

C. CONSENT AGENDA

- *7. Minutes

- a. January 9, 2023 PC Meeting Minutes

Kenai Peninsula Borough Planning Commission

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

January 9, 2023

7:30 P.M.

UNAPPROVED MINUTES
(Meeting Held Via Zoom Only)

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

Pamela Gillham, District 1 – Kalifornsky
Blair Martin – District 2, Kenai
John Hooper, District 3 – Nikiski
Michael Horton, District 4 - Soldotna
Jeremy Brantley, District 5 – Sterling/Funny River
David Stutzer, District 8 – Homer
Dawson Slaughter, District 9 – South Peninsula
Troy Staggs, City of Seward
Charlene Tautfest, City of Soldotna
Franco Venuti, City of Homer

With 10 members of a 12-member seated commission in attendance, a quorum was present.

Staff Present

Samantha Lopez, Acting Planning Director
Marcus Mueller, Land Management Officer
Walker Steinhage, Deputy Borough Attorney
Vince Piagentini, Platting Manager
Julie Hindman, Platting Specialist
Ann Shirnberg, Planning Administrative Assistant
Rhonda Foster-Deskins, Land Management Administrative Assistant

AGENDA ITEM C. CONSENT & REGULAR AGENDAS

- *3. Plats Granted Administrative Approval**
- a. AA Mattox Subdivision Johnson Addition; KPB File 2022-064
 - b. Bear Run Tract 2 Replat; KPB File 2022-043
 - c. Beaver Creek Alaska Subdivision 2020 Replat; KPB File 2021-006
 - d. Breakfield-McCaughey Subdivision; KPB File 2022-054
 - e. Catkin Subdivision 2021 Replat; KPB File 2021-144
 - f. C L Hatton Subdivision Eagles Crest Addition Byler Replat; KPB File 2022-027
 - g. Crane-France Subdivision; KPB File 2022-096
 - h. D & J subdivision; KPB File 2022-065
 - i. Foothills Subdivision Sunset View Estate 2020 Addition; KPB File 2020-113P2

- j. Fritz Creek Acres 2022 Replat; KPB File 2022-095
- k. K.D.M. Subdivision 2022 Addition; KPB File 2022-146
- l. Kasilof Alaska Subdivision 2022 Replat; KPB File 2022-119
- m. Lillian Walli Estate 2022 Replat; KPB File 2022-083
- n. Lobdell Subdivision; KPB File 2022-018
- o. McClaren Subdivision; KPB File 2016-083
- p. Monk Acres; KPB File 2022-071
- q. Puffin Acres Bayweld 2022 Replat; KPB File 2022-046

***4. Plats Granted Final Approval**

- a. Alisyn Acres Subdivision McDonald Replat; KPB File 2022-149
- b. Foster Lake Subdivision Vasilie Replat; KPB File 2022-140
- c. Golf-Fairway 2022 Replat; KPB File 2022-138
- d. John Buchanan Subdivision; KPB File 2022-154

***6. Commissioner Excused Absences**

- a. Virginia Morgan, District 6 – East Peninsula
- b. Diane Fikes, City of Kenai
- c. City of Seldovia, Vacant
- d. District 7 – Central, Vacant

***7. Minutes**

- a. December 12, 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.

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

MOTION: Commissioner Slaughter moved, seconded by Commissioner Staggs 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 - 10	Brantley, Gillham, Hooper, Horton, Martin, Slaughter, Staggs, Stutzer, Tauffest, Venuti
Absent - 2	Fikes, Morgan

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 2A SPRUCE LAKE ESTATES ADDN. NO. 2, PLAT HM 86-34**

KPB File No.	2022-176
Planning Commission Meeting:	January 9, 2023
Applicant / Owner:	Richard Shreves of Helena, Montana
Surveyor:	Jason Schollenberg / Peninsula Surveying, LLC
General Location:	Whiskey Gulch Street, Anchor Point, Anchor Point APC
Parent Parcel No.:	165-610-95
Legal Description:	Lot 2A Spruce Lake Estates Addn. No. 2, Plat HM 86-34
Assessing Use:	Residential
Zoning:	Rural Unrestricted

Staff report given by Platting Manager Vince Piagentini.

