

E. NEW BUSINESS

1. Building Setback Encroachment Permit

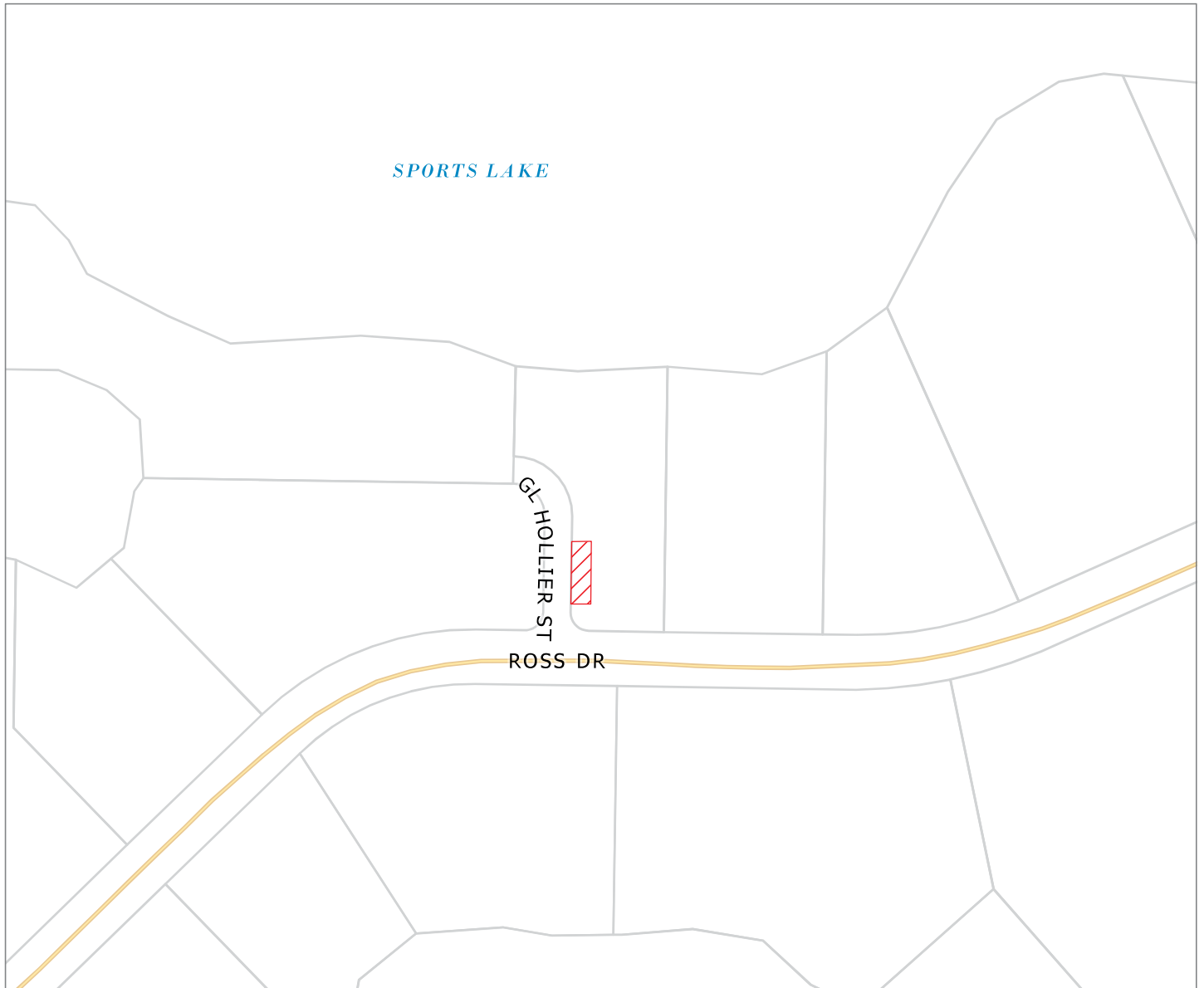
KPB File 2022-121

Lot 10, Lake Estates Subdivision, Plat KN-1648



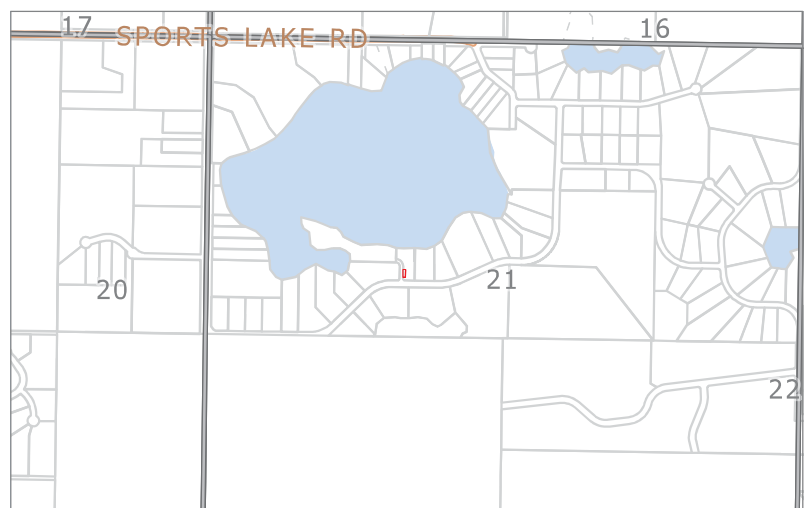
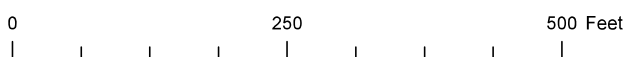
Kenai Peninsula Borough Planning Department

