street layout waivers be granted. The 6 findings in the Notice of Decision for this waiver³ do not address the real question—do all of the lots have “practical and feasible” access by the ocean or by the easements that are created? No findings were made nor were any tangible facts presented that the system of water access with easements will actually be effective.

³ Findings # 6 and 7, that the land is owned by the Mental Health Land Trust, are not even relevant as the Trust is not exempt from the jurisdiction of the Platting Board.

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KPB 20.30.050 A requires that every plat have an access plan. The legal access requirement can be waived under KPB 20.30.050.B.1 upon a finding that “no practical means of providing road access to a proposed subdivision exists and upon presentation of credible and convincing evidence by the applicant that permanent public access by air, water, or railroad is both practical and feasible, ...” The record is devoid of the necessary finding and support for a finding that water access is both practical and feasible. While the applicant focuses on the fact that this is remote and lacks roads, it fails to show how each lot will have practical and feasible access to the water. One wonders why the applicant would not want this as well rather than its blanket easements proposed that may enhance the largest number of lots, but not necessarily meet the intent of the Code.

Looking at the plat and the aerial photo submitted shows the following facts. These points were made by testimony and written records submitted to the Plat committee.⁴ Lots 5 through 15 abut Little Jakalof Bay. While the plat was not submitted superimposed on the aerial, a simple review of the aerial photos, as corroborated by the neighbors that the water frontage of several lots is actually a cliff with no real beach or access to the uplands. Merely being adjacent to the ocean does not mean that you have “practical and feasible” access. The petitioner failed to provide “credible and convincing evidence” that each of these lots have practical and feasible access to the water.

Second, to have meaningful practical and feasible access to a parcel from the ocean, one needs to show there is adequate moorage. This includes both a beach at least at low tide to run a running line or beach a skiff, as well as a mooring buoy to secure the boats. Nothing is in the record for this. This is significant especially with Lots 1-4, which are on Kasitsna Bay (known locally as Quiet Cove) which drains at low tide and whose only moorage is already granted to the current occupants of the cove by federal permit.

The petitioner’s solution to these issues was to draw a 50-foot access easement along the coast line of Lots 9 through 15. Again, merely drawing lines on a map does not make it practical and feasible in the real world and this plat is virtually guaranteed to cause generations of conflict and strife. First, the easement locations do not answer the question whether moorage and real access (rather than cliffs) are workable for Lots 5-8.

⁴ It is noteworthy that there is no access to any of this material from the Borough staff. A records request was submitted but as of yet, on the eve of this appeal, it is not ready.

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Second, the 50-foot easement is virtually guaranteed to conflict with the desires of the future landowners, who will want to build close to the water for the views and the proximity to their point of access. Finally, no evidence was presented to show that the access for Lots 13 and 14, which is by an estuary tidal easement from Little Tutka Bay, would really work as real access. If it does not, then access would only be allowed along the unimproved 50-foot access easement imposed on Lot 15, to these two non-water frontage lots. Again, the potential of future “Hatfield and McCoy” conflicts is significant.

It is not too much to expect to preserve the integrity of the land offerings in the borough to ask the petitioner to lay out a plat with proven access and moorage sites for each lot. Rather than the lazy solution of a blanket 50-foot access easement, a better solution would be to show which lots would need to share beaches and moorage and provide specific easements to those lots. It would be far more efficient, cause less future conflict, and in fact promote the health, welfare and general safety of its citizens. It also would improve the value of the lots and save those who buy thinking they have a lovely marine lot only to find, they have no moorage, not real access from the water and very irritable neighbors who have encroached on their access easements.

3. Staff Recommendations are not approved in the Notice of Decision.

The staff made numerous recommendations for the plat. The assumption is that the recommendations were accepted. However, the Notice of Decision only documents the access (street layout) waiver and not the adoption of those recommendations. As a result, there is no record that the community can look to as the plat proceeds to implementation. While KPB 20.10.120 does not specify contents of the Notice, it is axiomatic that a Decision should set out everything that was decided, so people do not have to guess or assume. The Notice should be complete as a matter of good practice. Some of those, such as the ADEC plat note requirements are important to this appeal, as well.

