

E. NEW BUSINESS

2. Building Setback Encroachment Permit; KPB File 2022-181

Petitioner/Landowner: Jay Snow

**Request: Permits a 9.1' by 4.3' portion of a house to remain
in the building setback granted on Hollywood
Subdivision No. 4, Plat HM 86-90**

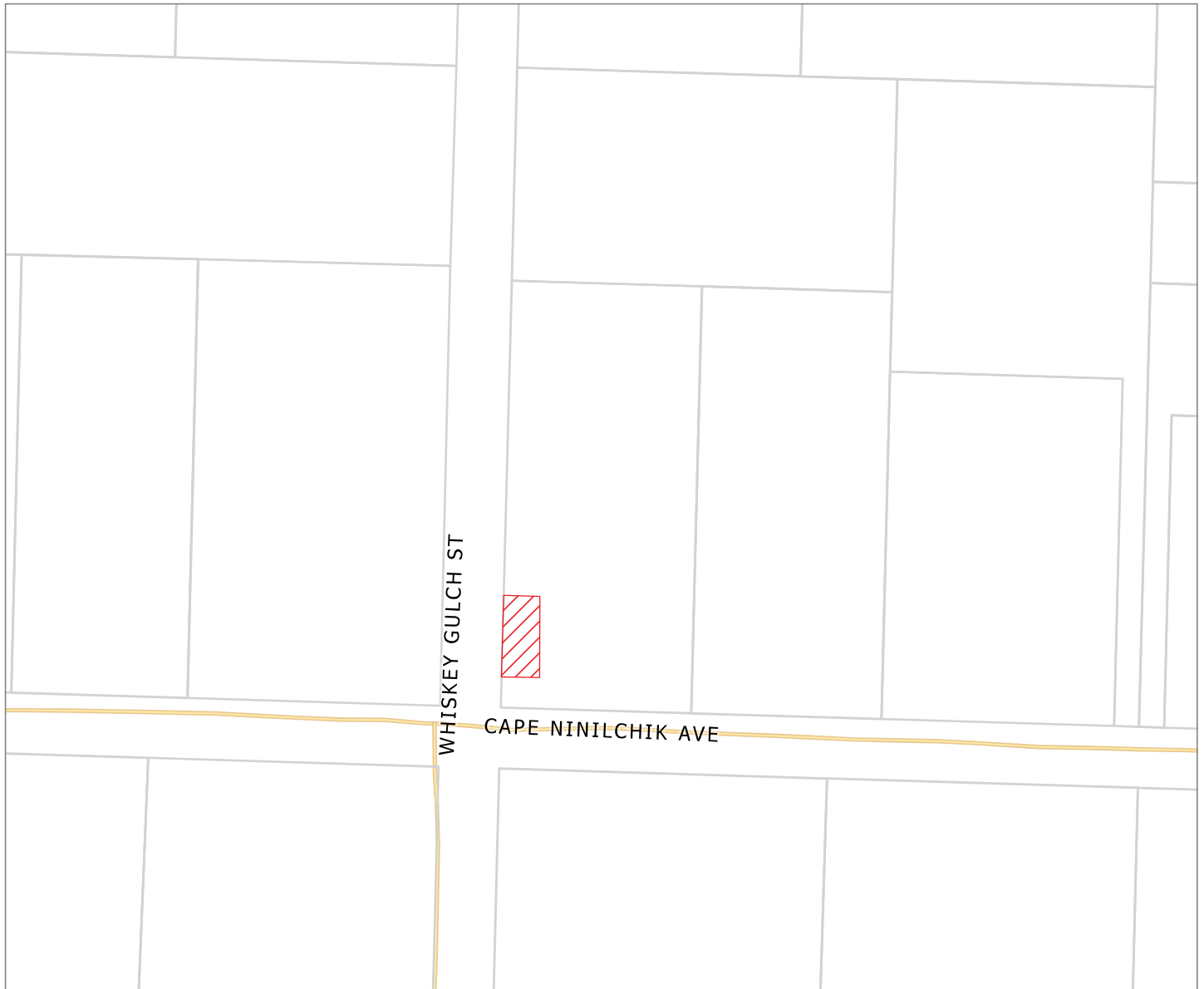