Vicinity Map

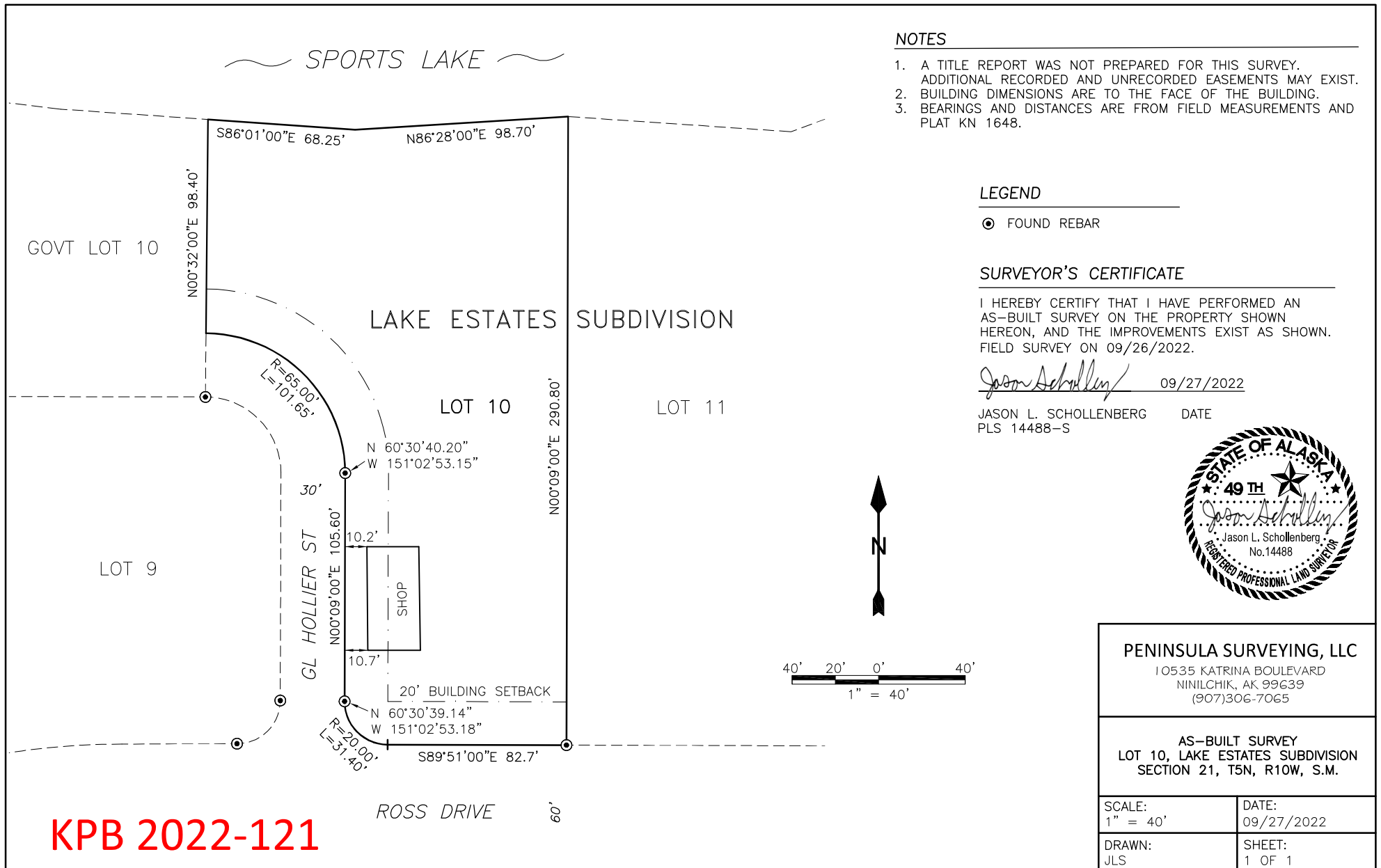


KPB File 2022-121
T 05N R 10W SEC 21
Ridgeway

9/28/2022







AGENDA ITEM E. NEW BUSINESS

**ITEM 1. – BUILDING SETBACK ENCROACHMENT PERMIT –
LOT 10, LAKE ESTATES SUBDIVISION (PLAT K-1648)**

KPB File No.	2022-121
Planning Commission Meeting:	October 24, 2022
Applicant / Owner:	David and Nancy Whitmore of Soldotna, Alaska
Surveyor:	Jason Schollenberg / Peninsula Surveying, LLC
General Location:	GL Hollier Street, Ridgeway area

Parent Parcel No.:	057-250-01
Legal Description:	Lot 10, Lake Estates Subdivision, Plat K-1648, Section 21, Township 5 North, Range 10 West
Assessing Use:	Residential
Zoning:	Rural Unrestricted

STAFF REPORT

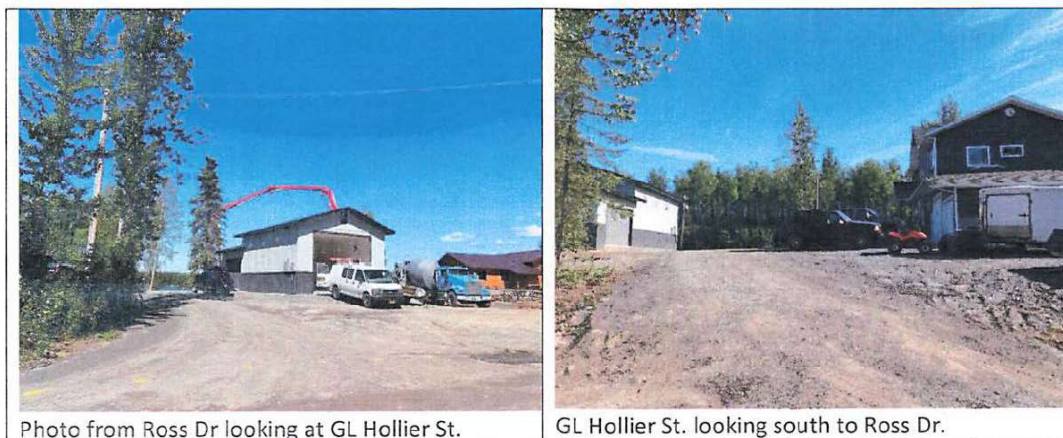
Specific Request / Purpose as stated in the petition: We are requesting a 20' Building Setback Exception from the KPB Planning and Platting Department because our garage has been built approximately 10' into the setback for GL Hollier Street, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115.

At our meeting with representative from the Planning and Platting Department on Friday, July 22, 2022, we were told that the KPB had a surveyor currently surveying 3 parcels in this subdivision, and that we could use this survey as the As-built Survey or Site Survey required for the *Application for Building Setback Encroachment Permit*.

This violation was not intentional; it was a collective error in planning how to use our lot (Lot 10) to meet our objections of building a detached garage, a home, and on-site well and septic systems. The lot is oddly shaped, with poor soils, having the useable area restricted by both Ross Dr. and GL Hollier St.