4. Conclusion.

The current plat should be denied. The petitioner can resubmit. There is a wealth of knowledge in this neighborhood that the petitioner could use if it only chose to talk to those who spent the time and money to make 2 trips to the plat hearings. The result may

ASHBURN & MASON P.C.

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or may not have the same number of lots, but the lots developed would be useful and attractive places for the citizens of the borough to buy and enjoy.

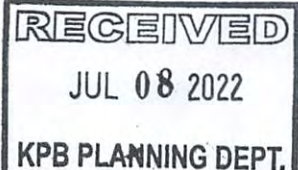
Sincerely,

ASHBURN & MASON, P.C.



Donald W. McClintock

Kenai Peninsula Borough Plat Committee
Hearing and Review Procedures



TO: Kenai Peninsula Borough Planning Director

FROM: TAMARA HOPKINS

ADDRESS (Mailing): 60112 NORDBY AVE
HOMER AK 99603

Daytime Phone: 907.399.1853

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.

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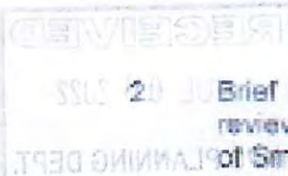
The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based. Notice of the review hearing will be issued by staff to the original recipients of the plat committee public hearing notice.

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 23, 2022



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

conditional approval of
preliminary plat for
East Oyster Cove
KPB File number 2022-047R1

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

As per KPB 20.30.050 The 40ft access from Little Tutka side is platted through tidal wetlands. This will create conflict with lots 15, 16 of South Kachamak AK subdivision.

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

Little Tutka easement should be vacated.
The access to lots 10, 11, 12, 15 unrealistic at best.

Tamara D. Hopkins
Signature (ORIGINAL SIGNATURE REQUIRED)

7.8.2022
Date

Kenai Peninsula Borough Plat Committee Hearing and Review Procedures

TO: Kenai Peninsula Borough Planning Director

FROM: William A. Lanier

ADDRESS (Mailing): 89 S 750 E, Bountiful, Utah 84010

Daytime Phone: 503-931-9131

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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 23, 2022

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.)

The KPB Plat Committee granted conditional approval of East Oyster Cove Subdivision Preliminary Plat with KPB file number 2022-047R1

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

The plat does not describe approximate locations of low wet areas or proposed means of supplying water, as required by KPB code 20.25

Additionally, discussion among the voting members at the June 13, 2022 meeting bordered on coercion for members to change their vote. This was inappropriate.

Of note: the posted minutes from the June 13, 2022 meeting are inaccurate, as they indicate an initial 4-to-0 vote on the exemption (should be 2:2).

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

The current plat should be denied. The petitioner can resubmit a revised plat that meets the requirements. Additionally, voting members should feel free to vote as they feel is appropriate, without coercion from other voting members.

Signature (ORIGINAL SIGNATURE REQUIRED)

7/8/2022

Date

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

TO: Kenai Peninsula Borough Planning Director

FROM: Donald Fell & Mary Ann Fell Joint Revocable Trust

ADDRESS (Mailing): PO Box 615, Homer, Alaska 99603

Daytime Phone: (907) 235-8038

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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, 4-16-02; 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: 8 July 2022

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.)

This is a request for de novo review of the platting committee approval of the East

Quiet Cove Subdivision Preliminary Plat KPB File Number 2022-047R1 pursuant to

Kenai Peninsula Borough Code Section 2.40.080.

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

1. Water Rights - Prior appropriation rights to the water should be noted. Stream outfall and water should be surveyed and noted.

2. Access and Easement - Not practical and feasible and record is devoid of the necessary findings and support.

3. Staff recommendations are not approved in the Notice of Decision and as a result there is no record.

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

The current plat should be denied.