Location: Whisky Gulch Street

Anchor Point Area / Anchor Point APC



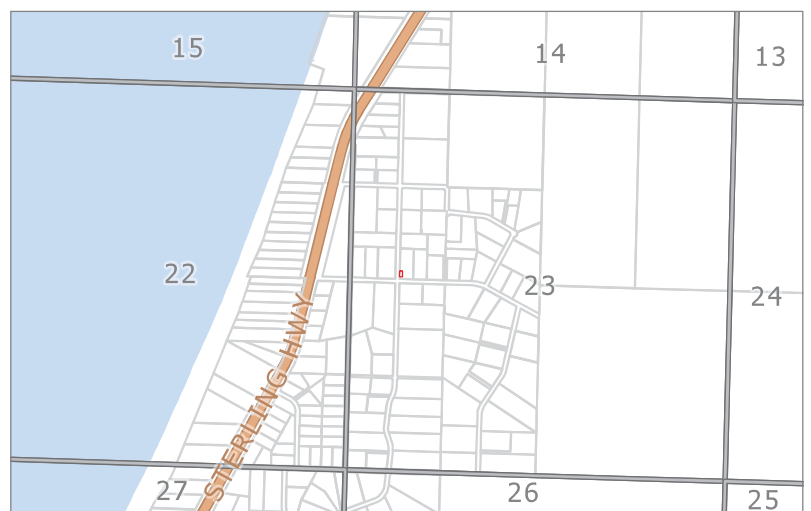
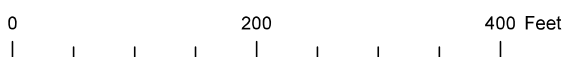
Kenai Peninsula Borough Planning Department

Vicinity Map

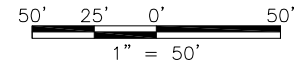
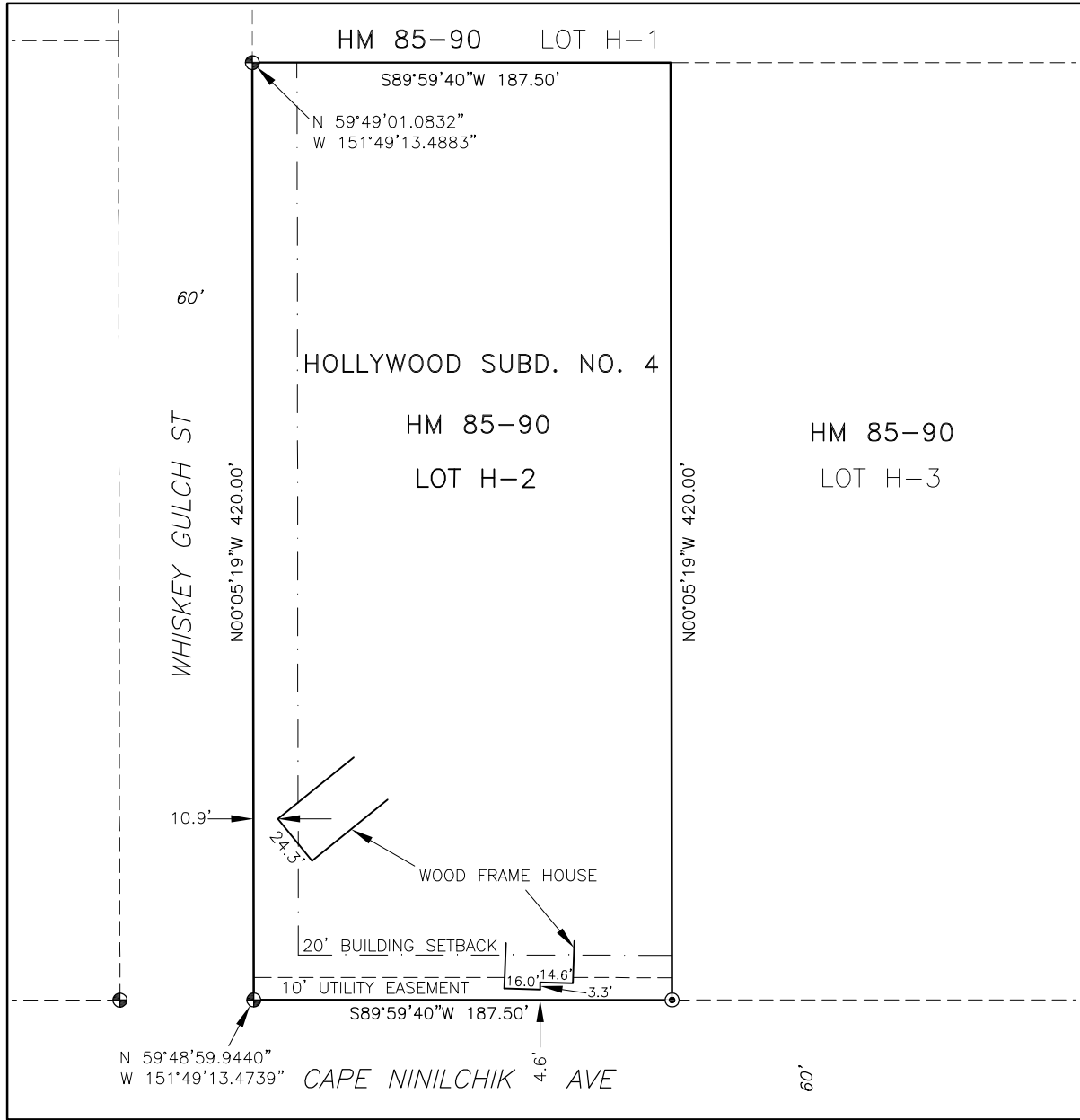