In discussion with the builder and the excavation company, we were aware of the required 100' separation between well and septic system (including the wells and septic systems of our adjacent neighbors). We were unaware of the 20' road setback for GL Hollier St. as there are no dotted lines to indicate this on the plat: a road setback is shown on the plat for Ross Dr. Our error was in not reading the notes on the plat.

Several photos are included to illustrate the situation.



It appears that the 48' exception to the road setback will not;

1. Not interfere with road maintenance (road is privately maintained).
2. Not interfere with sight lines or distances.
3. Not create a safety hazard.

We appreciate your consideration of this matter.

Site Investigation: The request is to be granted a permit for a 49 foot by 24 foot shed along GL Hollier Street. The building encroaches 9.8 feet for the length of 49 feet and is slightly angled to be 9.3 feet at the southwest corner of the shed. KPB GIS imagery does not show the structures being discussed as this is new construction. There are no steep slopes present within the area being reviewed or with the intersection with Ross Drive, a borough maintained gravel right-of-way. Wetlands are not present within the right-of-way.

The dedication for GL Hollier Street is only 30 feet wide. This right-of-way does not meet KPB width standards and while constructed is not maintained by the borough. The right-of-way only provides access to three lots.

The sight distances do not appear to be impacted. GL Hollier Street does have a curve on the northern end. The area in question is along the straight portion of the right-of-way and located on the side with the outside of the curve and should not cause any sight issues.

Staff Analysis: Lake Estates Subdivision, Plat K-1648, was recorded in 1969. The plat dedicated Ross Drive and GL Hollier Street (unnamed on the plat). GL Hollier Street was granted as a 30 foot wide right-of-way. Per the minutes from the September 8, 1969 Planning Commission meeting, the dedication of 30 feet was allowable as its intent was to provide access to a land locked parcel, Government Lot 10 that was noted as being the Hollier property.

The issues were brought to the attention of the KPB Code Compliance and they have been working with the owners on a resolution for the issue. The plat clearly shows a 25 foot building setback along Ross Drive with a depiction and label. A depiction of any type of setback was not shown along GL Hollier Street. Staff believes this is due to the spacing in that area and the inability to depict the setback without causing a problem with required information. The plat did have a plat note stating a setback from street frontage was to be 25 feet. The Kenai Peninsula Borough Legal Department reviewed the code that was in place when the plat was approved. The width that was granted did not fit the width for any of the types of roads defined in code. Per the staff report it appears an exception to width was granted. This right-of-way fits the definition of Marginal Access Streets from the 1968 KPB code. The definition states "minor streets which are parallel with and adjacent to arterial streets and highways, and which provide access to abutting properties and protection from through traffic." While this width does not comply with code, the approval of a substandard width would mean that this is a marginal access street and all streets were subject to a 20 foot building setback at that time. The decision was made that the plat did note setbacks were present, code required a minimal 20 foot setback, the plat did not depict a 25 foot setback, the plat note also included 20 foot setbacks on interior lines, and thus we are enforcing a 20 foot setback along GL Hollier Street.

GL Hollier Street is only being used by three lots. One is the lot that the road was created for, the applicant of this petition, and the owner on the west side of the right-of-way. Due to the width and the usage this is a privately maintained right-of-way.

The issues along GL Hollier Street were brought to the attention of the KPB Code Compliance Officer. After discussions with the owners and a field inspections an as-built was ordered by KPB. The as-built did show that new shop was encroaching into the setback. The owners have been working with the KPB Code Compliance Officer for a resolution of the situation.

Findings:

1. Lake Estates Subdivision, Plat K-1648, dedicated GL Hollier Street.
2. The Planning Commission allowed the dedication of GL Hollier Street to be only 30 feet wide.
3. GL Hollier Street was created to provide access to a landlocked parcel.

4. Three lots use GL Hollier Street for access.
5. The plat note states building limits from property lines shall be 20 feet from interior lines and 25 feet from street frontage.
6. The code at the time required 20 foot setbacks.
7. Current code requires 20 foot setbacks.
8. Setbacks along GL Hollier Street were not depicted due to lack of room.
9. The owners were not aware of the GL Hollier Street setback due to lack of depiction.
10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
11. There does not appear to be any line of sight issues.
12. The road is constructed by privately maintained.
13. Due to the width of the street, improvements, the location of Sports Lake, it does not appear that this right-of-way will ever serve additional lots.
14. The encroachment is along a straight portion of the right-of-way.
15. There are no terrain issues within the dedication.