Marey Can Fell

Signature (ORIGINAL SIGNATURE REQUIRED)

8 July 2022

Date



Planning Department

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

Charlie Pierce
Borough Mayor

June 23, 2022

**NOTICE OF DECISION
KENAI PENINSULA BOROUGH PLAT COMMITTEE
MEETING OF JUNE 13, 2022**

Re: East Oyster Cove Subdivision Preliminary Plat
KPB File Number: 2022-047R1

The Plat Committee reviewed and granted conditional approval of the subject preliminary plat during their regularly scheduled meeting of June 13, 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 MOTION

An amendment motion to grant exception to KPB 20.30.030 – proposed street layout requirements, passed by unanimous vote based on the following findings of fact.

Findings

4. This is a remote area.
5. Only access at this time is by water.
6. Large acreage lots are in the area that are all owned by Alaska Mental Health Trust.
7. The owner of this subdivision is Alaska Mental Health Trust.
8. Utility easements are being requested and will need to be granted.
9. Public access easements are proposed from Little Jakalof Bay to all lots within the subdivision.

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 23, 2022 to:

Buku <buku@fixedheight.com>; 'Andre' Andre@fixedheight.com

Notice was mailed on June 23, 2022 to:

Alaska Mental Health Trust Authority
3745 Community Park Loop Ste 200
Anchorage, AK 99508-3468

Alaska Mental Health Trust Authority
Jusdi Warner
2600 Cordova Street, Suite 201
Anchorage, AK 99503

Philip Brudie
PO Box 111
Homer, AK 99603

Gregory Welpton and
Shannyn Moore
PO Box RDO
Homer, AK 99603-8999

Jakolof Bay Coyle Family Trust
Daniel, Maurice, Jenny, and Jonathan Coyle
938 P Street
Anchorage, AK 99501

Dan and Zoey Coyle
350 Mountain View Drive
Homer, AK 99603

Doug and Margaret Kossler
2131 Lord Baranof Drive
Anchorage, AK 99517

William and Janelle Lanier
89 S 750 E
Bountiful, UT 84010

Kimberly Lanier
2611 Shepherdia Dr
Anchorage, AK 99508

Dennis and Lisa Poirier
11819 Rockridge Drive,

Anchorage, AK 99516

George and Marilyn Rhyneer
10500 Old Eagle River Road
Eagle River, AK 99577

Mark Pfeffer
1130 W 6th Avenue Ste 110
Anchorage, AK 99501

Tom and Tammy Hopkins
60112 Nordby Avenue
Homer, AK 99603

Donald and Mary Ann Fell
PO Box 615
Homer, AK 99603

Sharon Whytal
PO Box 1529
Homer, AK 99603-1529

Ricarda Lebman and
David Mesiar
15740 Wind Song Drive
Anchorage, AK 99516

Joy and Lamar Ballard
6221 Petersburg Street
Anchorage, AK 99507

14. Shannon Martin; Soldotna, AK
15. John Gaule; PO Box 62, Moose Pass, AK 99631

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 Hooper to grant preliminary approval to ROW Acquisition Seward Hwy. MP 25.5 to 36 Trial River to Sterling WYE Rehabilitation, based on staff recommendations and compliance to borough code.

Commissioner Venuti noted that based on the testimony from the community there seems to be a failure of adequate communication. There is also a suggestion to postpone action on this item. He asked Mr. Bentz what would be the effect on this project. Mr. Bentz replied it would cause a delay in securing needed funding to move the project forward. It would delay the negotiations with area property owners and the ability to address their concerns.

AMENDMENT MOTION: Commissioner Martin moved, seconded by Commissioner Venuti to postpone action on this item until the July 18, 2022 Planning Commission meeting.

Commissioner Brantley stated he believes what is going on here is a misunderstanding. He understands that AK DOT is working to secure funding so that they can begin negotiations with effected landowners; which in turn would result in more details for the public. He is not sure how this situation will be resolved by postponing action on this item, but he will support the postponement request.

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

AMENDMENT MOTION PASSED BY UNANIMOUS VOTE

Yes	4	Brantley, Hooper, Martin, Venuti
No	0	

ITEM E11 - EAST OYSTER COVE SUBDIVISION

KPB File No.	2022-047R1
Plat Committee Meeting:	June 13, 2022
Applicant / Owner:	Alaska Mental Health Trust of Anchorage, AK
Surveyor:	Andre Kaeppele, Buku Saliz / Fixed Height LLC
General Location:	Remote, Oyster Cove, Kasitsna Bay

Parent Parcel No.:	191-170-70 and 191-170-87
Legal Description:	A Portion of the North ½ of Section 21 and Lot 4 of US Survey No 4700
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On site

Staff report given by Platting Specialist Julie Hindman.