Chair Brantley opened the item for public comment.

Richard Shreves; 1800 Laurel Street, Helena, MT 59601: Mr. Shreves is the landowner. He noted that he uses the property during his summer stays in Alaska. He acknowledged that he made a mistake years ago when he built this structure. It would cost prohibitive to move the structure and would ask that the commission approve his permit.

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

MOTION: Commissioner Venuti moved, seconded by Commissioner Staggs to adopt PC Resolution 2023-01 granting a setback encroachment permit to Lot 2A, Spruce Lake Estates Subdivision No. 2, Plat HM 86-34 based on findings in the staff report.

Commissioner Stutzer stated he understands that mistakes are made but he has a difficult time approving these kinds of permits. He does not like approving encroachments after the fact. If possible, he would like to see the encroachment resolved by moving the structure. If moving it is cost prohibitive, he asked staff if a condition could be put on the permit that should the landowner conduct any kind of major renovations on the property that they would be required to move the structure. Ms. Hindman replied that the permit contains language that states any new, replacement, and/or additional construction will be subject to the 20-foot setback limit. She also noted that the encroachment issue was brought to the borough's attention by the Code Compliance Officer, Eric Ogren. Mr. Ogren went to the landowner to negotiate a resolution to the encroachment and that is why this application is coming forward tonight.

Commissioner Martin stated he agrees with Commissioner Stutzer's concerns. However when reviewing the staff report findings, such as the cost to move the structure, he is in favor of granting the permit. The structure can be moved in the future if the landowner wants to renovate the home.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 10	Brantley, Gillham, Hooper, Horton, Martin, Slaughter, Staggs, Stutzer, Tautfest, Venuti
Absent - 2	Fikes, Morgan

**ITEM E2 – 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 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 Staggs to adopt PC Resolution 2023-02 granting a setback encroachment permit to Lot H-2, Hollywood Subdivision No. 4, Plat HM 85-90 based on the findings as stated in the staff report.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 10	Brantley, Gillham, Hooper, Horton, Martin, Slaughter, Staggs, Stutzer, Taufest, Venuti
Absent - 2	Fikes, Morgan

**ITEM E3 – ORDINANCE 2022-46
AMENDING KPB 21.02.230 TO MODIFY THE BOUNDARIES OF THE
NIKISKI ADVISORY PLANNING COMMISSION**

Staff report given by Senior Planner Samantha Lopez.

Commissioner Gillham asked staff if the Tyonek Native Corporation had made any attempts to secure representation on the APC. Ms. Lopez replied that no applicants for the APC had been received from any residents on the westside. Commissioner Gillham then asked if the reduced boundary size of the APC being put forth, is the same one the Planning Commission initially recommended to the Assembly. Ms. Lopez replied that it was. She noted the ordinance reducing the boundary size was brought forth by several assembly members in response to the letter from the Tyonek Native Association.

Chair Brantley opened the item for public comment.

Len Niesen; PO Box 8485, Nikiski, AK 99635: Ms. Niesen spoke in support of leaving the Nikiski APC boundaries as they are. She noted that the Tyonek Native Corporation had received the same notice about the formation of the APC as the other area residents. They had the same opportunity to make comments then, but they chose not to. They chose to lodge their complaint after the fact, after the APC boundaries were approved. The native corporation actually owns very little land on the westside. In addition, there are energy companies that own lands on the westside that are based in Nikiski, as well as 150-plus properties on the westside that are privately owned. She feels that by reducing the APC boundaries, all the folks who are not a part of the native corporation will be losing a voice that they have been given. The native corporation can choose to participate or not, however they are not losing anything by remaining within the APC boundaries. She noted that most of the lands on the westside are publicly owned lands (Federal, State & Borough) and have the potential of being developed in the future. Some of these public lands may one day be transferred into private hands. She does not believe that the voices of the private landowners in the area should be shut down. She believes the westside is completely attached to Nikiski. The westside is included in their service area and those land should remain within the APC boundary. Making this change, after the fact, does not sit well with her. She would ask that the commission recommend rejecting this proposal.

Commissioner Slaughter asked Ms. Niesen if the APC had reached out to the Tyonek Native Corporation to discuss this matter. Ms. Niesen replied that they had not. She noted that the APC just recently had their first meeting and believed the open meetings act prohibited them from reaching out directly. The APC has not really had the time or opportunity to reach out to them.