KPB File 2022-181
T 04S R 15W SEC 23
Anchor Point

12/16/2022







LEGEND

- ⊙ FOUND 5/8" REBAR
- ⊕ FOUND 2" ALUMINUM CAP

NOTES

1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
2. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT HM 85-90.

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE PERFORMED AN AS-BUILT SURVEY ON THE PROPERTY SHOWN HEREON, AND THE IMPROVEMENTS EXIST AS SHOWN. FIELD SURVEY ON 09/12/2022.

Jason L. Schollenberg 12/17/2022

JASON L. SCHOLLENBERG DATE
PLS 14488-S



PENINSULA SURVEYING, LLC 10535 KATRINA BOULEVARD NINILCHIK, AK 99639 (907)306-7065	
AS-BUILT SURVEY LOT H-2, HOLLYWOOD SUBDIVISION NUMBER 4 SECTION 23, T4S, R15W, S.M.	
SCALE: 1" = 50'	DATE: 12/17/2022
DRAWN: JLS	SHEET: 1 OF 1

AGENDA ITEM E. NEW BUSINESS

**ITEM 2. – BUILDING SETBACK ENCROACHMENT PERMIT
LOT H-2 HOLLYWOOD SUBDIVISION #4, PLAT HM 85-90**

KPB File No.	2022-181
Planning Commission Meeting:	January 9, 2023
Applicant / Owner:	Jay Snow of Anchor Point, Alaska
Surveyor:	Jason Schollenberg / Peninsula Surveying, LLC
General Location:	Whiskey Gulch Street, Anchor Point, Anchor Point APC

Parent Parcel No.:	165-610-84
Legal Description:	Lot H-2 Hollywood Subdivision #4, Plat HM 85-90
Assessing Use:	Residential
Zoning:	Rural Unrestricted

STAFF REPORT

Specific Request / Purpose as stated in the petition: The structure on Cape Ninilchik Avenue constructed in 1955, predates building setback and will not be considered. The house on unconstructed Whiskey Gulch St. right-of-way has a corner that is 9.1 ft into the building setback. The surrounding area is flat and if Whiskey Gulch Street is ever constructed, this will not create any line of sight issues, nor will it cause any hazards.