Chair Brantley open the meeting for public comment.

Andre Koeppele, Fixed Height, LLC, Surveyor: 225 W. 23rd Ave., Anchorage, AK 99503: Mr. Koeppele spoke in support of the preliminary approval of this plat. He stated there had been some revisions to the plat from the last meeting. One change was the total number of lots created by the plat was reduced by one. He noted that this is privately owned land and the landowners have a right to subdivide their land according to borough code.

Numerous individuals spoke in opposition to the preliminary approval of this plat. Their concerns have not changed from those expressed at the May 9, 2022 plat committee meeting. Some of the concerns expressed were, water right issues, the negative effect on the environment due to the significant increase of

lots into the area, inadequate access for the proposed new lots and lack of communication with the area residents. Those who spoke in opposition to granting preliminary approval to the plat were:

1. Philip Brudie, P.O. Box 111, Homer, AK 99603
2. Doug Kossler; 2131 Baranoff Dr., Anchorage, AK 99517
3. Zoey Coyle; 350 Mountain View Dr., Homer, AK 99603
4. Mark Pfeffer; 1130 W. 6th Ave., #110, Anchorage, AK 99501 (letter read by Tamara Hopkins)
5. Tom Hopkins; 60112 Nordby Ave., Homer, AK 99603
6. Dan Coyle; 350 Mountain View Dr., Homer, AK 99603
7. William Lanier; 89 S 750 E, Bountiful, UT 84010

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 Hooper, to grant preliminary approval to East Oyster Cove Subdivision, based on staff recommendations and compliance to borough code.

AMENDMENT MOTION: Commissioner Martin moved, seconded by Commissioner Hooper, to grant exception request to KPB 20.30.030 – Proposed Street Layouts, citing findings 4-9 in support of standards one, two and three.

Commissioner Brantley noted that this exception request is in line with other communities similar to this, remote properties without platted streets. These type of exception requests have been routinely granted in the past so he will be supporting this exception request.

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

AMENDMENT MOTION FAILED- TIED VOTE

Yes	4	Brantley, Martin
No	0	Hooper, Venuti

Commissioner Venuti stated he agrees Kachemak Bay is a magical & beautiful place and understands the concerns expressed by the public to this plat. He understands that they do not want to see change, but change is inevitable. He then stated that it was hard for him to support this issue.

Ms. Hindman informed the committee that while they do not have to cite findings to support their denial of an exception request, you are just requiring the petitioner to comply with code. However, she wanted them to understand that by approving the preliminary plat you will be requiring the petitioner to dedicate roads instead of public access easements and that each lot will have to front a dedicated right-of-way.

Commissioner Brantley then stated that he understands that this is a remote area and that it would not be practical to all these lots to front a right-of-way. He then asked if the committee, with this additional information, would like to reconsider the exception request. There was no response.

Commissioner Brantley noted that plats are quasi-judicial matters. That it doesn't really matter so much how they feel about the request but that it complies with code. He understands the objections by the public to this plat, if he had a cabin in this area, he personally would not want these new lots. If this plat is denied the committee will have to come up with findings based in code to support the denial. Code does not require landowners wanting to subdivide their properties to first talk with their neighbors. He then noted the plat meets the code requirements and the he will be supporting preliminary approval of the plat. If this plat were denied and the petitioners appealed the decision, there would be nothing in code to support the denial and the decision would be overturned.

Borough Deputy Attorney Steinhage reminded the committee before they took their vote, AS 29.40.110(b) states the planning authority shall state in writing the findings for disapproval of a plat. Not knowing which way, the vote would go, he wanted to make sure the committee understood that if they denied the plat, they will need to provide good findings that can be reduced into writing

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

MOTION PASSED AS AMENDED BY UNANIMOUS VOTE

Yes	4	Brantley, Hooper, Martin, Venuti
No	0	

Commissioner Brantley stated that now that the motion has passed, he believed it would be appropriate to entertain a reconsideration for the exception request.