Commissioner Slaughter noted that no one from the westside appears to be on the APC. It also sounds like the Tyonek Native Association may not have received any notice about the formation of the APC. He asked staff what resources were put into notifying residents on the westside about the APC. Ms. Lopez replied that once the APC boundaries were set, a notice was sent out to all landowners within the adopted boundary, informing them of the new APC, and that they had lands that resided within the boundary. The notice also contained information on how to apply to be a member of the APC board.

Len Niesen; PO Box 8485, Nikiski, AK 99635: Ms. Niesen wanted it noted that the Nikiski APC would welcome participation from the residents on the westside. She would be happy to relinquish her seat to allow for that to happen

Heidi Covey; 46990 Two Junes Ave., Kenai, AK 99611: Ms. Covey spoke in support of leaving the Nikiski APC boundaries as they are. She stated she keeps hearing concerns being expressed about the size of the APC. She doesn't believe that should be a concern, as there is nothing in code or statute about limiting the size of an APC. The Tyonek Native Association received the same notices as all the other area residents. The native association appears to be saying that they were left out of the process and we know that they were not. They chose to speak up only after the APC was established. The native corporation

states that they are not a part of the borough, however they do receive services paid for by borough tax payers. The native corporation is no different than any other area resident, they can exercise their civic duty and submit an application to be on the APC. She then noted that an owner of a business on the westside did just that, they submitted an application to sit on the APC. She stated that we need to be guided by the law and would encourage the commission to follow the law and allow the APC boundaries to remain as they were initially adopted.

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

MOTION: Commissioner Gillham moved, seconded by Commissioner Slaughter to forward to the Assembly a recommendation to adopt Ordinance 2022-46, amending KPB 21.02.230 to modify the boundaries of the Nikiski Advisory Planning Commission.

Commissioner Gillham stated that she thought when the commission initially recommended reducing the size of the boundary it was to give the westside the opportunity to create an APC and to have their own voice. It does not appear that the native corporation wants to do that. There are still other lands on the westside that are not apart of the native corporation and it seems to be unwise for them to not have any representation. Initially she supported the small boundary for this APC but she is now leaning towards supporting that the boundaries remain as they are. Just because the native corporation doesn't want a voice doesn't mean the other residents on the westside shouldn't have one. The borough already doesn't tell the native corporations what to do with their lands, so this APC won't negatively affect them.

Commissioner Staggs stated since the native corporation doesn't want to participate in the APC, the commission could just make a recommendation to remove the native corporation lands from the APC boundaries.

Commissioner Martin stated that he agrees with what the two testifiers and commissioner Gillham has said. He is inclined to vote against recommending approval of the ordinance.

Commissioner Stutzer asked what kind of jurisdiction does the borough have over federal and native lands? If we really don't have much jurisdiction over federal and native lands, he doesn't see how the APC would negatively affect them. If that is true, then he is inclined to recommend that the boundaries be left as they currently are. Ms. Lopez replied as far as what kind of lands are subject to the borough, it is her understanding that federal and native lands are still subject to code. For instance, any time there is any type of platting action, whether on private or public lands, those plats will still come before the commission for approval. The same would be true for conditional use and conditional land use permits. However, when it comes to the APC developing a land use plan, it would only apply to borough owned lands. Borough Attorney Walker Steinhage added generally in cases where federal and local laws are in conflict, federal law will control. The issue of the relationship of laws between native corporations/tribes and state/local municipalities are rapidly evolving and changing. Having said that, he doesn't believe that this would be implicated at the APC level, because the purpose of the APC is to give locals a voice and make recommendations. The APC is not a decision-making body.

Commissioner Brantley noted that the last time this came before the commission there was a lot of discussion about why the boundaries of this APC should be smaller. He noted that APCs are not in any way tied to the size of a service area. The service areas and APCs are two different bodies, that perform very different functions. The westside of the inlet is so unique, and while some would say that it is a part of Nikiski, it really isn't. It is a very different place to Nikiski. It would be like claiming that he, as a resident of Sterling, should have a say as to what goes on in Cooper Landing. These are two completely different areas. If the westside wants to represent themselves he believes that another APC would be appropriate. He hasn't changed his mind from the last time this came before the commission. He will be voting to recommend adopting the smaller boundary area. He also reminded the commission that the westside is represented by them. The Planning Commission represents the entire borough, so it is not like the westside is going without any representation.

