

DESK PACKET

(ITEMS THAT CAME IN AFTER MEETING PACKET WAS POSTED)

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

Quainton, Madeleine

From: Planning Dept,
Sent: Tuesday, August 2, 2022 10:16 AM
To: Ruffner, Robert; Piagentini, Vincent; Hindman, Julie; Quainton, Madeleine
Subject: FW: <EXTERNAL-SENDER>KPB file 2022-047R1

From: tamara hopkins <taxito32@gmail.com>
Sent: Tuesday, August 2, 2022 10:09 AM
To: Planning Dept, <planning@kpb.us>
Subject: <EXTERNAL-SENDER>KPB file 2022-047R1

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Dear Commissioners,

Regarding the review of this subdivision plat, I see the for sale are up already, nothing on the letter or plat seems to be addressed. Are the community members not listened to at all? We know it will be sold and new homes or cabins will be built. It would be nice to do it with common sense on the accesses, and not ruin the "remoteness" of this area. What is the review for, if it is already being put up for sale, without these issues being resolved? The entrance channel is narrow and it needs to be seen if boats and moorings, or running lines are approved by DNR or core of engineers. And the wetlands/estuary on the Little Tutka is unrealistic. Those lots should just come in from lot 15.

Frustrated,

Tamara Hopkins
60112 Nordby ave
Homer, ak 99603

From: Daniel Coyle <djcoyle1@gmail.com>
Sent: Tuesday, August 2, 2022 4:32 PM
To: Planning Dept,
Subject: <EXTERNAL-SENDER>written testimony on KPB 2022-047R1

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**To: Kenai Peninsula Borough Planning Commission
144 N Binkley Street
Soldotna, AK 99669**

(submitted via email)
August 2, 2022

To: Kenai Peninsula Borough Planning Department

As a unified group of local residents and landowners, we'd like to express our urgent concerns about the proposed subdivision in Little Jakolof Bay and Little Tutka Bay, KPB File 2022-047R1, for the following reasons:

- 1) The proposed subdivision does not provide adequate water access or supply. Many of the proposed lots are located on bedrock, with no water source.
- 2) The proposed subdivision — 16 lots, many of them extremely narrow, located in a relatively small, confined area — creates multiple and overlapping problems of density and access, and will generate significant navigational hazards. The entrance and the western (weather-exposed) side of the bay is narrow for running lines, and not suitable for moorings.

3) A significant number of the lots are unusable because of steepness or access problems. Some lots have steep rocks on the shore and are inaccessible from the beach. In addition, two lots have access only through Little Tutka Bay, creating additional congestion for residents of Tutka Bay.

4) The alterations made to this latest version (subsequent to 2022-047) do not significantly lessen any of the concerns voiced above. Adding public-use corridors does not lessen the multiple and lasting negative impacts to the area that this subdivision will create.

We hope that these comments will provide the planning commission with guidance and clarity as it makes its decisions. We are ready and willing to answer any questions or provide any additional information the planning commission requires. We hope that the commission will delay any imminent decisions in order to give appropriate time, research, and attention to these sincere and valid concerns.

SIGNED,

Daniel Coyle

Maurice Coyle

Jonathan Coyle

Co-owners of Bootleggers Cove Lots 1, 3 4, and 5

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Fixed Height, LLC
225 W 23rd Avenue
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July 15, 2022

Kenai Peninsula Borough
Platting Department
144 North Binkley St.
Soldotna, AK 99669

RE: East Oyster Cove Subdivision

To whom it may concern,

This letter is intended to address land survey concerns related to the numerous "Requests for Review" submitted to the KPB Platting Committee on June 23rd, 2022.

Request for Review submitted by Tamara Hopkins –

- Review Summary – The requestor would like the 40 ft. access easement from Little Tutka Bay across Lots 15 & 16 of South Kachemak Alaska Subdivision vacated, due to the indication that it crosses tidal wetlands.
- Rebuttals – The requested easement vacation does not cross land owned by the developer, as such, the developer has no jurisdiction over easement vacation. There is alternative access to proposed Lots 13 & 14 of East Oyster Cove Subdivision across proposed Lot 15.

Request for Review submitted by William A. Lanier –

- Review Summary – The requestor indicates that the plat does not describe the low wet areas and does not describe the proposed means of supplying water. This is the only survey related concern in the request.
- Rebuttals –
 - This proposed subdivision of land does not destroy or disturb wetlands. Any wetlands in the proposed subdivision are protected by federal law.
 - The soils analysis currently being conducted by an engineer will describe the proposed means of supplying water on the final plat.