RECONSIDERATION: Commissioner Hooper moved and was seconded by Commissioner Venuti to reconsider the exception request to KPB 20.30.030 – Proposed Street Layouts, citing findings 4-9 in support of standards one, two and three.

Commissioner Martin stated he understands that it is disruptive to see all these new lots come in to this quiet and pristine area. He believes granting this exception request will be less destructive and have less of an environmental impact to the area. Building rights-of-way would require that lots of trees be cut down which would cause more harm to the environment. He will be supporting this exception request.

Commissioner Hooper encouraged the other area landowners to contact the AK Mental Health Trust Authority to see if they can negotiate a proposal to remedy some of their concerns.

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

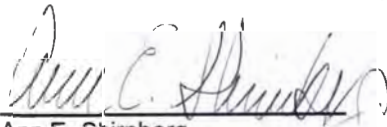
RECONSIDERATION MOTION PASSED AS AMENDED BY UNANIMOUS VOTE

Yes	4	Brantley, Hooper, Martin, Venuti
No	0	

F. PUBLIC COMMENT - None

G. ADJOURNMENT

Commissioner Martin moved to adjourn the meeting 8:55 P.M.


Ann E. Shimberg
Administrative Assistant

AGENDA ITEM E. NEW BUSINESS

ITEM E13 - EAST OYSTER COVE SUBDIVISION

KPB File No.	2022-047R1
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	Alaska Mental Health Trust of Anchorage, AK
Surveyor:	Andre Kaeppele, Buku Saliz / Fixed Height LLC
General Location:	Remote, Oyster Cove, Kasitsna Bay

Parent Parcel No.:	191-170-70 and 191-170-87
Legal Description:	A Portion of the North ½ of Section 21 and Lot 4 of US Survey No 4700
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On site

STAFF REPORT

Summary

This item was originally heard by the Plat Committee on May 9, 2022. The Plat Committee did not take action on the plat due to lack of a second on the motion. Per KPB Code 20.25.100, once a completed application has been received the Planning Commission shall approve, conditionally approve, or disapprove the plat by determining if the plat complies with KPB Code requirements. This decision must be granted within 60 days of a completed application. Per Alaska Statutes, the platting authority must approve or disapprove a plat within 60 days and unless the applicant consents to an extension of time, the plat would be considered approved and the certificate of approval may be issued on demand if action was not taken within the required timeframe. Staff contacted the surveyor to discuss scheduling for the May 23, 2022 meeting. The turnaround time would allow for staff to provide the required notifications and for the Plat Committee to make a decision within 60 days. The surveyor requested the June 13, 2022 meeting to allow time to address some of the concerns brought up during the original meeting and to update their design. At the June 13, 2022 Kenai Peninsula Borough Plat Committee meeting a revised preliminary plat was reviewed.

An exception had been requested to KPB Code 20.30.030, proposed street layouts. This is remote property with water access and the owners requested to not dedicate rights-of-way but to grant public access easements. The exception originally failed. Staff noted to the committee that if the preliminary plat was approved they would be required to dedicated 60 foot wide rights-of-way within the subdivision. Staff also noted that findings to deny an exception are not required but do help support their decision if challenged. Discussions began on the preliminary plat. Not knowing the results of the vote, staff directed the commissioners to KPB 20.25.100, *"If denied, the decision shall make reference to the specific sections of this title with which the submitted plat does not comply."* This was to let the plat committee know that they may deny this platting action but they must specify the portion of code that it does not comply. The plat received approval. A reconsideration of the exception request was given. Several of the commissioners noted that if the plat was to go through, not requiring dedications would better fit the area. The exception was then granted.

Several requests for review of a Kenai Peninsula Plat Committee decision were received and filed in accordance with KPB 2.40.080. The requests are 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 13, 2022 Plat Committee Meeting

Specific Request / Scope of Subdivision: The proposed plat will subdivide two parcels that are approximately 38 acres into sixteen lots. The lots will range in size from 1.508 acres to 4.631 acres. 50 foot wide public access easements are proposed to provide alternate access to lots.

