

J. NEW BUSINESS

1. Remand Hearing

Building Setback Encroachment; KPB File 2022-121

Lot 10, Lake Estates Subdivision, Plat KN 1648

Applicants: David & Nancy Whitmore

General Location: GL Hollier Street

Ridgeway Area

***(PLEASE NOTE ADDITIONAL MATERIALS RECEIVED AFTER THE
PACKET PUBLICATION DATE OF 9/29/23 WILL BE IN THE DESK
PACKET WHICH WILL BE PUBLISHED AFTER 2:00 PM ON 10/6/23)***

**APPEAL OF THE KENAI PENINSULA BOROUGH
PLANNING COMMISSION DECISION
PC RESOLUTION 2022-46**

**Building Setback Encroachment Permit
Lot 10, Lake Estates Subdivision
KPB File 2022-2022-121**

KPB Tax Parcel ID#: 057-250-01

**Legal Description: a lot 10, Lakes Estates Subdivision, Plat
K-1648, Section 21, Township 5 North, Range 10 West**

**Applicant/Landowner:
David & Nancy Whitmore**



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Mike Navarre
Borough Mayor

"I, Robert Ruffner, the Kenai Peninsula Borough Planning Director, do hereby certify that to the best of my knowledge the attached record contains true and correct copies of all documents required by KPB 21.20.270 to be included in the record on appeal in the matter of the approval of a building setback encroachment permit for Lot 10, Lake Estates Subdivision, Plat K-1648; KPB File 2022-121.

Robert Ruffner
Planning Director
Kenai Peninsula Borough

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

)
)ss.
)



Ann E. Shirnberg
State of Alaska
Notary Public
Commission No. 211108013
My Commission Expires With Office

The foregoing instrument was acknowledged before me this 19th day of December by Robert Ruffner of the Kenai Peninsula Borough, a municipal corporation, on behalf of the corporation.

Notary Public for the State of Alaska

INDEX

Record Page #	Document
R-1	PC Resolution 2022-46
R-2 to R-7	October 25, 2022 Notice of Decision
R-8 to R-21	October 24, 2022 Meeting Materials
R-22 to R-28	Miscellaneous Information: Public Hearing Notice Agenda Newspaper Ad
R-29 to R-33	October 24, 2022 Planning Commission Meeting Minutes
VERBATIM TRANSCRIPTS	
T-1 to T-14	October 24, 2022 Planning Commission Verbatim Transcript

**PLANNING
COMMISSION
RESOLUTION
2022-46**

**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.

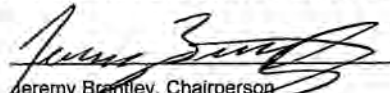
Section 3. That the twenty-foot building setback shall apply to the remainder of said lot.

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.

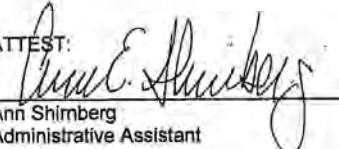
Section 5. That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.

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 Shimberg
Administrative Assistant

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

OCTOBER 25, 2022
NOTICE OF DECISION

Landowner
Party of Record

October 25, 2022

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
NOTICE OF DECISION
MEETING OF OCTOBER 24, 2022**

Lot 10, Lake Estates Subdivision Building Setback Encroachment Permit
KPB File 2022-121; KPB PC Resolution 2022-46
Location: on GL Hollier Street, Ridgeway area.

By unanimous consent and based on the following findings of fact, the Kenai Peninsula Borough Planning Commission conditionally approved the building setback encroachment permit thereby adopting KPB PC Resolution 2022-46 during their regularly scheduled meeting of October 24, 2022.

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

Findings:

10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
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.

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

Findings:

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.

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

Findings:

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.

The approval is subject to:

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).
2. That any new, replacement and/or additional construction will be subject to the twenty-foot building setback limit.
3. That the twenty-foot building setback shall apply to the remainder of said lot.
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.
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.
6. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

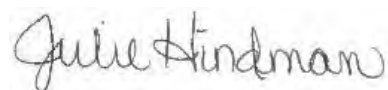
Our office is responsible for recording the resolution. Please send a check to this office for **\$28.84** made payable to the **Kenai Peninsula Borough**. The borough has a three-day hold for checks received for payment of recordation of resolutions.

The deadline to appeal the Planning Commission's approval is 15 days from the date of this notice. The resolution cannot be recorded until that period has expired.

The Kenai Peninsula Borough had an as-built done during the compliance review. Staff has reached out to the surveyor for permission to use the as-built as the required exhibit drawing required for recording. If permission is not received we will notify you to acquire an as-built for recording.

To ensure timely recording of this document, please send your check to our office (Planning Department, 144 N. Binkley St., Soldotna, AK 99669) no later than January 9, 2023.

Sincerely,



Julie Hindman
Administrative Assistant

Notice was mailed on October 25, 2022 to:

Nancy and David Whitmore
PO Box 881
Soldotna, AK 99669-0881

October 25, 2022

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
NOTICE OF DECISION
MEETING OF OCTOBER 24, 2022**

Lot 10, Lake Estates Subdivision Building Setback Encroachment Permit
KPB File 2022-121; KPB PC Resolution 2022-46
Location: on GL Hollier Street, Ridgeway area.

By unanimous consent and based on the following findings of fact, the Kenai Peninsula Borough Planning Commission conditionally approved the building setback encroachment permit thereby adopting KPB PC Resolution 2022-46 during their regularly scheduled meeting of October 24, 2022.

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

Findings:

10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
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.

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

Findings:

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.

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

Findings:

10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.

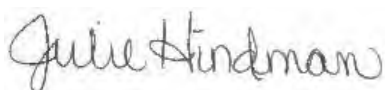
11. There does not appear to be any line of sight issues.
12. The road is constructed by privately maintained.
13. Due to the width of the street, improvements, the location of Sports Lake, it does not appear that this right-of-way will ever serve additional lots.
14. The encroachment is along a straight portion of the right-of-way.
15. There are no terrain issues within the dedication.

The approval is subject to:

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).
2. That any new, replacement and/or additional construction will be subject to the twenty-foot building setback limit.
3. That the twenty-foot building setback shall apply to the remainder of said lot.
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.
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.
6. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

Per KPB 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. The resolution cannot be recorded until that period has expired.

Sincerely,

A handwritten signature in cursive script that reads "Julie Hindman". The ink is dark and the signature is written in a fluid, connected style.

Julie Hindman
Administrative Assistant

Notice was mailed on October 25, 2022 to:

