

C. CONSENT AGENDA

- *7. Minutes
October 24, 2022 Planning Commission Meeting

Kenai Peninsula Borough Planning Commission

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

October 24, 2022
7:30 P.M.
UNAPPROVED MINUTES

AGENDA ITEM A. **CALL TO ORDER**

Chair Brantley called the meeting to order at 7:30 p.m.

AGENDA ITEM B. **ROLL CALL**

Commissioners Present

Jeremy Brantley, District 5 – Sterling/Funny River
Diane Fikes, City of Kenai
Pamela Gillham, District 1 – Kalifornsky
John Hooper, District 3 – Nikiski
Michael Horton, District 4 – Soldotna
Virginia Morgan, District 6 – East Peninsula
Troy Staggs, City of Seward
Dawson Slaughter, District 9 – South Peninsula
David Stutzer, District 8 - Homer
Charlene Tautfest, City of Soldotna
Franco Venuti, City of Homer

With 11 members of a 12-member seated commission in attendance, a quorum was present.

Staff Present

Robert Ruffner, Planning Director
Walker Steinhage, Deputy Borough Attorney
Vince Piagentini, Platting Manager
Julie Hindman, Platting Specialist
Ann Shirnberg, Planning Administrative Assistant
Rhonda Foster-Deskins, LMD Administrative Assistant.

AGENDA ITEM C. **CONSENT & REGULAR AGENDAS**

***3. Plats Granted Administrative Approval**

- a. Arrowhead Estates 2022 Replat; KPB File 2022-001
- b. Bryson Subdivision; KPB File 2020-089
- c. Kinder Subdivision; KPB File 2021-079
- d. Seldovia Townsite East Addn Watson 2021 Replat; KPB File 2021-148
- e. Smurfy Acres 2022 Replat; KPB File 2022-080
- f. The Business Center Subd 2022 Replat; KPB File 2022-039

***4. Plats Granted Final Approval**

- a. Trotter Subdivision Rill River Replat; KPB File 2022-102

***6. Commissioner Excused Absences**

- a. Blair Martin – District 2, Kenai
- b. City of Seldovia, Vacant
- c. District 7 – Central, Vacant

***7. Minutes**

- a. October 10, 2022 Planning Commission meeting minutes.

Chair Brantley asked Ms. Shirnberg to read the consent agenda items into the record.

Chair Brantley asked if anyone wished to speak to any of the items on the consent agenda.

Hearing no one wishing to comment Chair Brantley brought it back to the commission for a motion.

MOTION: Commissioner Venuti moved, seconded by Commissioner Tautfest to approve the regular and consent agendas.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 11	Brantley, Fikes, Gillham, Horton, Hooper, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	
Absent-1	Martin

AGENDA ITEM E. NEW BUSINESS

Chair Brantley asked Ms. Shirnberg to read into the record the procedures for public hearings.

**ITEM E1 – 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 given by Platting Manager Vince Piagentini.

Chair Brantley opened the item for public comment.

Nancy Whitmore, Applicant; P.O. Box 881, Soldotna, AK 99669: Ms. Whitmore is one of the applicants. She stated that building into the setback was a mistake and that she was sorry that it had happened. She then made herself available for questions

Commissioner Fikes asked if any of her neighbors have been negatively affected by this mistake. She wondered if the encroachment would negatively affect road maintenance, particularly for the landowner at the end of GL Hollier Road. Ms. Whitmore replied that she did not believe so. The neighbor at the end of GL Hollier Rd. is the one who uses the road the most. She noted that they use their setback to park several

cars in.

Chair Brantley asked who was the general contractor on this project. Ms. Whitmore replied Eric Arneson was the general contractor and Steam On Wheels had done the dirt work.

Commissioner Venuti asked how finished was the shed. Ms. Whitmore replied that it was not a shed but a detached garage/shop. She noted that it was finished on the inside and has power running to it. Commissioner Venuti then asked when was it built and Ms. Whitmore replied that it was built this last summer. Commissioner Venuti asked if there was a mortgage on the property, which would require an as-built, or were they building out of pocket. Ms. Whitmore replied that they were building out of pocket and that no as-build was done. Commissioner Venuti then asked if their contractor did a survey on the property before they began building. Ms. Whitmore replied apparently, they did not. The corners of the property were marked when they purchased the lot.

Troy Taylor; 43680 Ross Drive, Soldotna, AK 99669: Mr. Taylor is a neighboring landowner and spoke in opposition to this permit. He had contacted the borough regarding his concerns. Mr. Taylor stated he believed it was brought to his neighbor's attention, when they put in the concrete slab, that they were building in the right-of-way. They ignored the warning and continued with the building of their shop. He also noted that they also built an additional 3' X 3' slab next to the shop. He believes that the setback rules should be followed.