Site Investigation: Near mile 154 of the Sterling Highway is Cape Ninilchik Avenue, a borough maintained right-of-way. Whiskey Gulch Street is located approximately 1,250 feet from the intersection with the Sterling Highway. This platting action is located north of Cape Ninilchik Avenue. The lot is located on the northeast corner of Whiskey Gulch Street and Cape Ninilchik Avenue. Per the as-built survey performed by Peninsula Surveying, LLC, a wood frame house is within the 20 foot building setback along Whiskey Gulch Street. The width of the structure is 24.3 feet and it is at an angle to the edge of the property line. The corner of the house is 9.1 feet within the setback leaving 10.9 feet between the structure and the edge of Whiskey Gulch Street dedication.

Whiskey Gulch Street was dedicated as a 60 foot wide right-of-way by Hollywood Subdivision Addition No. 1, Plat HM 76-56. That plat dedicated Whiskey Gulch Street from Cape Ninilchik Avenue north to Bourbon Avenue. Portions of Whiskey Gulch Street are being used for access but none are borough maintained. The portion adjacent to the encroachment is not constructed.

Hollywood Subdivision Addition No. 1, Plat HM 76-56, dedicated Whiskey Gulch Street and created a 20 foot building setback along all rights-of-way per a plat note. Tract H, that was created by that plat, was replatted by Hollywood Subdivision Addition No. 4, Plat HM 82-90. That plat created the current lot configuration for Lot H-2 and per plat note 1, carried over the setback. Depiction of the setbacks were not present on either of the plats.

Staff Analysis: This encroachment issue came to the attention of the Code Compliance Officer and the KPB Roads Department as it appeared the structures may have been encroaching into the right-of-way dedications. Once the as-built was performed it showed that there was no encroachment into the right-of-way but into the building setback. The KPB Code Compliance Officer worked with the owners to find a resolution and a petition for an encroachment permit was submitted.

The setback was created by Hollywood Subdivision Addition No. 1, Plat HM 76-56, and then carried over to the most recent plat for the property on Hollywood Subdivision Addition No. 4, Plat HM 82-90. The as-built indicates two structures within the setbacks, one is along Whiskey Gulch Street and the other along Cape Ninilchik Avenue. Per KPB Assessing information, a structure was constructed in 1955. The owners request states the same. The

setback was not put into place until 1976 therefore the structure along Cape Ninilchik Avenue is not subject to the setback. The dwelling along Whiskey Gulch Street, per KPB Assessing information, was constructed in 2007 and is subject to the setback requirement.

There are no street view available for this area. Kettle designated wetlands are present to the north of the encroachment within the dedication. There is no steep terrain in the area located near the encroachment.

This portion of Whiskey Gulch Street is not currently constructed. Portions further north are used for access but are not maintained by the Kenai Peninsula Borough. The dedication for Whiskey Gulch Street provides complete blocks that intersect other rights-of-way that provide multiple access routes to and from the Sterling Highway. The portion being discussed for this platting action can provide another route once constructed through.

Findings:

1. Hollywood Subdivision Addition No. 1, Plat HM 76-56 created a 20-foot building setback along Whiskey Gulch Street and Cape Ninilchik Avenue.
2. Hollywood Subdivision Addition No. 4, Plat HM 85-90 carried over the 20-foot building setback along Whiskey Gulch Street and Cape Ninilchik Avenue.
3. A house is within the 20 foot building setback along Whiskey Gulch Road with the corner being 9.1 feet into the setback.
4. A 10.9 foot portion of the building setback remains between the structure and the edge of the dedication for Whiskey Gulch Street.
5. The portion of Whiskey Gulch Street for consideration is not constructed.
6. The Kenai Peninsula Borough Roads Department reviewed the permit request and had no comments.
7. There are no low wet areas within this portion of Whiskey Gulch Street.
8. Low wet areas are present to the north.
9. The terrain is relatively flat.
10. There does not appear to be any line of sight issues.