Troy Taylor
43680 Ross Dr.
Soldotna, AK 99669

OCTOBER 24, 2022 MEETING MATERIALS

E. NEW BUSINESS

1. Building Setback Encroachment Permit

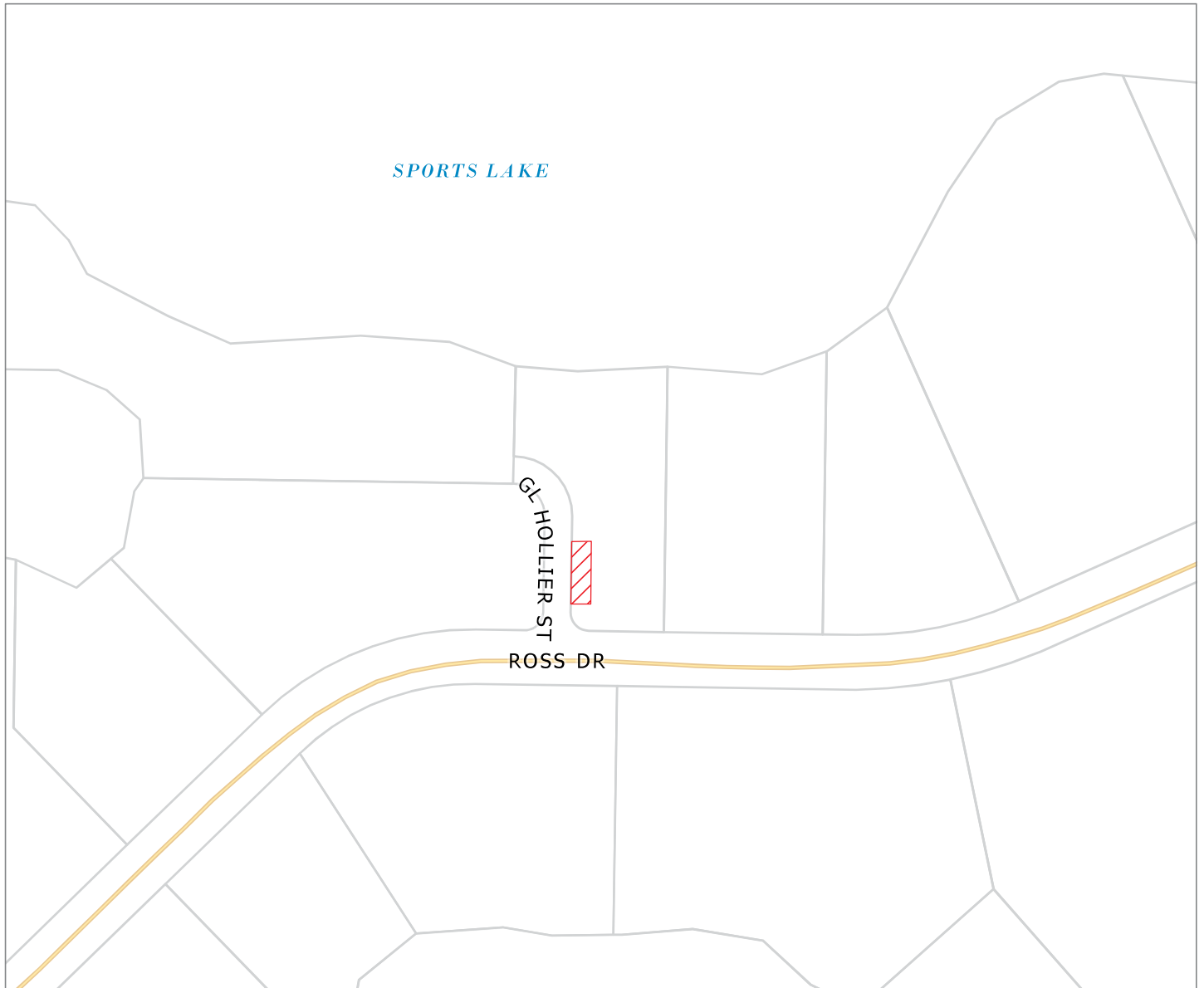
KPB File 2022-121

Lot 10, Lake Estates Subdivision, Plat KN-1648



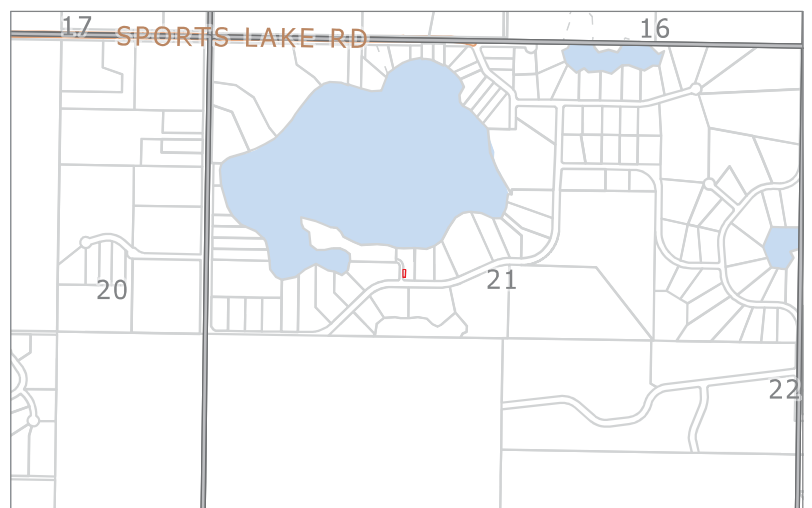
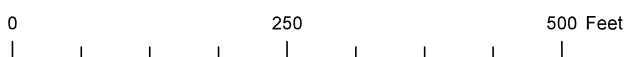
Kenai Peninsula Borough Planning Department

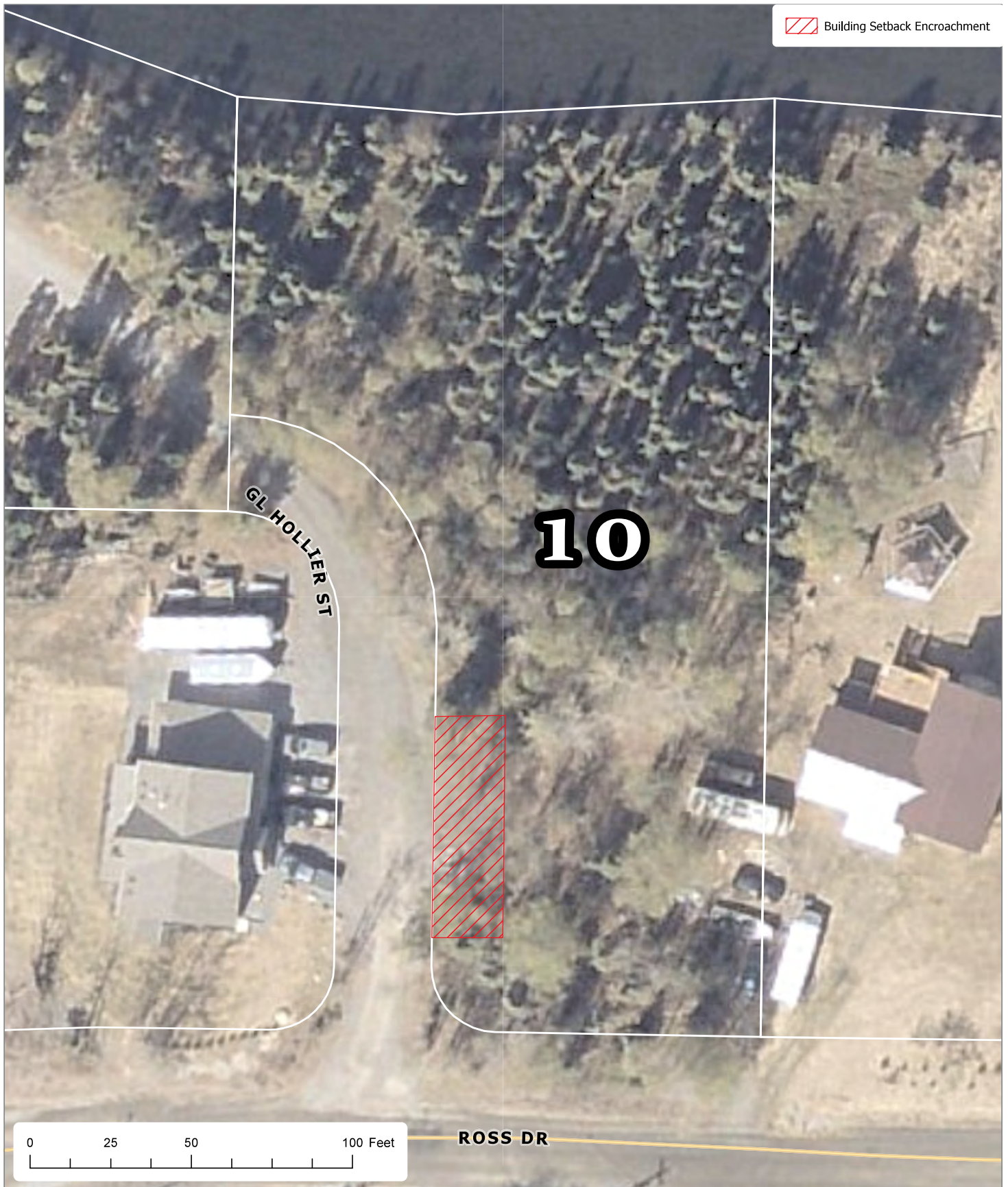
Vicinity Map



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

9/28/2022





NOTES

1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
2. BUILDING DIMENSIONS ARE TO THE FACE OF THE BUILDING.
3. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT KN 1648.