Request for Review by Donald Fell & Mary Ann Fell Revocable Trust & Request for Review by Donald McClintock on behalf of Phillip Burdie

- Review Summary – These two separate requests share identical concerns and are summarized in a letter prepared by the law firm Ashburn & Mason, P.C. dated July 7, 2022. Each concern is addressed individually in the subsequent bullet points.
- *Water Rights* –
 - Comment Summary – Mr. Burdie submitted documented water rights to an unnamed stream within U.S. Survey 3980 (the adjoining parcel to the north), the source of which is that portion of the stream lying below Mean High Tide within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Protracted Section 21 at the previous meetings (LAS 11231). Burdie's prior request was that the stream to which his water rights pertain, be located on the plat. This would prevent future developers of the lot from encroaching upon the 100' required setback between a drinking water source and wastewater system.
 - Rebuttals –
 - There are no recorded water rights over the proposed subdivision. The water rights recorded under LAS 11231 in Book 30, Page 224 are for lands within U.S. Survey 3980.
 - A soils analysis report is being conducted by an engineer as requested by the KPB platting department. It will identify appropriate wastewater systems based on existing soil conditions, and a note will be made on the plat to indicate that all systems must meet state and federal regulations, including the required separation between drinking water sources and wastewater systems.
- *Access and Easements* –
 - Comment summary – The lawyer points out that no findings were made regarding practical and feasible access by waterfront or along the proposed easements within the proposed subdivision. They note that many of the lots abut sea cliffs with no beach or moorage. They point out that the 50' easement along the waterfront of Lots 9-15 have no evidence of being practical, or feasible, and invite future conflicts of the future landowners. Additionally, there is concern that the easement in place to access Lots 13 and 14 may traverse an estuarian habitat.
 - Rebuttals –



- All of the existing subdivision surrounding this proposed subdivision have the ocean as there legal and physical access. The existing subdivisions in this area are developed.
- The 50' easement along Lots 9-15 does, in fact, contain a suitable beach for landing watercraft without additional infrastructure and allows surrounding lot owners to use this access, if desired. The public access along the north line of Lot 15 does not cross an estuarian area, and in fact contains numerous foot paths and game trails.

Thank you for your time.

Buku Saliz, PLS, CFedS
Fixed Height, LLC
www.fixedheight.com



Kenai Peninsula Borough
Planning Commission
144 North Binkley St.
Soldotna, AK 99669

2600 Cordova Street, Suite 201
Anchorage, AK 99503
Tel 907.269.8658
alaskamentalhealthtrust.org/trust-land-office/

August 2, 2022

RE: Review of Plat Committee Decision East Oyster Cove subdivision; KPB File 2022-047R1

Dear Commissioners:

The Alaska Mental Health Trust Authority (AMHTA) is a public corporation within the Alaska Department of Revenue (AS 47.30.011 et seq.). In 1994, the Alaska legislature mandated the creation of the Trust Land Office within the Department of Natural Resources to serve as AMHTA's land manager. Under AS 38.05.801, the Trust Land Office must manage those lands consistent with the 1956 Enabling Act; an act that set aside lands to be managed for a state mental health program. Because of AS 38.05.801 and the 1956 Enabling Act, the Trust Land Office's management decisions are guided by private trust principles – as explained by the Alaska Supreme Court in *State v. Weiss*, 706 P.2d 681, fn. 3 (Alaska 1985) – and thus all decisions are made in the best interest of the trust beneficiaries for mental health programs. Proceeds from the Trust Land Office's management is directed to AMHTA for funding mental health programs.

Regulation 11 AAC 99.020(b) reiterates the holding in *Weiss*, noting that Trust land must be managed “solely in the best interest of the Alaska Mental Health Trust and its beneficiaries.” This means that AMHTA lands are not managed by the Trust land office under the public trust doctrine or as state public domain land. Due to the 1956 Enabling Act and the Legislature's mandate in 1994, the Trust Land Office has a fiduciary responsibility to maximize revenue generation from Trust land assets and does so by selling and developing its land and resources. To maximize revenue from the subject land, it must first be subdivided.

The East Oyster Cove subdivision would provide hundreds of thousands of dollars, perhaps millions, in revenue to the Alaska Mental Health Trust Authority and its beneficiaries. The Trust Land Office respectfully asks that you approve the plat as it meets the Kenai Peninsula Borough requirements and would provide significant revenue to the Alaska Mental Health Trust and its beneficiaries.

Sincerely,

Jusdi Warner
Executive Director
Trust Land Office