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 4-7 and 9 appear to support this standard.

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

Findings 4-7, 9, and 10 appear to support this standard.

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

Findings 4-10 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
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	Roads Director: Painter, Jed Comments: No comments
SOA DOT comments	
KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: Located in a mapped D Zone - Non-regulatory, undetermined flood risk</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
State of Alaska Fish and Game	
Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 71850 CAPE NINILCHIK AVE</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names: CAPE NINILCHIK AVE WHISKEY GULCH ST</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: 71850 CAPE NINILCHIK AVE will remain with lot H-2.</p>
Code Compliance	Reviewer: Ogren, Eric Comments: Code Compliance Case for encroachment into the 20 ft building set back
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
Advisory Planning Commission	

Utility provider review:

Homer Electric Association	
ACS	
ENSTAR	
GCI	

RECOMMENDATION:

Based on the standards to grant a building setback encroachment permit, **staff recommends** to adopt Resolution 2023-2, 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



**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2023-2
HOMER RECORDING DISTRICT**

GRANT A BUILDING SETBACK ENCROACHMENT PERMIT TO A PORTION OF THE TWENTY FOOT BUILDING SETBACK FOR H-2, HOLLYWOOD SUBDIVISION NO 4 (HM 0760056); IN NE 1/4 S23, T04S, R15W; SEWARD MERIDIAN, ALASKA, WITHIN THE KENAI PENINSULA BOROUGH; KPB FILE NO. 2022-181

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; and

WHEREAS, Jay Snow of Anchor Point, AK requested a building setback encroachment permit to the 20-foot building setback granted by Hollywood Subdivision No 1 (HM 0760056); and

WHEREAS, an improvement was constructed in 1955 that predates the creation of the 20 foot building setback adjoining Cape Ninilchik Avenue and is exempt from the 20 foot building setback; and

WHEREAS, per the petition, a house was constructed in 2007 and is located 9.1 feet within the 20 foot building setback adjoining Whiskey Gulch Street; and

WHEREAS, the encroaching structure does not affect sight distance along the right-of-way; and

WHEREAS, on Monday, January 9, 2023, 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 encroachment 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 accomplish building setback encroachment permits by Resolution.

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

Section 1. That the 20-foot building setback limit on H-2 Hollywood Subdivision #4 (HM 0760056) is hereby excepted to accommodate only the encroaching portion of the wood frame house.

Section 2. That any new, replacement, and/or additional construction will be subject to the 20-foot building setback limit.

Section 3. That the 20-foot building setback limit shall apply to the remainder of said lot.

Section 4. That a current as-built survey or sketch prepared, signed, and sealed by a licensed land surveyor showing the location of the encroachment within the building setback be attached to, and made a part of this resolution, becoming page 2 of 2.

Section 5. That this resolution is void if not recorded in the appropriate Recording District within 90 days of adoption.