LEGEND

- FOUND REBAR

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 09/26/2022.

Jason L. Schollenberg 09/27/2022

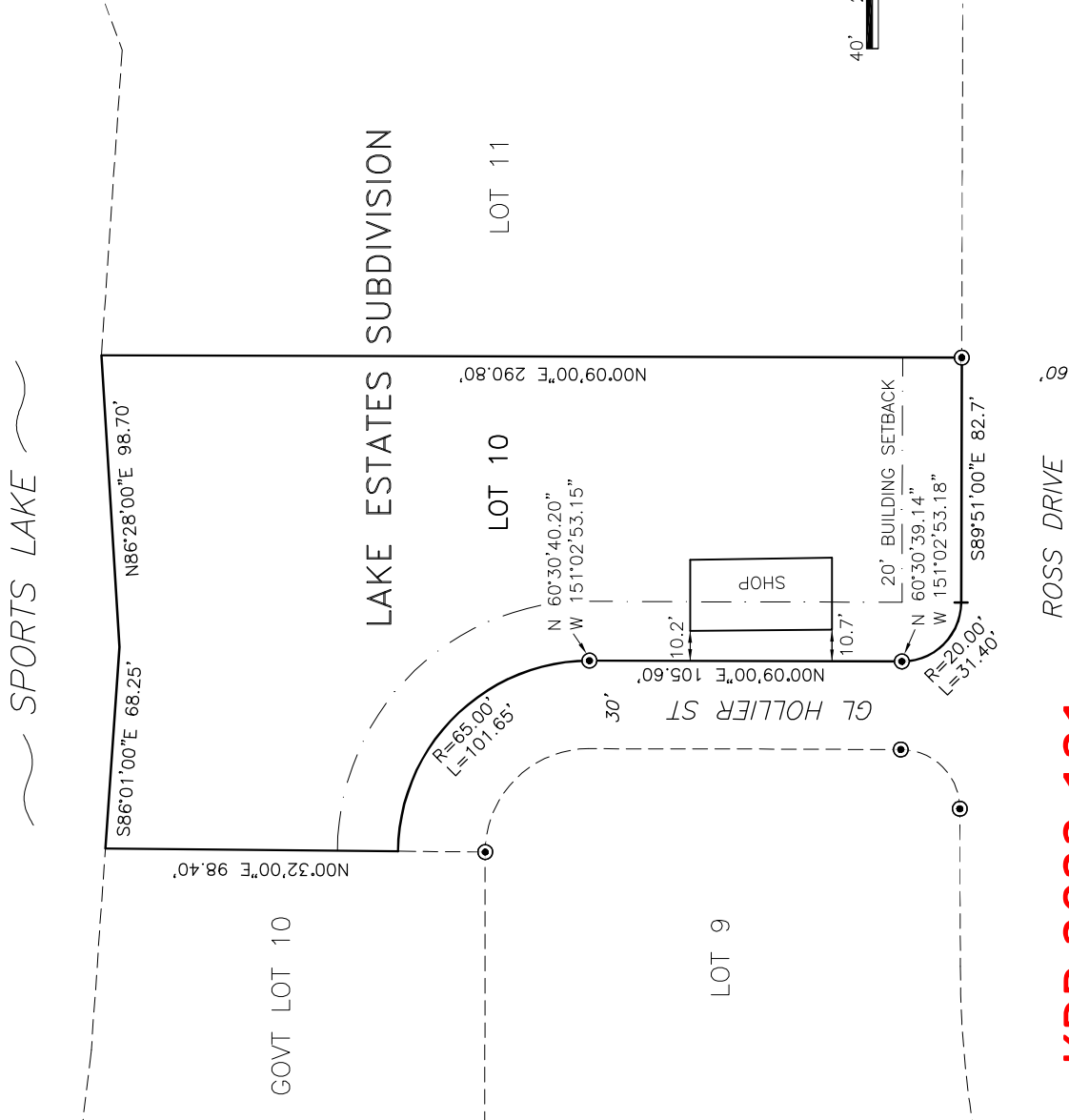
JASON L. SCHOLLENBERG DATE
PLS 14488-S



PENINSULA SURVEYING, LLC
10535 KATRINA BOULEVARD
NINILCHIK, AK 99639
(907)306-7065

AS-BUILT SURVEY
LOT 10, LAKE ESTATES SUBDIVISION
SECTION 21, T5N, R10W, S.M.

SCALE: 1" = 40'	DATE: 09/27/2022
DRAWN: JLS	SHEET: 1 OF 1



KPB 2022-121

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

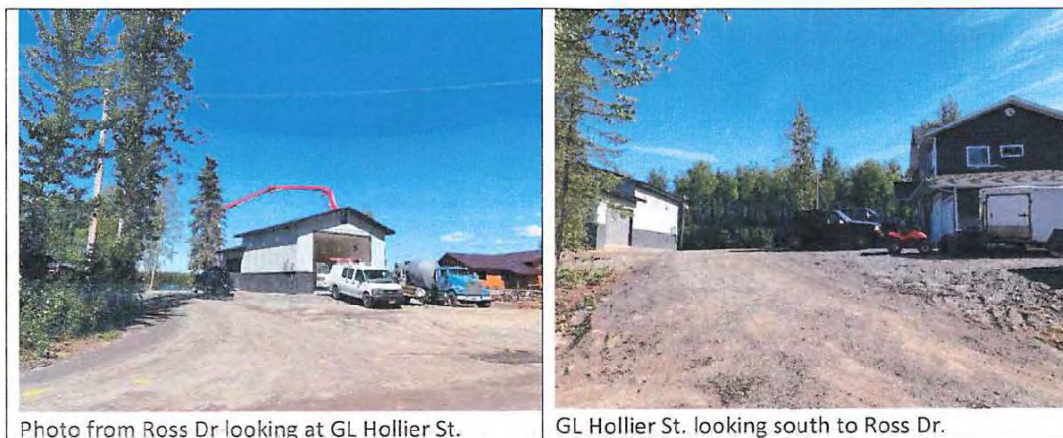
Specific Request / Purpose as stated in the petition: We are requesting a 20' Building Setback Exception from the KPB Planning and Platting Department because our garage has been built approximately 10' into the setback for GL Hollier Street, a substandard road. We acknowledge that we are in violation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