20.10.110. – Building setback encroachment permits.

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

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

Findings 10, and 12-15 appear to support this standard.

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

Findings 10-15 appear to support this standard.

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

Findings 10-15 appear to support this standard.

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

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

KPB department / agency review:

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	
KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments B. Habitat Protection Reviewer: Carver, Nancy 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
Addressing	Reviewer: Haws, Derek Affected Addresses: 36602 GL HOLLIER ST Existing Street Names are Correct: Yes List of Correct Street Names: GL HOLLIER ST ROSS DR Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: 36602 GL HOLLIER ST will remain with lot 10.
Code Compliance	Reviewer: Ogren, Eric Comments: Owner is working with KPB Code Compliance to resolve the new construction build into the 20 ft set back of GL Hollier. Code compliance is in agreement to issuing the permit.
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: Windsor, Heather Comments: No comment

RECOMMENDATION:

Based on the standards to grant a building setback encroachment permit, **staff recommends** to adopt Resolution 2022-46, subject to compliance with KPB 20.10.110 sections F and G.

NOTE:

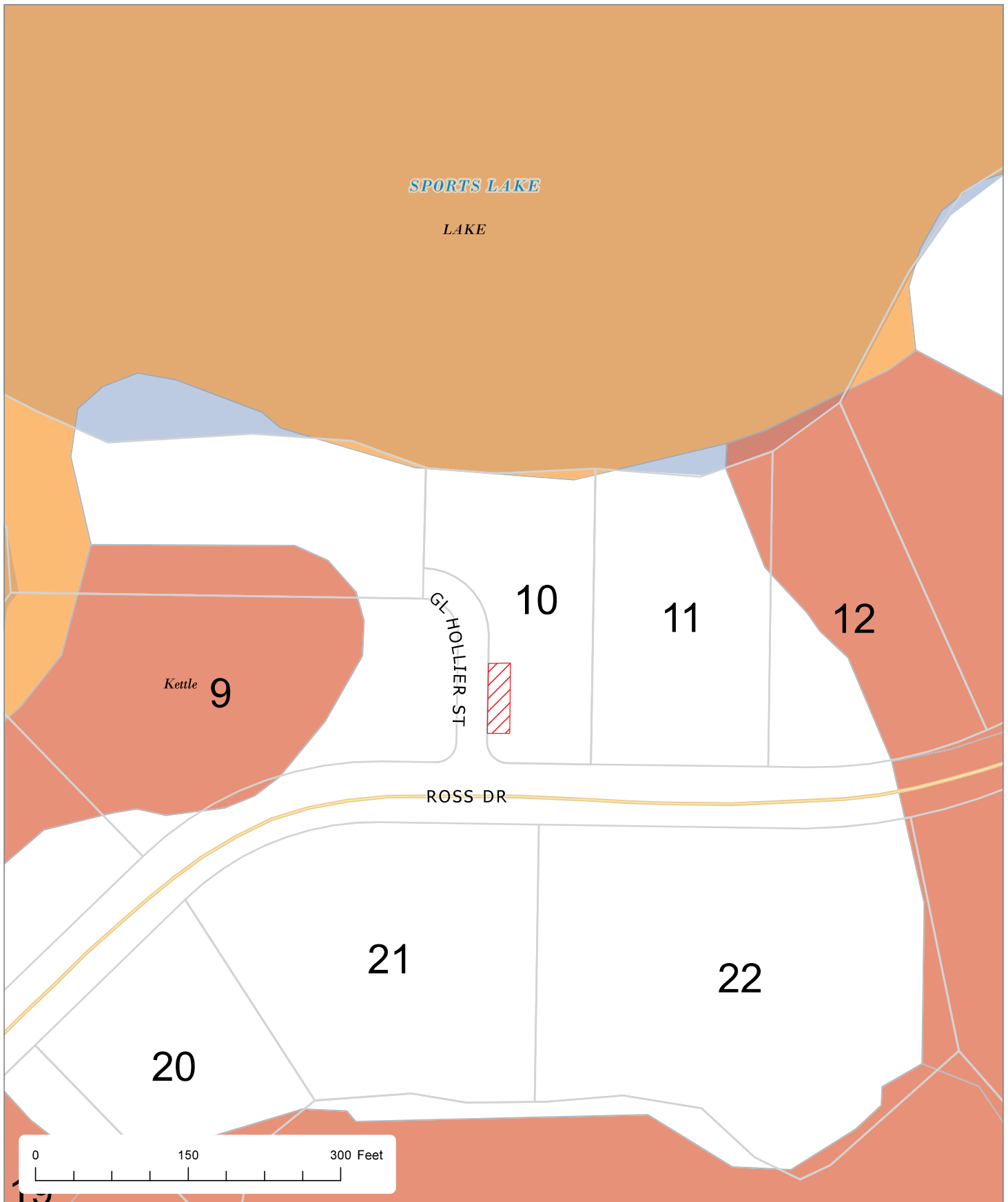
20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