Location and Legal Access (existing and proposed): This is considered a remote location. It is located along Oyster Cove in the Kasitsna Bay. This is along the eastern side of Oster Cove. On the western side of the cove is the Oyster Cove Airport. These lots will be water access only.

A large acreage parcel is present to the south. Adjacent to the south, east, and southeast of that parcel is more large acreage parcels. They are all owned by Alaska Mental Health Trust. The closest right-of-way is Jakolof Bay Road, about 2 miles south of the subdivision. If the large acreage parcels are ever subdivided they may be able to provide dedicated access to the various lots located along the coast of the bays in the area. KPB information has found that the status of section line easements through the large acreage tracts is not clear. Any attempt to use section lines for access will require a determination by the State of Alaska.

South Kachemak Alaska Subdivision, Plat SL 67-85, indicated a 40 foot wide access easement, centered on the share lot line of Lot 15 and Lot 16 that would provide future access to lands to the west from Little Tutka Bay. This plat is proposing to provide a 50 foot wide access easement at the end of that access easement to provide a continuation to Little Jakalof Bay. Additional 50 foot public access easements are proposed along the shore of Lots 9-13 and Lot 16. That access easement continues to the north centered on shared lot lines to provide additional access to Lots 5-8. The easements then run east-west to provide additional access to Lots 1-4 and 9-11.

Due to the location, large acreage tracts, and no dedications within the area, the block length is not compliant.

KPB Code 20.30.050, Legal Access, requires that legal access exists to the boundary of the subdivision. It is currently only accessed by water. Staff believes the requirements of 20.30.050(B) have been met as there is permanent public access by water. A plat note is present that states the current access limitations. **Staff recommends the plat committee concur to waive the legal access requirements of KPB 20.30.050(A).**

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: Per RSA standards, a 60' ROW is required for maintenance.
SOA DOT comments	No comment

Site Investigation: KPB GIS does not have any wetland or contour information for the area. Per older imagery the land appears to not contain any low wet areas except around the cove and bay. Within proposed Lot 14 and Lot 15 there appears some low wet areas may be present within the access easement area from Little Tutka Bay. The appropriate note regarding wetland determinations is present. **Staff recommends any low wet areas or steep terrain discovered during the field survey be depicted and labeled on the final plat.**

This appears to be property with lots of vegetation. No improvements appear on the older imagery that is available. KPB Assessing notes that the property is vacant.

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 NOT within HPD Comments: No comments
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	C. State Parks Reviewer: Russell, Pam Comments: No Comments
State of Alaska Fish and Game	No comments

Staff Analysis The proposed plat being reviewed was originally heard by the Plat Committee on May 9, 2022. The Plat Committee did not take action on that plat due to lack of a second on the motion. Per KPB Code 20.25.100, once a completed application has been received the Planning Commission shall approve, conditionally approve, or disapprove the plat by determining if the plat complies with KPB Code requirements. This decision must be granted within 60 days of a completed application. Per Alaska Statutes, the platting authority must approve or disapprove a plat within 60 days and unless the applicant consents to an extension of time, the plat would be considered approved and the certificate of approval may be issued on demand if action was not taken within the required timeframe. Staff contacted the surveyor to discuss scheduling for the May 23, 2022 meeting. The turnaround time would allow for staff to provide the required notifications and for the Plat Committee to make a decision within 60 days. The surveyor requested the June 13, 2022 meeting to allow time to address some of the concerns brought up during the original meeting and to update their design. What is being reviewed at this time is a revision of the original submittal.

The revision has incorporated some of the recommended changes and corrections made by staff within the original staff report. The lot numbers have had some of their numbers changed at staff's request. Concerns were addressed regarding some of the steep terrain along the water for some of the lots. Additionally, the prior existing access easement from the east contained some low wet areas that could cause access issues. In order to address both of those issues additional public access easements are proposed in addition to the previously proposed easements along Little Jakalof Bay. All lots will now have access to a 50 foot public access easement in addition to their water access. Lots 14 and 15 will now have another route if the already existing access easement is not sufficient.