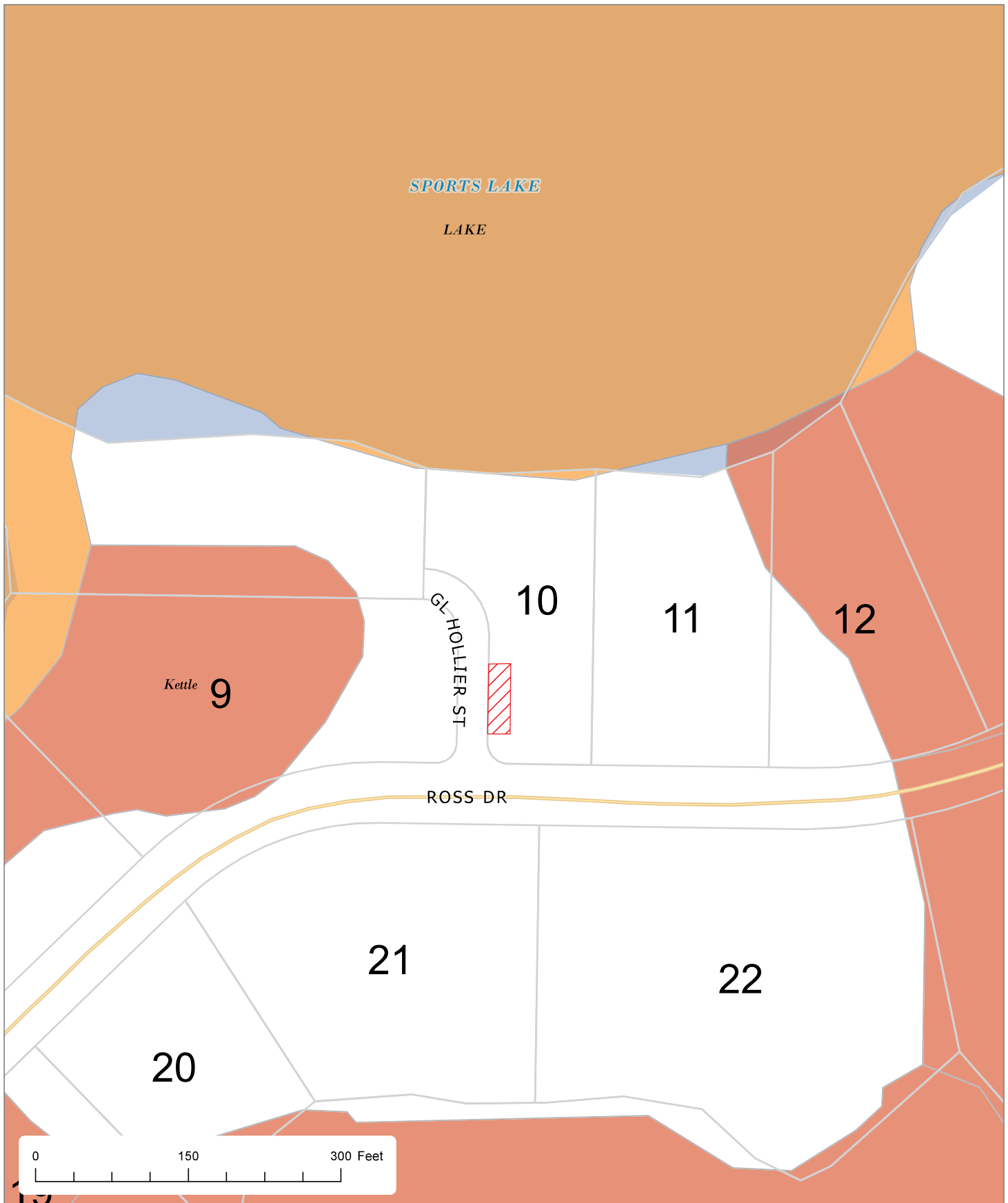
20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

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

MISCELLANEOUS INFORMATION



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Mike Navarre
Borough Mayor

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF BUILDING SETBACK ENCROACHMENT PERMIT

Public notice is hereby given that a building setback encroachment permit application was received on 9/27/2022. You are being sent this notice because you are within 600 feet of the subject parcel and are invited to comment.

The building setback encroachment permit application is for the following property:

Request / Affected Property: Allows a 9.4 feet by 49 feet portion of a shop to remain in the building setback granted on Lake Estates Subdivision K-1648.

KPB File No. 2022-121

Petitioner(s) / Land Owner(s): David and Nancy Whitmore of Soldotna, AK.

Purpose as stated in 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 St, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115. At our meeting with representatives 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 objectives 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. 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.

Building setback encroachment permit reviews are conducted in accordance with KPB Subdivision Ordinance.

Public hearing will be held by the Kenai Peninsula Borough Planning Commission on **Monday, October 24, 2022**, commencing at **7:30 p.m.**, or as soon thereafter as business permits. The meeting is being held in person at the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, Alaska and remotely through Zoom.

To attend the meeting using Zoom from a computer visit <https://us06web.zoom.us/j9077142200>. You may also connect to Zoom by telephone, call toll free **1-888-788-0099** or **1-877-853-5247**. If calling in you will need the Meeting ID of 907 714 2200. Additional information about connecting to the meeting may be found at <https://www.kpb.us/planning-dept/planning-commission>.

Anyone wishing to testify may attend the meeting in person or through Zoom. Written testimony may be submitted by email to planning@kpb.us, or mailed to the attention of Madeleine Quainton, Kenai Peninsula Borough Planning Department, 144 N. Binkley Street, Soldotna, Alaska 99669. [Written comments may also be sent by Fax to 907-714-2378]. All written comments or documents must be submitted by **1:00 PM, Friday, October 21, 2022**. The deadline to submit written comments or documents does not impact the ability to provide verbal testimony at the public hearing.

Additional information such as staff reports and comments are available online. This information is available the Monday prior to the meeting and found at <https://kpb.legistar.com/Calendar.aspx>. Use the search options to find the correct timeframe and committee.

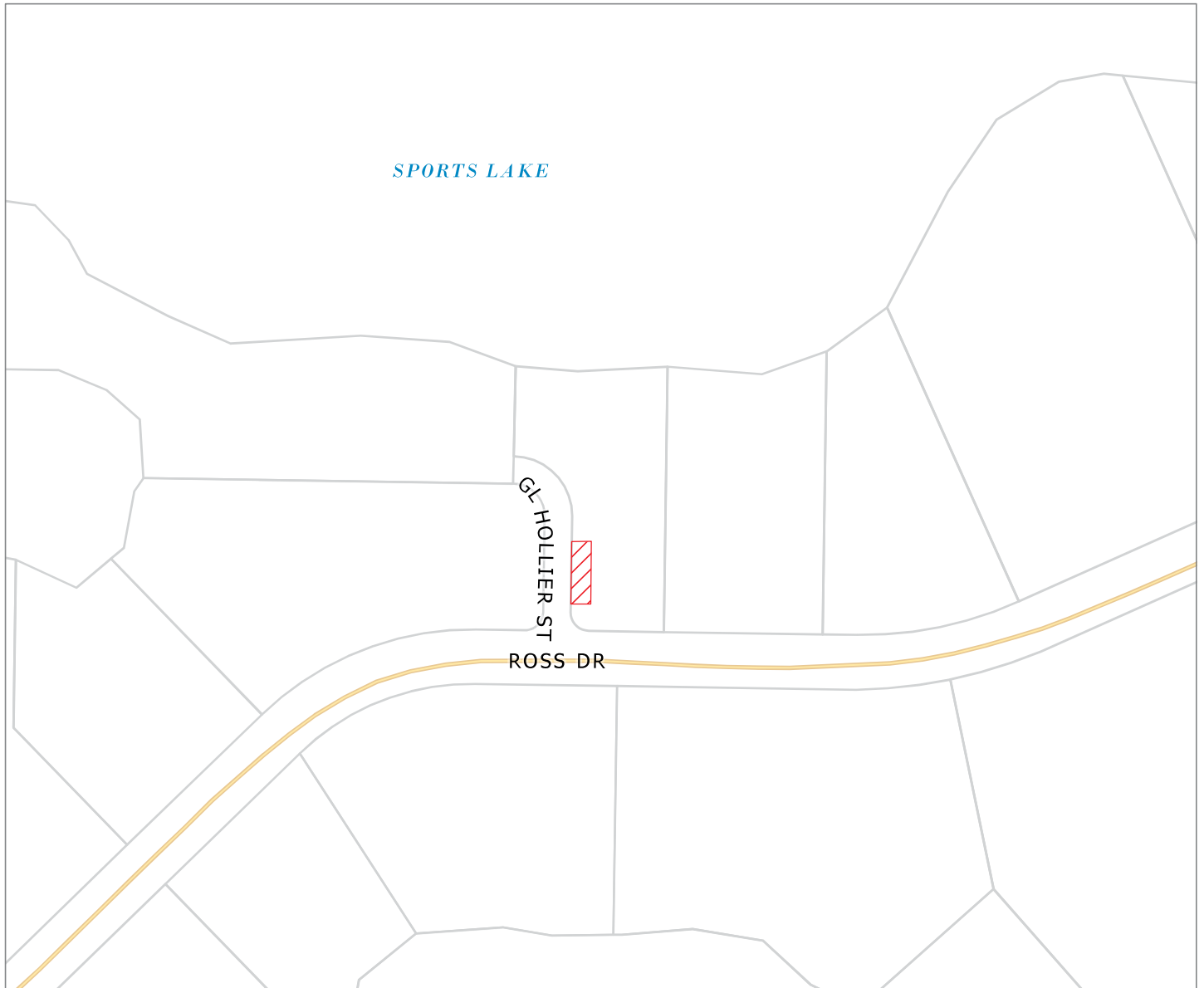
For additional information contact Madeleine Quainton (mquainton@kpb.us) or Julie Hindman (jhindman@kpb.us), Planning Department, 714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough).