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

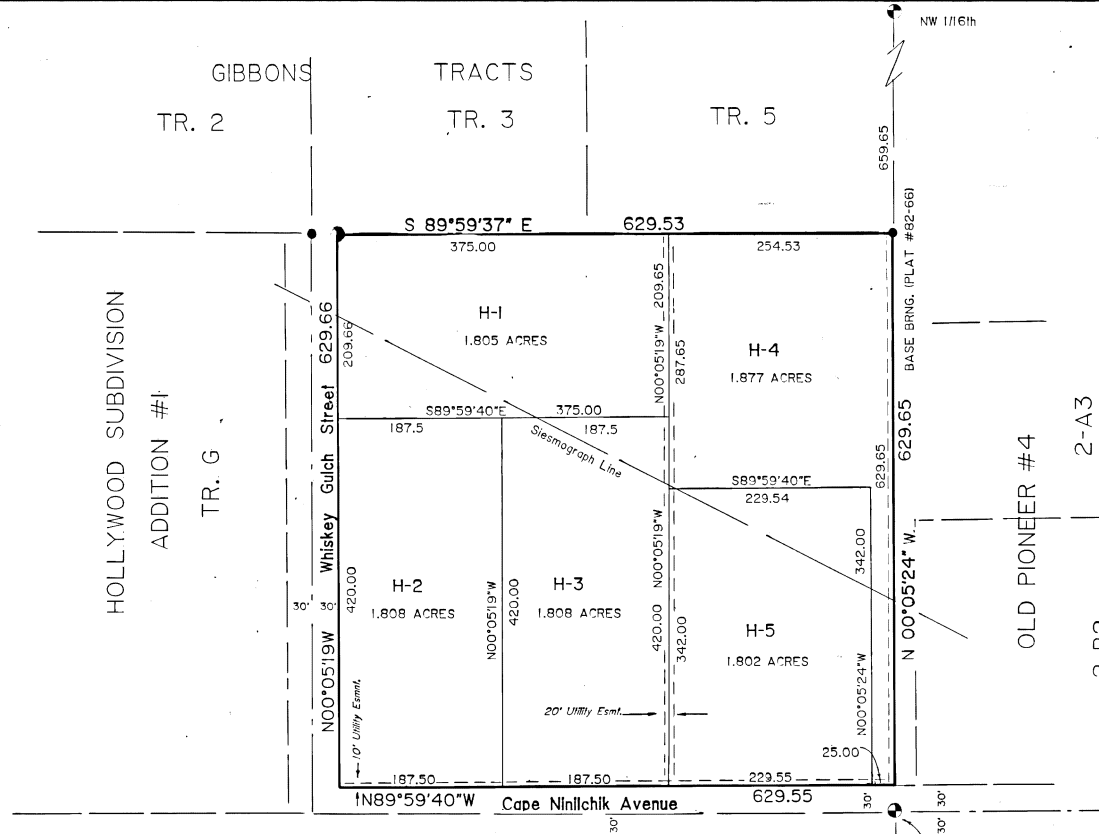
ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS _____ DAY OF _____, 2023.

Jeremy Brantley, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg,
Administrative Assistant

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



NOTES:

- 1) A building setback of 20' is required from all street rights of way unless a lesser standard is approved by resolution of the appropriate planning commission.
- 2) No structures are allowed on the panhandle portion of Lot H-4 which is subject to a road and utility easement.
- 3) The soils in this subdivision may be unsuitable for conventional on-site disposal systems. No person may construct, install, maintain or operate a pressurized water system or a waste disposal system without obtaining prior approval of the plans for the system from the Alaska Department of Environmental Conservation. The burden of providing soils data, ground-water table information, engineering designs and any other information required by the Department to complete the review of the proposed system rests solely on the lot owner.
- 4) This plat is an "isolated subdivision" as defined in 18AAC 72.990(27) and is not subject to review under 18AAC 72.065.

SPRUCE LAKE ESTATES

LEGEND

- FOUND 1/2" REBAR, 4374-S, 1979
- FOUND B.C. MONUMENT, 4734-S, 1979
- SET AL. CAP MONUMENT ON 5/8" X 24" REBAR
- FOUND 5/8" REBAR WITH 1 1/2" AL. CAP 4374-S, 1985



85-90

FILED 10 *my*
HOMER REC. DIST.

DATE 9-9-85
TIME 8:45 A.M.
Requested By KPB
Address Seldotun.

CERTIFICATE OF OWNERSHIP
I hereby certify that I am the owner of the property shown and described hereon. I hereby request approval of this plat showing such easements for public utilities and roadways dedicated by me for public use, to the use shown.