Homer Electric Association had requested some additional utility easements, the surveyor has included some easements within the revision and this was forwarded to the providers for new comments.

Additional concerns discussed during the previous meeting such as eagle's nest, archeology sites, etc. are not within the purview of KPB Code. Multiple comments have been received for this review that state many of the same concerns as discussed during the previous meeting. Staff would like to note that KPB Code does not have the provision to require environmental impact studies. Additional agencies have guidelines and restrictions that any owner or developer will need to adhere to.

The surveyor has noted in conversations with staff, that the soils will not support a conventional wastewater system. They were advised that the submittal of the report will require compliance for an alternate onsite wastewater treatment and disposal system. A DEC approved alternate system should be presented with the soils report for review.

This is a 38 acre subdivision to create sixteen lots that will be accessed by water only. The two lots that do not front on any waterbody have access via a 40 foot wide access easement from Little Tutka Bay that was created by Plat SL 67-85. All lots will have additional access via 50 foot wide access easements from Little Jakalof Bay.

The land within this survey is from U.S. Survey 4700 that was done in 1965. The remainder of the property is the remaining portion of the north half of Section 21 excluding numerous U.S. Surveys and several subdivision plats.

A soils report will be required and an engineer will sign the final plat.

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 within this subdivision has not been part of a subdivision that would have granted platted utility easements. Per South Kachemak Alaska Subdivision, Plat SL 67-85, 20 foot utility easements were granted centered on the lot lines shared with the large remainder parcel of this subdivision. That plat was a state plat but we generally do not allow easements to be granted on property not included within the boundary of the subdivision plat. This plat is depicting the easement along the eastern boundary. **Staff recommends the label include "granted by this 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	
ACS	No objections
GCI	

KPB department / agency review:

Addressing	Reviewer: Haws, Derek Affected Addresses: None Existing Street Names are Correct: No List of Correct Street Names: Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: No addresses affected by this subdivision.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat.
Assessing	Reviewer: Wilcox, Adeena Comments: No Comment

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

STAFF RECOMMENDATIONS
CORRECTIONS / EDITS

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:

- Owner name should include Alaska Mental Health Trust.
- The KPB Assessing information has a different address for Alaska Mental Health. Verify the address they wish to have present on the plat.

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.

20.30.030. Proposed street layout-Requirements.

A. The streets provided on the plat must provide fee simple right-of-way dedications to the appropriate governmental entity. These dedications must provide for the continuation or appropriate projection of all streets in surrounding areas and provide reasonable means of ingress for surrounding acreage tracts. Adequate and safe access for emergency and service vehicle traffic shall be considered in street layout.

B. Subdivision of land classified as agricultural conveyed subject to AS 38.05.321(a)(2)(B) may provide public access easements in lieu of fee simple dedications if necessary to comply with the minimum lot size restriction of the statute. The public access easements must meet all applicable right-of-way design criteria of Title 20 and are subject to the building setback requirements set forth in KPB 20.30.240.

C. Preliminary plats fronting state maintained roads will be submitted by the planning department to the State of Alaska Department of Transportation and Public Facilities (DOT) for its review and comments.

Staff recommendation: An exception has been requested.

20.30.050. Legal access.

A. The applicant shall provide an access plan to the planning department verifying the existence of legal access to the subdivision boundary. The plan shall consist of the documents depicting the access, a map depicting the location of the access, and topographic information indicating that construction which meets the design requirements set forth in KPB Chapter 20.30 is practical and economical. In this title, legal access exists where an unrestricted, public right-of-way connects the subdivision to the state highway system, the state marine highway system or a regularly served public airport, and one of the following is met:

1. Ingress and egress will be provided over section line easements located within a surveyed section;
2. The applicant provides copies of borough-accepted recorded conveyances creating the public easement or right-of-way where the access is located;
3. That access is a State of Alaska maintained road or municipal maintained road;
4. The applicant provides documentation satisfactory to the borough demonstrating that public legal access is guaranteed through judicial decree; or
5. The right-of-way is an easement or fee interest at least 60 feet in width dedicated or irrevocably conveyed to the public and acceptable to the planning commission.