Mailed 10/4/2022



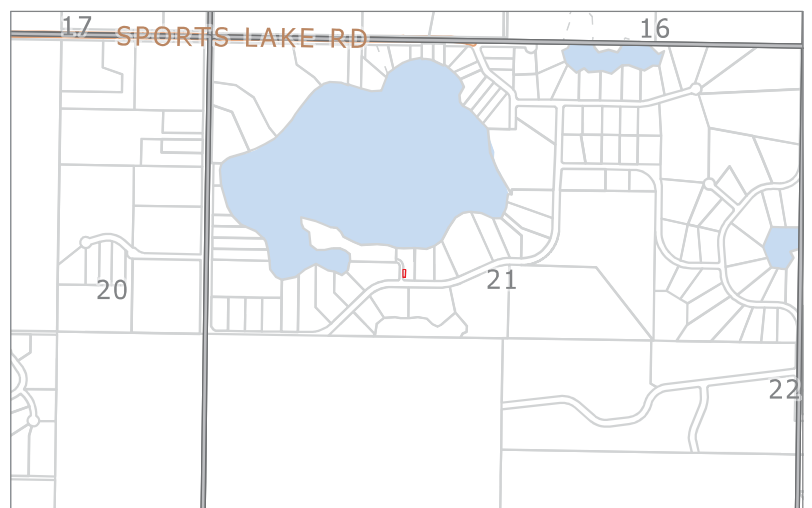
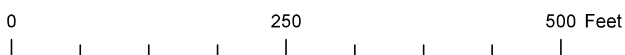
Kenai Peninsula Borough Planning Department

Vicinity Map



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

9/28/2022



SPORTS LAKE

NOTES

1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
2. BUILDING DIMENSIONS ARE TO THE FACE OF THE BUILDING.
3. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT KN 1648.

LEGEND

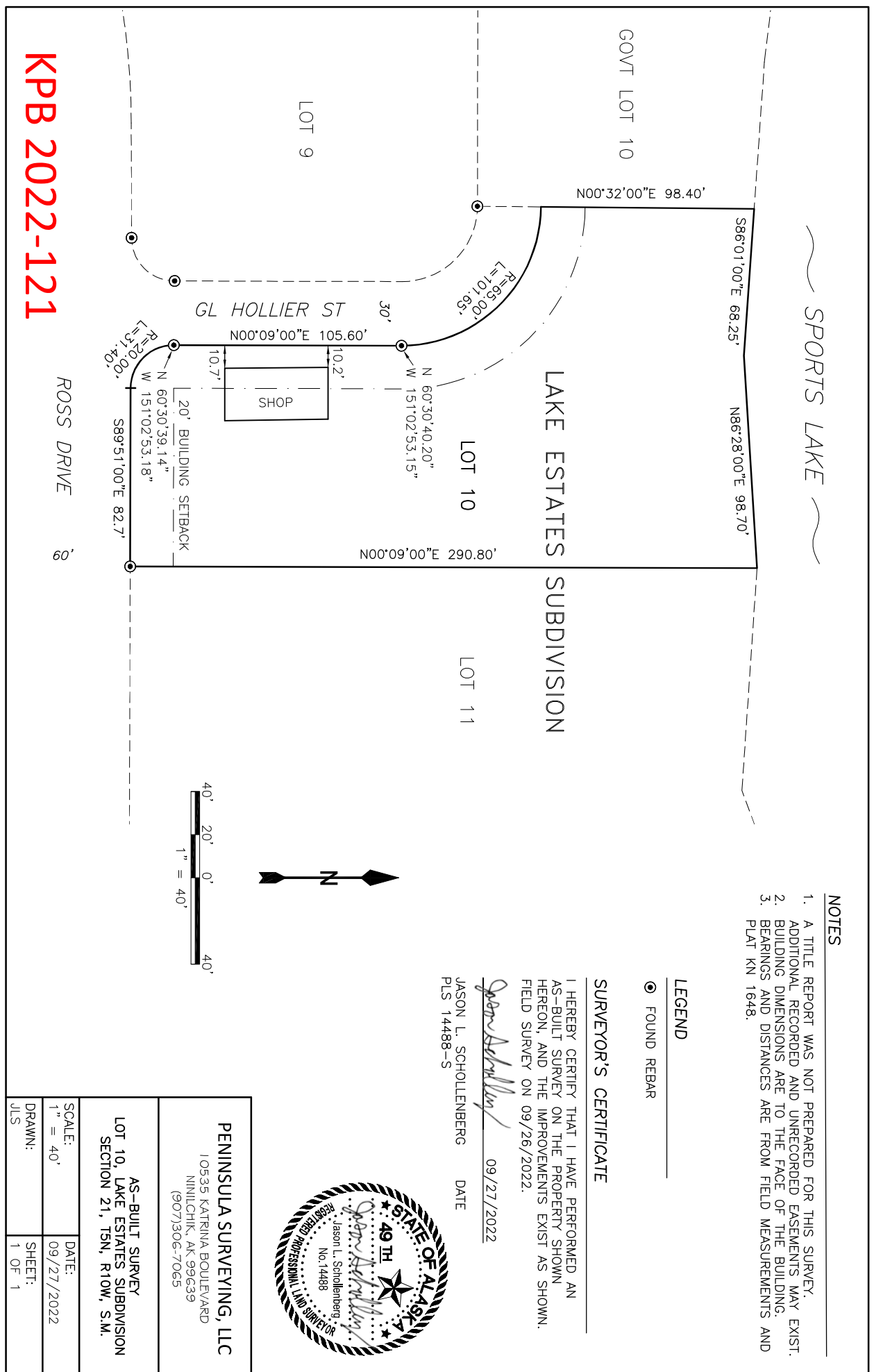
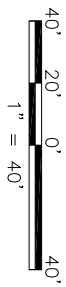
● FOUND REBAR

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 09/26/2022.

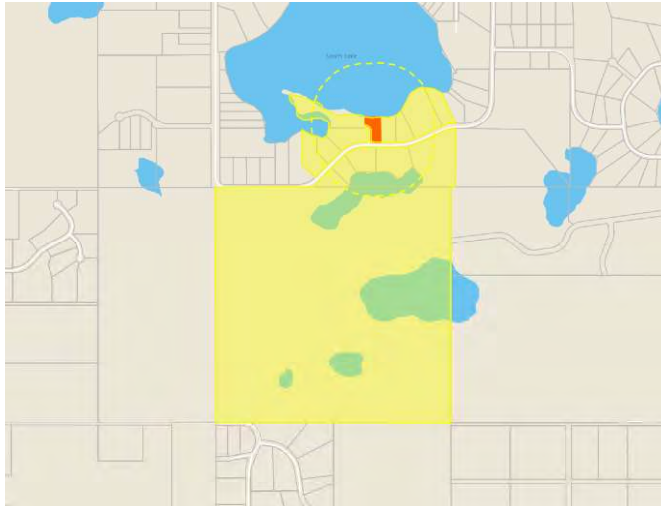
Jason L. Schollenberg 09/27/2022

JASON L. SCHOLLENBERG DATE
PLS 14488-S



KPB 2022-121

PENINSULA SURVEYING, LLC 10535 KATRINA BOULEVARD NINILCHIK, AK 99639 (907)306-7065	
AS-BUILT SURVEY LOT 10, LAKE ESTATES SUBDIVISION SECTION 21, T5N, R10W, S.M.	
SCALE: 1" = 40'	DATE: 09/27/2022
DRAWN: JLS	SHEET: 1 OF 1



- Input parcel(s)
- Parcels within 600ft
- Parcels within 300 feet (when applicable).

Notification Report

Wednesday, September 28, 2022

Report generated for KPB Parcel(s):
05725001



The following list was created by applying a 600 ft buffer to the parcel or parcels indicated above. Questions or comments can be relayed to mquainton@kpb.us.