END OF STAFF REPORT

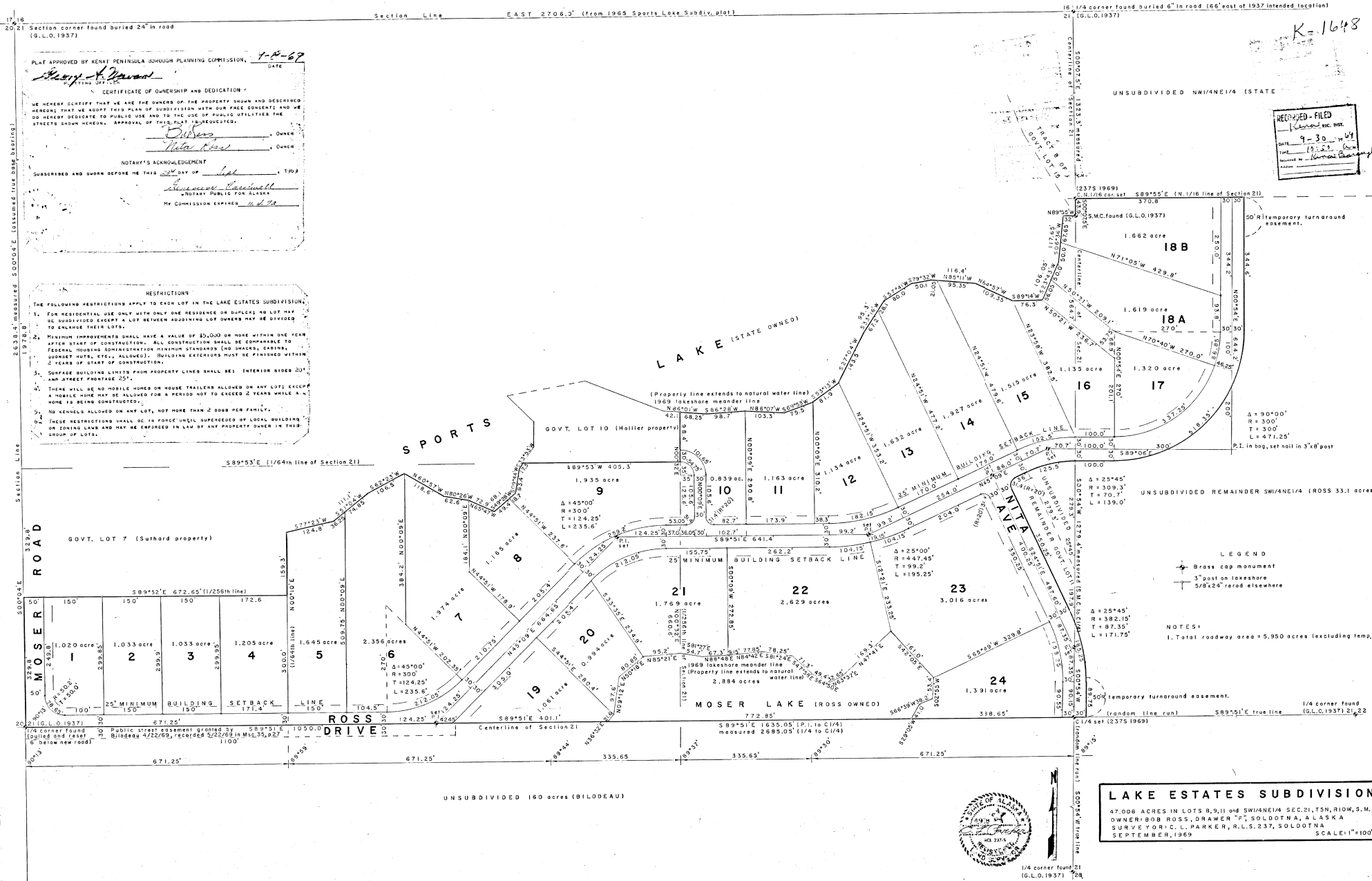




Wetlands







4. The plat must show both the original meanders of USS 1540 and the 1969 meanders of MHW.
5. A heavy line be placed around the subdivision on the plat.