Susan Alexander
SUSAN ALEXANDER
BOX 140
ANCHOR POINT, ALASKA 99556

JERRY ANDERSON
NOTARY PUBLIC
STATE OF ALASKA

NOTARY'S ACKNOWLEDGEMENT
Subscribed and sworn to before me this 11th day of Nov 1984
[Signature]
Notary Public for Alaska
My Commission Expires 11-7-87

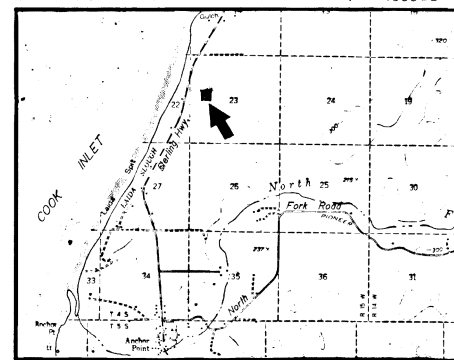
SURVEYOR'S CERTIFICATE
I, the undersigned registered surveyor, hereby certify that a land survey has been completed by me or under my direct supervision and that corners and monuments have been located and established and that dimensions shown hereon are true and correct.

[Signature] 11-11-84
(Person, RLS No. 3686-S) DATE

PLAT APPROVAL
This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of December 17, 1984.
Kenai Peninsula Borough

By *Richard O. Tveit*
Authorized Official

VICINITY MAP



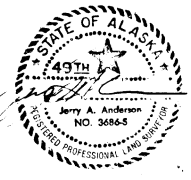
DATE: NOVEMBER, 1984

SCALE: 1" = 100'

DRAWN BY: SAS

FLD. BK. NO.: 166

JOB NO.: 1710



HOLLYWOOD SUBD. #4

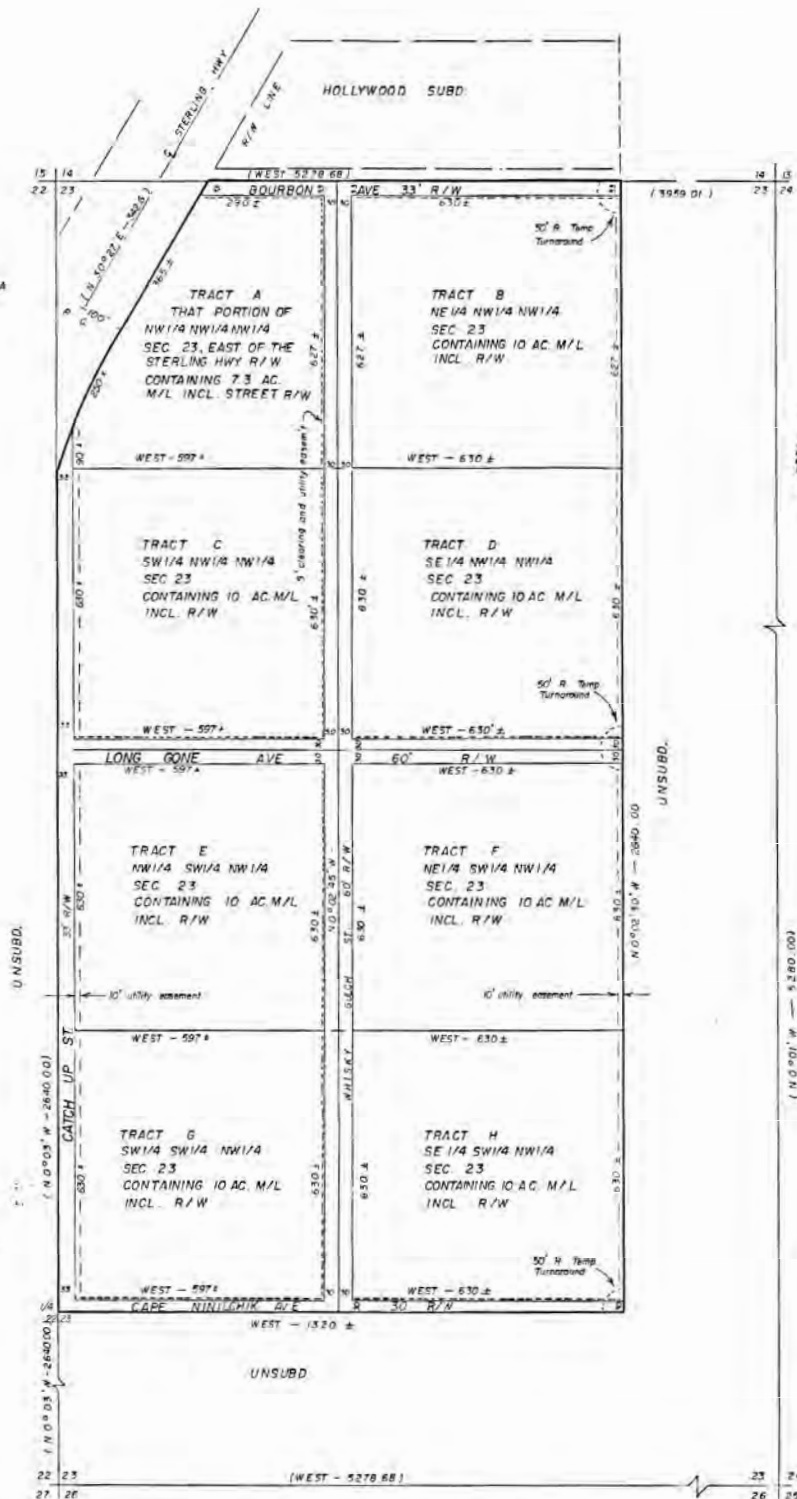
Being a replat of Tract 14, HOLLYWOOD SUBDIVISION; plat #76-56, H.R.D. Situated within the SW 1/4 NW 1/4, Section 23, T4S, R15W, S.M., ALASKA.