All Ownership Records

PARCEL_ID	OWNER	ADDRESS	CITY	STATE	ZIP
05704413	INNES DAVID SCOTT	740 E REDOUBT AVE	SOLDOTNA	AK	99669
05704414	MARKHAM ERICA	3374 E VALLEJO CT	GILBERT	AZ	85298
05704414	MARKHAM MICHAEL	3374 E VALLEJO CT	GILBERT	AZ	85298
05704414	MARKHAM MICHELE	3374 E VALLEJO CT	GILBERT	AZ	85298
05704414	MARKHAM ZACHARY	3374 E VALLEJO CT	GILBERT	AZ	85298
05723007	MILLER FRITZ W & CINDY A	43850 ROSS DR	SOLDOTNA	AK	99669
05723008	GIOVANELLI TERRI L	43732 ROSS DR	SOLDOTNA	AK	99669
05723009	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669
05724001	TAYLOR AUTUMN R	43680 ROSS DR	SOLDOTNA	AK	99669
05724001	TAYLOR TROY R	43680 ROSS DR	SOLDOTNA	AK	99669
05724002	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669
05724003	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669
05724004	MARCOTTE TAMAR G	43625 ROSS DR	SOLDOTNA	AK	99669
05724007	RODGERS CHARLES R & JEANETTE K	43725 ROSS DR	SOLDOTNA	AK	99669
05724008	RAWSON JOYCE	43565 ROSS DR	SOLDOTNA	AK	99669
05724008	RAWSON SETH	43565 ROSS DR	SOLDOTNA	AK	99669
05725001	WHITMORE DAVID C	PO BOX 881	SOLDOTNA	AK	99669
05725001	WHITMORE NANCY	PO BOX 881	SOLDOTNA	AK	99669
05725002	WALKER DONALD G	PO BOX 3161	MONTROSE	CO	81402
05725003	HAWKES BRADFORD JAY	43610 ROSS DR	SOLDOTNA	AK	99669
05725003	HAWKES RENAE SALLY	43610 ROSS DR	SOLDOTNA	AK	99669
05725006	IVERSON JAMES P & HEIDI L	43530 ROSS DR	SOLDOTNA	AK	99669
05725011	IVERSON JAMES P & HEIDI L	43530 ROSS DR	SOLDOTNA	AK	99669



KENAI PENINSULA BOROUGH PLANNING COMMISSION
NOTICE OF PUBLIC HEARING
Monday, October 24, 2022

The next regularly scheduled Planning Commission meeting will be held Monday, October 24, 2022. The meeting is being held at the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley St., Soldotna, AK. Participation is also available through video conferencing using Zoom. To join the meeting from a computer, visit: <https://us06web.zoom.us/j/9077142200>. If you connect by computer and do not have speakers or a microphone, connect online and then select phone for audio. A box will come up with toll free numbers, the Meeting ID, and your participant number. To attend the Zoom meeting by telephone call toll free 1-888-788-0099 or 1-877-853-5247. When calling in you will need the Meeting ID of 907 714 2200. Detailed instructions will be posted on the Planning Commission's webpage prior to the meeting:

<https://www.kpb.us/planning-dept/planning-commission>

Anyone wishing to testify may attend in person or via Zoom to give testimony. **Written statements must be submitted by 1:00 PM Friday October 21, 2022.** The deadline to submit written comments does not impact the ability to provide verbal testimony at the public hearing. Written statements may be submitted by email (planning@kpb.us) or fax (907-714-2378). Written comments may also be submitted by hand-delivery or mail (Planning Department, 144 N. Binkley St., Soldotna, AK 99669).

PLAT COMMITTEE – 6:00 PM

1. North 20 Subdivision AHO Replat; KPB File 2022-152; Mullikin Surveys / Kudwa, Whiteberry, Wang; Location: Lulu Court & Pyrenees Way; Fritz Creek Area / Kachemak Bay APC
2. Birch Forest No. 3; KPB File 2022-151; Edge Survey & Design, LLC / Poppin Family Revocable Community Property Trust; Location: Ertwein Road, Ertwein Circle & Shishmaref Drive; Sterling Area
3. R Subdivision; KPB File 2022-091R1; Edge Survey & Design, LLC / Ranguette; Location: Reid Street, Throop Avenue, Reno Street & Steik Avenue; Ninilchik Area
4. Red Boat Subdivision; KPB File 2022-150; Edge Survey & Design, LLC / Red Boat Club, LLC; Location: Rebel Run Road & Big Eddy Road; Ridgeway Area
5. D & J Subdivision Burt Addition 2022 Replat; KPB File 2022-145; Johnson Surveying / MacLean, Gundersen, Brandt; Location: Burt Avenue & Sterling Highway; Kalifornsky Area / Kalifornsky APC
6. Grouse Creek Subdivision 2022 Addition; KPB File 2022-022R1; Johnson Surveying / Ronne Living Trust; Location: Seward Highway & Punkin Avenue; Bear Creek Area
7. K.M.D. Subdivision 2022 Addition; KPB File 2022-146; Johnson Surveying / Kizer; Location: Dog Fish Avenue & Kalifornsky Beach Road; Kalifornsky Area / Kalifornsky APC
8. Waldron-Engle Subdivision; KPB File 2022-147; Johnson Surveying / Waldron, Cooper-Waldron; Location: Approximately MP 127 of Sterling Highway; Ninilchik Area

PLANNING COMMISSION – 7:30 PM

1. Building Setback Encroachment Permit; KPB File 2022-121; Petitioners: David & Nancy Whitmore; Request: Allowing a portion of a shop to remain in the building setback granted on Lake Estates Subdivision, Plat KN-1648; Ridgeway Area
2. Utility Easement Vacation; KPB File 2022-148V; Seabright Surveying / Watson; Request: Vacate the entire 20' wide utility easement granted by plat Seldovia Townsite East Addition 2006 Replat, Plat SL 2007-3; City of Seldovia
3. Resolution 2022-XX, Approving the Acquisition of a Public Access Easement from the State of Alaska for Watermelon Trail.

KPB PLANNING DEPARTMENT
Ann Shimberg, Administrative Assistant
Phone: (907) 714-2215 / Fax: (907) 714-2378
Toll free within the Borough 1-800-478-4441

2680390

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

} SS:

Doug Munn, being first duly sworn, on oath deposes and says:

That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Peninsula Clarion, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

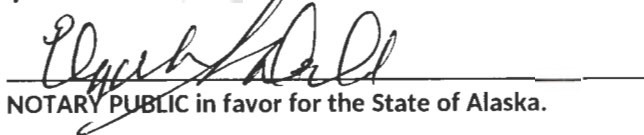
PC NPH
10/20/22

X



SUBSCRIBED AND SWORN before me on this

14th day of November, 2022.


NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 3/6/2024.

Elizabeth A. McDonald
Notary Public, State of Alaska
Commission #200306009
My Commission Expires March 6, 2024

**PLANNING COMMISSION
OCTOBER 24, 2022
MEETING MINUTES**

**October 24, 2022
7:30 P.M.
APPROVED 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

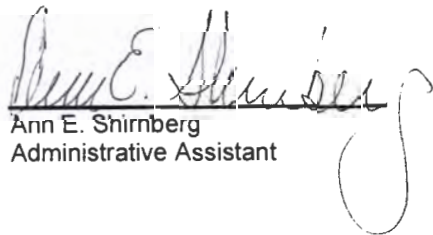
Commissioner Gillham reported the plat committee reviewed eight plats, granted preliminary approval to seven and postponed action on one.