Nancy Whitmore, Applicant; P.O. Box 881, Soldotna, AK 99669: Ms. Whitmore reiterated that they made a mistake in building in the setback. They were not made aware of the issue until recently. She noted the dirt work was done for the shop over a year ago. Steam On Wheels built the gravel pad for the shop and covered it with foam and wire and it sat there over the winter into the spring, right across the road from Mr. Taylor. Mr. Taylor has never spoken to them directly about his concerns. It was pretty clear where they were planning to build the shop. She wished Mr. Taylor had spoken to them about his concerns. If he had spoken to them, they would have corrected the error. They were concerned about 3' X 3' slab but the electrician has wired their shop in such a way he said that it was the only location for the generator. Their contractor has told him if it was necessary, they could move the location for the generator. She noted that the first time they were made aware of the issue, was when someone from the borough had contacted them. By then the concrete slab had been installed and the walls for the shop had already gone up.

Commissioner Venuti noted that he has been inspecting new construction projects for the last 30 years and it is a rare project that gets built out of whack like this. He wonders why their contractor did not build by the rules, why didn't he conduct a survey before starting the project. It is his responsibility, as well as yours, to make sure that he follows the rules. Ms. Whitmore agreed, they were stunned that both the contractor and their dirt guy didn't catch this error. It appears no one took a hard look at the plat before they began to build. They understand that ultimately it is their responsibility and they are sorry. Commissioner Venuti noted that this is not a new rule, it has been on the books for years. He then stated that he would have a hard time supporting this request.

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

MOTION: Commissioner Morgan moved, seconded by Commissioner Gillham to adopt PC Resolution 2022-46 granting a building setback encroachment permit to Lot 10, Lake Estates Subdivision, Plat K-1648.

Commissioner Stutzer noted that he has been very vocal in the past about folks not doing their homework before starting construction, which leads to errors like this. It is still his position that errors like this should not occur. In this situation he believes there are a couple of mitigating factors. First, the owners have been very forthright about accepting responsibility for this error. Second, the road that is being talked about here is basically a driveway and only serves three lots. He noted staff has stated that there are no sightline issues. The neighbor that spoke in opposition, stating that he has issues with this request, built his home right on the setback line. They are parking in their setback and have to back on to the road to get away from their house. This road has been designed in such a way that the borough will not take over the maintenance, so he doesn't see any issues there either. This road will be maintained by the neighborhood. He recognizes that this is a sticky situation, and he understands Commissioner Venuti's comments. He then stated that he is inclined to support this petition but he does have concerns as well.

Commissioner Morgan stated that in the end it is the landowner's responsibility to make sure things like this don't happen, but she also noted that landowners have to rely on the expertise of their contractors. She is very disappointed in the contractor's lack of research before starting their work.

Commissioner Gillham stated that she agrees with Commissioner Morgan. She also would place most of the blame in this situation on the contractor. He should have done his homework. She is not concerned with the neighbors parking in their setback, that area is still a part of their property. The setback code relates to construction within the setback. She stated that she is inclined to support this request as she feels that the fault lies mostly with the contractor. The landowners should be able to trust in their expertise.

Chair Brantley noted the testimony from the neighbor inferred that the landowners had built in the right-of-way. That is not correct, the encroachment is into the setback. The shop is still on the landowner's property. He does not see snow removal or road maintenance being affected. He does have some sympathy for this being an older plat and the setback information not being very visible. Contractors do make mistakes. The reason he asked who the contractor was, is that he has been on this commission long enough and likes to see if there is a reoccurring theme with certain contractors that might need to be addressed. He then stated that he will be supporting this request.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 11	Brantley, Fikes, Gillham, Horton, Hooper, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	
Absent-1	Martin

**ITEM E2 – UTILITY EASEMENT ALTERATION
20-FOOT-WIDE HOMER ELECTRIC ASSOCIATION EASEMENT WITHIN LOTS 2A-1 AND 2B-1 OF
SELDOVIA TOWNSITE EAST ADDITION 2006 REPLAT**

KPB File No.	2022-148V
Planning Commission Meeting:	October 24, 2022
Applicant / Owner:	Jennifer Watson of Anchorage, Alaska
Surveyor:	
General Location:	City of Seldovia

Staff report given by Platting Manager Vince Piagentini.

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 commission.

MOTION: Commissioner Slaughter moved, seconded by Commissioner Morgan to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 11	Brantley, Fikes, Gillham, Horton, Hooper, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	
Absent-1	Martin

**ITEM E3 – RESOLUTION 2022-054
A RESOLUTION APPROVING THE ACQUISITION OF A PUBLIC ACCESS
EASEMENT FROM THE STATE OF ALASKA FOR WATERMELON TRAIL**

Staff report given by Land Management Officer Marcus Mueller.

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 commission.

MOTION: Commissioner Slaughter moved, seconded by Commissioner Gillham to forward to the Assembly a recommendation to adopt Resolution 2022-054, approving the acquisition of a public access easement from the State of Alaska for Watermelon Trail.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 11	Brantley, Fikes, Gillham, Horton, Hooper, Morgan, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 0	
Absent-1	Martin

AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Gillham reported the plat committee reviewed eight plats, granted preliminary approval to seven and postponed action on one.

AGENDA ITEM H. PUBLIC COMMENT/PRESENTATIONS

Chair Brantley asked if there was anyone from the public who would like to comment on anything not appearing on the agenda. No one wished to comment.

AGENDA ITEM K. ADJOURNMENT

Commissioner Venuti moved to adjourn the meeting at 8:36 PM.

Ann E. Shirnberg
Administrative Assistant