- B. The following situations may qualify for a waiver of the legal access requirement:
1. Upon finding that no practical means of providing road access to a proposed subdivision exists and upon presentation of credible and convincing evidence by the applicant that permanent public access by air, water, or railroad is both practical and feasible, the planning commission may waive the legal access requirements of KPB 20.30.050(A). If access other than by road is approved, the mode of access shall be noted on the plat. .
 2. Where only a 30-foot dedication exists over all or a portion of the legal access to a subdivision, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the other 30 feet will be dedicated in the future.
 3. Where a road is in use for physical access but there is no right-of-way document for all or part of the access road, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the right-of-way will be dedicated in the future.

Staff recommendation: *Staff is asking the plat committee to concur that the legal access requirements should be waived, plat note 11 states only water access.*

20.30.170. Blocks-Length requirements. Blocks shall not be less than 330 feet or more than 1,320 feet in length. Along arterial streets and state maintained roads, block lengths shall not be less than 800 feet. Block lengths shall be measured from centerline intersections.

Staff recommendation: *The plat does not comply. Grouped and discussed with the exception to KPB 20.30.030.*

20.30.210. Lots-Access to street. Each lot shall abut on a fee simple dedicated street except as provided by KPB 20.30.030(B).

Staff recommendation: *Grouped and discussed with the exception to KPB 20.30.030.*

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: A soils report will be required and an engineer will need to sign the plat. KPB Code 20.40.050, is specific to alternate onsite wastewater treatment and disposal.

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.*

20.60.180. 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.*

- *The natural meanders of mean high water line is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.*

Plat notes need renumbered and note 12 needs date updated.

20.60.190. Certificates, statements, and signatures required.

Staff recommendation:

- *On the certificate of ownership, a signature line is not required above Alaska Mental Health Trust Authority as the signature above is on their behalf. Move the typed information to be below "Authorized Official Name".*
- *Correct the Notary's Acknowledgement should contain "Acknowledged before me, this ____ day of _____, 20__." Comply with 20.60.190.*

EXCEPTIONS REQUESTED:

KPB 20.30.030 – Proposed Street Layout

Surveyor's Discussion: Based on the ocean frontage contained by all but two of the lots within the proposed subdivision, we expect the primary access for development of these lots to be by watercraft. Additionally, none of the adjoining subdivisions have dedicated ROWs due to the similar ocean front layout of the lots. Dedicating a ROW would encourage development along the landward boundaries of the proposed lots and detract from the rural nature that makes them desirable. If an exception is granted to KPB 20.30.030, 20.30.170 and 20.30.210 would no longer be applicable due to the absence of streets within the proposed subdivision.

Staff Discussion: Per KPB Code 20.30.030, dedications must be provided for continuation or appropriate projections and provide reasonable means of ingress to surrounding acreage tracts. While the exception request is for KPB Code 20.30.030, staff finds that the approval of this acceptance should also take into consideration KPB 20.30.170, Block Length Requirements, and 20.30.210, Lots-Access to streets. If this exception is granted it will not be possible to meet those requirements.

This subdivision is to be remote recreational property. There are other lots in the area that are similar. The Oyster Cove airport is across the bay to provide additional access but watercraft will still be required to get to the lots. The owner of the large acreage parcels in the area are the same of this subdivision. If they needed right-of-way access for their property they could require it at this time.

If the exception is granted, staff recommends the plat note for the exception granted include all three portions of code.

Findings:

1. KPB Code requires right-of-way dedications to provide adequate access to all lots within the subdivision and neighboring.
2. KPB Code requires right-of-way dedications to create compliant block lengths.
3. KPB Code requires lots to abut a fee simple dedicated street.
4. This is a remote area.
5. Only access at this time is by water.
6. Large acreage lots are in the area that are all owned by Alaska Mental Health Trust.
7. The owner of this subdivision is Alaska Mental Health Trust.
8. Utility easements are being requested and will need to be granted.
9. Public access easements are proposed from Little Jakalof Bay to all lots within the subdivision.

Denial of the exception will require rights-of-way dedications that will create compliant blocks and that all lots will abut.

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 4-9 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 4-9 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 4-9 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.

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