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. Shinnberg
Administrative Assistant

**PLANNING COMMISSION
OCTOBER 24, 2022
VERBATIM TRANSCRIPT**

KENAI PENINSULA BOROUGH PLANNING COMMISSION

LOCATION:

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

October 24, 2022
7:30 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 28, inclusive

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
David Stutzer, District 8 - Homer
Dawson Slaughter, District 9 - South Peninsula
Charlene Tautfest, City of Soldotna
Franco Venuti, City of Homer

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

Transcribed by: Lenny DiPaolo, RPR, CRR, CCP

<p style="text-align: right;">Page 2</p> <p>1 PROCEEDINGS</p> <p>2 0:00:00</p> <p>3 (This portion not requested)</p> <p>4 5:06</p> <p>5 CHAIRMAN BRANTLEY: That will bring us</p> <p>6 down to item E-1, which is a building setback</p> <p>7 encroachment permit, KPB File 2022-121. Staff report</p> <p>8 please.</p> <p>9 VINCE PIAGENTINI: Item 1, Building</p> <p>10 Setback Encroachment Permit, Lot 10, Lake Estates</p> <p>11 Subdivision, Plat K-1648, KPB File 2022-121. General</p> <p>12 location is GL Hollier Street in Ridgeway area. The</p> <p>13 parent parcel number is 057-250-01. Again, Lake Lot</p> <p>14 10, Lake Estates Subdivision.</p> <p>15 This is a -- we are requesting a 20-foot</p> <p>16 building setback exception from the KPB planning and</p> <p>17 platting department because our garage has been built</p> <p>18 approximately 10 feet into the setback for GL Hollier</p> <p>19 Street, a substandard road.</p> <p>20 We acknowledge that we are in violation</p> <p>21 of KPB Roads Code 14-40-035 and 14-40-15 -- 115. This</p> <p>22 violation was not intentional. It was a collective</p> <p>23 error in planning, how we used our lot, our objections</p> <p>24 of building a detached garage, a home, and onsite well</p> <p>25 and septic systems. The lot is oddly shaped with poor</p>	<p style="text-align: right;">Page 4</p> <p>1 northern end. The area in question is along a</p> <p>2 straight portion of the right-of-way and located on</p> <p>3 the side with the outside of the curve and should not</p> <p>4 cause any sight issues.</p> <p>5 Staff analysis: Lake Estates</p> <p>6 Subdivision, Plat K-1648 was recorded in 1969. The</p> <p>7 plat dedicated Ross Drive and GL Hollier Street,</p> <p>8 unnamed on the plat. GL Hollier Street was granted as</p> <p>9 a 30-foot-wide right-of-way to provide access to a</p> <p>10 landlocked parcel, Government Lot 10, that was noted</p> <p>11 as being the Hollier property.</p> <p>12 The issues were brought to the attention</p> <p>13 of the KPB code compliance, and they have been working</p> <p>14 with the owners on a resolution for the issue. The</p> <p>15 plat clearly shows a 25-foot building setback along</p> <p>16 Ross Drive and a depiction -- with a depiction and a</p> <p>17 label. A depiction of any type of setback was not</p> <p>18 shown along GL Hollier Street.</p> <p>19 The plat did not have -- did have a plat</p> <p>20 note stating the setback from the street frontage was</p> <p>21 to be 25 feet. The Kenai Peninsula Borough Legal</p> <p>22 Department reviewed the code that was in place when</p> <p>23 the plat was approved. The plat -- the width that was</p> <p>24 granted did not fit that -- the width for any of the</p> <p>25 types of roads defined in code. For the staff report,</p>
<p style="text-align: right;">Page 3</p> <p>1 soils, having the usable area restricted to both Ross</p> <p>2 Drive and GL Hollier Street. Excuse me.</p> <p>3 In discussion with the builder and the</p> <p>4 excavation company, we were aware of the required</p> <p>5 100-foot separation between well and septic system,</p> <p>6 including the wells and septic system of our adjacent</p> <p>7 neighbors. We were unaware of the 20-foot road</p> <p>8 setback for GL Hollier Street as there are no dotted</p> <p>9 lines to indicate this on the plat.</p> <p>10 A road setback is shown on the plat for</p> <p>11 Ross Drive. Our error was in not reading the notes on</p> <p>12 the plat. It appears that a 48-foot exception to the</p> <p>13 road setback will not (1) interfere with road</p> <p>14 maintenance, the road is privately maintained; (2) not</p> <p>15 interfere with sight lines or distance; (3) not create</p> <p>16 a safety hazard. We appreciate your consideration in</p> <p>17 this matter.</p> <p>18 On the site investigation, the request</p> <p>19 is to be granted a permit for a 49-foot by 24-foot</p> <p>20 shed along GL Hollier Street. The building encroaches</p> <p>21 9.8 feet for the length of 49 feet, and is slightly</p> <p>22 angled to 9.3 feet at the southwest corner of the</p> <p>23 shed.</p> <p>24 The sight distances do not appear to be</p> <p>25 impacted. GL Hollier Street does have a curve on the</p>	<p style="text-align: right;">Page 5</p> <p>1 it appears an exception to width was granted.</p> <p>2 This right-of-way fits the dedication of</p> <p>3 marginal access streets from the 1968 KPB code. The</p> <p>4 definition as states: Minor streets, which are</p> <p>5 parallel with and adjacent to arterial streets and</p> <p>6 highways, and which provide access to abutting</p> <p>7 properties and protection from through traffic.</p> <p>8 While this width does not comply with</p> <p>9 code, the approval of a substandard width would mean</p> <p>10 that this is a marginal access street, and all streets</p> <p>11 were subject to a 20-foot building setback at that</p> <p>12 time. The dedication was made that the plat did note</p> <p>13 setbacks were present. Code required a minimal</p> <p>14 20-foot setback.</p> <p>15 The plat did not depict a 25-foot</p> <p>16 setback. The plat note also indicated 20-foot</p> <p>17 setbacks on interior lines, and thus we are enforcing</p> <p>18 a 20-foot setback along GL Hollier Street.</p> <p>19 GL Hollier Street is only being used by</p> <p>20 three lots. One is the lot that the road was created</p> <p>21 for, the applicant of this petition, and the owner on</p> <p>22 the west side of the right-of-way. Due to the width</p> <p>23 and the usage, this is a privately maintained</p> <p>24 right-of-way.</p> <p>25 The issues along GL Hollier Street were</p>

Page 6

1 brought to the attention of the KPB code compliance
2 officer. The as-built did show that the new shop was
3 encroached into the setback. The owners have been
4 working with the KPB code compliance officer for a
5 resolution of the situation. There were some findings
6 listed, and findings 10, 12 through 15 appear to
7 support the standards.

8 So the recommendation is based on the
9 standards to grant a building setback encroachment
10 permit. Staff recommends to adopt Resolution 2022-46,
11 subject to compliance with KPB Code 20.10.110,
12 sections F and G.

13 End of staff report.

14 **CHAIRMAN BRANTLEY:** Thank you. Is the
15 petitioner or applicant here to speak on this matter?
16 Okay. Can you just come forward to the mike -- and
17 we'll turn it on for you -- and state your name and
18 address for the record, please.

19 **NANCY WHITMORE:** My name is Nancy
20 Whitmore. This is Craig. Our address is 36602 GL
21 Hollier. We have a home under construction there, and
22 I just came to see if you had any questions that I
23 could answer.

24 **CHAIRMAN BRANTLEY:** Are there any
25 questions for the applicant?

Page 7

1 **COMMISSIONER FIKES:** This is one of
2 three homes that are accessed off of GL Hollier. Are
3 you aware of how your other neighbors -- are they
4 related or unrelated? Is this going to impact them in
5 any way?

6 **NANCY WHITMORE:** I don't believe it
7 would impact them. The neighbor who was landlocked is
8 at the end of the road. There's a curve, and they use
9 the road the most to get to their property. The
10 neighbor across the street from us has -- they have
11 their 20-foot setback, and they park -- they park this
12 way in it, and they have quite a few vehicles. So
13 they use their --

14 **COMMISSIONER FIKES:** So my concern is
15 that's really tight, and it's not to code, and so it's
16 also not maintained, so I would be concerned about
17 snow removal if that setback is already going to be
18 encroached 10 feet.

19 Is that loss of road maintenance area,
20 is that going to be impacting the person's access to
21 the back land lock?

22 **NANCY WHITMORE:** I don't think so. I
23 would think the snow being pushed would probably be
24 pushed from the farthest point of the road out toward
25 Ross and maybe even across Ross. I don't -- I mean, I

Page 8

1 don't know. We haven't been there for a winter, but
2 it seems pretty wide with their 20-foot setback and
3 our 10-foot setback and the 30 feet of road.

4 And, again, it's just the three -- the
5 three homes.

6 **COMMISSIONER FIKES:** Okay. Thanks.

7 **CHAIRMAN BRANTLEY:** Is there any more
8 questions for the applicant? I had one.
9 Who was the general contractor?

10 **COMMISSIONER VENUTI:** Mr. Chair. I have
11 questions.

12 **CHAIRMAN BRANTLEY:** Okay. We'll get
13 right to you, Commissioner Venuti.