Commissioner Hursh moved, seconded by Commissioner Coyle, to approve this plat subject to the staff's recommendations. Motion unanimously approved.

i. LAKE LSTATES SUBDIVISION (FINAL)

Located on the southeast side of Sports Lake.

Mr. Best reviewed the background on this plat and read the staff report recommending approval of this plat subject to the following:

1. Lot 25 be shown as a lake not a lot and the meanders listed as being 1969 meanders.
2. The corners set within the subdivision should be described.
3. The 30 foot road dedication to the Holliers property would be an exception to the minimum width required by the subdivision; however, since only one parcel of land is to be served, 30 feet of right-of-way should suffice and the exception granted.

Commissioner Hursh moved, seconded by Commissioner English, to approve this plat subject to the staff's recommendations. Motion unanimously approved.

j. SEELY SUBDIVISION (FINAL)

Located off Island Lake Road, North Kenai.

Mr. Best read a letter from the subdivider and the staff report recommending final approval subject to the 30' street dedication to the north being noted on Lots 5, 6, 7 & 8, and a heavy line being drawn around the subdivision on the plat.

Commissioner Hursh moved, seconded by Commissioner English, to approve this plat subject to the staff's recommendations. Motion unanimously approved.

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2022-46
KENAI RECORDING DISTRICT**

GRANT A BUILDING SETBACK ENCROACHMENT PERMIT TO A PORTION OF THE 20-FOOT BUILDING SETBACK ADJOINING THE WEST BOUNDARY OF LOT 10, LAKE ESTATES SUBDIVISION (K-1648), GRANTED BY LAKE ESTATES SUBDIVISION (K-1648); IN SE1/4 NE1/4 SECTION 21, TOWNSHIP 5 NORTH, RANGE 10 WEST, SEWARD MERIDIAN, ALASKA, WITHIN THE KENAI PENINSULA BOROUGH. KPB FILE 2022-121.

WHEREAS, per KPB 20.30.240 – Building Setbacks, a minimum 20-foot building setback shall be required for fee simple non-arterial rights-of-way in subdivisions located outside incorporated cities.

WHEREAS, Nancy and David Whitmore of Soldotna, Alaska requested a building setback permit for a portion of a shop located on said lot; and

WHEREAS, per the petition, a shop was recently constructed and is located 9.8 feet for a distance of 49 feet within the 20 foot building setback adjoining GL Hollier Street right-of-way;

WHEREAS, the existing building will not obstruct line of sight for traffic; and

WHEREAS, on October 24, 2022, the Kenai Peninsula Borough Planning Commission considered the background information, all comments received, and recommendations from KPB Planning Department staff regarding the proposed exception; and

WHEREAS, the Planning Commission found that granting the building setback permit will not be detrimental to the public interest; and

WHEREAS, 20.10.110 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to approve building setback permits by Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

Section 1. Approved a permit to allow only the encroaching portion of the shop that extends 9.8 feet into the 20 foot building setback adjoining GL Hollier Street right-of-way on the west boundary of Lot 10, Lake Estates Subdivision, granted by Lake Estates Subdivision (K-1648).

Section 2. That any new, replacement and/or additional construction will be subject to the twenty-foot building setback limit.

Section 3. That the twenty-foot building setback shall apply to the remainder of said lot.

Section 4. That an exhibit drawing or as-built survey prepared by a licensed land surveyor, showing the location of the portion of the building setback exception to be granted be attached to and made a part of this Resolution, becoming page 2 of 2.

Section 5. That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.

Section 6. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 24th DAY OF OCTOBER, 2022.

Jeremy Brantley, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg
Administrative Assistant

Return to:
Kenai Peninsula Borough Planning Department
144 North Binkley Street, Soldotna, Alaska 99669