Commissioner Horton stated he agreed with Commissioner Brantley. It would be like him, a resident of Sterling, saying that he should be making recommendations for the Funny River area.

Commissioner Gillham stated she believes it is beneficial to have a local voice, and she was concerned

that the residents of the westside would be going without a local voice. She has noticed that a number of the APCs have had difficulties finding residents willing to serve. She had been thinking that at least there were folks on the Nikiski APC willing to speak up for the westside. She recognizes that the westside is unique and it would be great if the Nikiski APC could get residents from over there to join their board. However, she agrees that the westside is not without representation, as they are represented by the KPB Planning Commission.

Commissioner Stutzer stated that he agreed with Commissioner Brantley. He doesn't believe that as a Homer resident, that he should be making recommendations for another community further up the peninsula. He is not from the area and the conditions in the area could be very different.

Commissioner Brantley stated he understands that the westside is a large area and noted that Tyonek is the town of the westside. Tyonek has stated that they do not want to be a part of the Nikiski APC. Perhaps in the future they may want to form an APC for the westside. The ordinance before us was what we originally recommended to the Assembly.

Commissioner Venuti stated he understands that Tyonek does not want to participate in the APC. One thing he has not heard discussed is how they would participate. Living in Homer he has reliable internet connections, he wonders what it is like on the westside. Being remote, the westside might be at a disadvantage. He wonders if this issue might play into their decision. Commissioner Brantley replied that Tyonek may be showing how much they do not want to participate by choosing to not participate at all.

Commissioner Slaughter says that he supports the smaller APC boundary. He has served on an APC and he believes it is beneficial to have the community involvement. However, if Tyonek does not want to participate in the APC he does not believe they should be forced to. The westside is not without representation, they do have the planning commission and the assembly. He will be voting in favor of adopting this ordinance.

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

MOTION PASSED BY MAJORITY VOTE:

Yes - 9	Brantley, Gillham, Hooper, Horton, Slaughter, Staggs, Stutzer, Tautfest, Venuti
No - 1	Martin
Absent - 2	Fikes, Morgan

ITEM E4 – ORDINANCE 2023-xx

AUTHORIZING AN AMENDMENT TO THE KENAI PENINSULA ARCHERS LEASE TO PROVIDE A TEN-YEAR EXTENSION OF THE TERM AND A TEN-YEAR RENEWAL OPTION

Staff report given by Marcus Mueller.

Chair Brantley opened the item for public comment.

Steve Latz, Kenai Peninsula Archers; P.O. Box 1892, Kenai, AK 99611: Mr. Latz is the Gaming Officer for the club and spoke in support of approving the lease amendment. He also made himself available for questions.

Seeing and hearing no one else 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 Ordinance 2022-XX, authorizing an amendment to the Kenai Peninsula Archers lease to provide a ten-year extension of the term and a ten-year renewal option.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 10	Brantley, Gillham, Hooper, Horton, Martin, Slaughter Staggs, Stutzer, Tautfest, Venuti
Absent - 2	Fikes, Morgan

**ITEM E5 – RESOLUTION 2023-XX
PROVIDING A 30-DAY APPLICATION PERIOD PRIOR TO INACTIVATING THE KACHEMAK BAY
ADVISORY PLANNING COMMISSION**

Staff report given by Senior Planner Samantha Lopez.

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 Gillham moved, seconded by Commissioner Staggs to forward to the Assembly a recommendation to adopt Resolution 2023-XX, providing a 30-day application period prior to inactivating the Kachemak Bay Advisory Planning Commission.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 10	Brantley, Gillham, Fikes, Hooper, Horton, Martin, Staggs, Stutzer, Tautfest, Venuti
Absent - 2	Morgan, Slaughter

AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Gillham reported the plat committee reviewed and granted preliminary approval to 8 plats.

AGENDA ITEM G. OTHER

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 9:02 PM.

Ann E. Shirnberg
Administrative Assistant