CONTAINING 9.100 ACRES

ABILITY SURVEYS

JERRY ANDERSON, R.L.S. BOX 378 HOMER, ALASKA

DEPT. HWY'S
& CURVE DATA
Δ = 18°05'
T = 104.1
L = 603.2
R = 1910.0
S = .06



LEGEND AND NOTES

This is a paper plat of the W1/2 NW1/4 SEC. 23, T4S, R15W 5M AK. East of the Sterling Hwy R/W subdivided into aliquot parts.

All bearings and distances refer to the official G.L.O. Township Plat of T4S, R15W 5M AK.

Data of record shown within ().

No field survey has been made as of this date and no stakes or monuments set.

All lots are subject to a 20' building set back along all street R/W's. Tract A is subject to a 50' set back along Sterling Hwy R/W.

PLAT APPROVAL

Plat approved by the Commission this 3RD day of May, 1976.

Richard E. Sullivan
Mayor

#76-56

FILED 34
HOMER REC. DIST.
DATE 7-15-76
TIME 10:17 A.M.
RECORDED BY KPB
SUBMITTER Sullivan

76-76
FILED
HOMER REC. DIST.
DATE 6/1/76
TIME 1:05 P.M.
RECORDED BY KPB
SUBMITTER Sullivan

CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of said property, and request the approval of this plat showing such easements for public utilities, roadways, and/or streets dedicated by us for public use.

Robert B. Knott
Robert B. Knott - owner - 2904 Northern Lights Blvd., Anchorage, AK

Jerry C. Anderson
Jerry C. Anderson - owner - Box 1727, Venet, AK

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn before me this 2nd day of May, 1976.

My commission expires 3/13/78.

Robert White
notary public for Alaska

HOLLYWOOD SUBDIVISION ADDITION NO. 1

Hollywood Investments No. 1 - owner
2904 Northern Lights Blvd., Anchorage, AK 99503

DESCRIPTION
77.3 AC. M/L SITUATED IN THE W1/2 NW1/4 SEC. 23, T4S, R15W 5M AK EAST OF THE STERLING HWY R/W AND IN THE KENAI PENINSULA BOROUGH.

Prepared by McLane and Associates

Date of Preparation 4/13/76

Scale 1" = 200'