14 Oh, yeah, who were the general
15 contractors?

16 **COMMISSIONER VENUTI:** I said I have a
17 question.

18 **NANCY WHITMORE:** Who was the general
19 contractor?

20 **CHAIRMAN BRANTLEY:** Yeah.

21 **NANCY WHITMORE:** It's Eric Arneson.

22 **CHAIRMAN BRANTLEY:** Okay.

23 **NANCY WHITMORE:** And we had the dirt
24 work done by Steam On Wheels.

25 **CHAIRMAN BRANTLEY:** Okay. Commissioner

Page 9

1 Venuti, go ahead.

2 **COMMISSIONER VENUTI:** Yes, I have a
3 question for the applicant.

4 This is referred to as a shed. How
5 finished is it on the inside?

6 **NANCY WHITMORE:** It's not a shed. It's
7 a detached garage-shop, and it's finished on the
8 inside with OSB and painted with a primer. It has
9 power.

10 **COMMISSIONER VENUTI:** And when was this
11 built?

12 **NANCY WHITMORE:** It --

13 **COMMISSIONER VENUTI:** And when was this
14 built?

15 **NANCY WHITMORE:** It was built this
16 summer.

17 **COMMISSIONER VENUTI:** Did you say this
18 summer?

19 **NANCY WHITMORE:** Yeah, this summer.

20 **COMMISSIONER VENUTI:** Is this part of a
21 mortgage, or did you guys build this out of pocket?

22 **NANCY WHITMORE:** We built it out of
23 pocket.

24 **COMMISSIONER VENUTI:** So there was no
25 requirement that you produce an as-built when you were

Page 10

1 done?
2 **NANCY WHITMORE:** Correct.
3 **COMMISSIONER VENUTI:** Thank you.
4 **CHAIRMAN BRANTLEY:** Commissioner
5 Stutzer, go ahead.
6 **COMMISSIONER STUTZER:** Yeah, thank you.
7 I have a question.
8 So is this the first building on the
9 property, and you're going to build a house?
10 **NANCY WHITMORE:** There's -- a house has
11 been -- being built also during the summer, and it's
12 just now getting what I refer to as buttoned up.
13 **COMMISSIONER STUTZER:** On Lot 10?
14 **NANCY WHITMORE:** On Lot 10.
15 **COMMISSIONER STUTZER:** Yeah. So -- and
16 maybe you can answer this, but our photo, the
17 satellite photo shows there's -- from the Lot 11
18 there's some buildings or something, I can't tell what
19 they are, that are actually on Lot 10. And, I don't
20 know, maybe that's just a poor satellite picture, but
21 I was just curious.
22 So you're building on Lot 10? That was
23 my question.
24 **NANCY WHITMORE:** Yes, we're building on
25 Lot 10. And as you can see, it's a very oddly shaped

Page 11

1 lot.
2 **COMMISSIONER STUTZER:** Yes.
3 **NANCY WHITMORE:** It's very narrow at the
4 front and much wider at the other end.
5 **COMMISSIONER STUTZER:** And where is the
6 house going to be? I mean, where is it -- you said
7 it's already --
8 **NANCY WHITMORE:** Yeah. The house is
9 where the -- if you have the same map I have, where it
10 says "Lot 10," that's about where the house is.
11 **COMMISSIONER STUTZER:** About -- okay.
12 Where the "10" is, okay. Okay, very good.
13 **NANCY WHITMORE:** Yeah. We wanted -- we
14 wanted the house to be closer -- farther away from
15 Ross, but there's a -- it's sort of wet down there,
16 and it's a slope, and so we ended up kind of putting
17 it in the middle.
18 **COMMISSIONER STUTZER:** Yeah, gotcha.
19 Okay, thank you.
20 **NANCY WHITMORE:** Uh-huh.
21 **CHAIRMAN BRANTLEY:** Any more
22 commissioner questions for the applicant?
23 **UNIDENTIFIED SPEAKER:** So is your
24 driveway --
25 **COMMISSIONER VENUTI:** Yes.

Page 12

1 **UNIDENTIFIED SPEAKER:** --- going to be
2 accessed off of Hollier?
3 **NANCY WHITMORE:** We -- the garage-shop
4 has a garage door on the Ross side, and it has a
5 garage door at the end -- at the -- on the GL Hollier
6 side for a smaller vehicle. So we're trying to access
7 that building from the side off GL Hollier and from
8 the end off Ross.
9 **UNIDENTIFIED SPEAKER:** So if your home
10 is being constructed underneath the "10" on our maps,
11 you're going to be coming into your home off of Ross?
12 **NANCY WHITMORE:** Yeah, we do. A lot of
13 the traffic goes in off of Ross. That's all been
14 cleared and hardened up there to the right of the
15 shop.
16 **CHAIRMAN BRANTLEY:** Yeah, Commissioner
17 Venuti, go ahead.
18 **COMMISSIONER VENUTI:** Yes, another
19 question for the applicant. Are you building this out
20 of pocket, or do you have a contractor working with
21 you?
22 **NANCY WHITMORE:** We have a contractor,
23 and we are so far building it out of pocket.
24 **COMMISSIONER VENUTI:** Did the contractor
25 survey the lot before he started?

Page 13

1 **NANCY WHITMORE:** Apparently not. We had
2 the corners marked when we purchased the lot, and that
3 was the extent of any survey before we started the
4 process.
5 **COMMISSIONER VENUTI:** Thank you.
6 **CHAIRMAN BRANTLEY:** Are there any more
7 questions? All right. Thank you very much.
8 **NANCY WHITMORE:** Thank you.
9 **CHAIRMAN BRANTLEY:** Are there any public
10 comments on this matter?
11 **TROY TAYLOR:** Yeah, hi, this is Troy
12 Taylor. Can you hear me?
13 **CHAIRMAN BRANTLEY:** Sorry. Yeah, go
14 ahead and state your name and your address for the
15 record, please.
16 **TROY TAYLOR:** Yeah, my name is Troy
17 Taylor. Address is 43680 Ross Drive. We are located
18 across the street on GL Hollier. We are one of the
19 three residents on GL Hollier.
20 Yeah, we have actually had many concerns
21 with this. And it's been brought up to the
22 attention -- as soon as this build was being done, we
23 brought it to the attention of the borough, because we
24 had a pretty good idea that they were overbuilt over
25 the line when they first started building that shop.

<p style="text-align: right;">Page 14</p> <p>1 So we brought it to the attention.</p> <p>2 The borough had come out, and under our</p> <p>3 understanding, this job was postponed for a couple</p> <p>4 days. It was pretty much stopped, and then they</p> <p>5 started building again where at this point all they</p> <p>6 had was a concrete slab. There was no walls up or</p> <p>7 nothing. And then they continued to build knowing</p> <p>8 that they were over the line.</p> <p>9 And now that the shop is completely</p> <p>10 built, since then they have also built a concrete slab</p> <p>11 off the side of the shop. I would estimate it about a</p> <p>12 3-foot-by-5-foot concrete slab on the GL Hollier side</p> <p>13 for a generator as well. So the building is 9.4 feet</p> <p>14 with an addition to another 3 feet added onto that</p> <p>15 that is actually out in the right-of-way as well.</p> <p>16 Clearing the snow down through there --</p> <p>17 like, it is not -- yes, it's not a borough-maintained</p> <p>18 road, which 75 percent of the snow clearing on this</p> <p>19 road I do myself, and we are not going to -- it was</p> <p>20 stated of possibly pushing snow across Ross Drive.</p> <p>21 Well, as we know, we're not supposed to push snow</p> <p>22 across a borough-maintained road and fill up the road</p> <p>23 and leave it up to the borough maintenance to take</p> <p>24 care of. The snow is supposed to be cleared off to</p> <p>25 the sides and not pushing snow across traffic and</p>	<p style="text-align: right;">Page 16</p> <p>1 Wheels about repairing that, since all this</p> <p>2 construction has been done, to put it back the way</p> <p>3 that it was since I did pay for it out of my own</p> <p>4 pocket.</p> <p>5 I believe that, you know, all these</p> <p>6 rules and regulations for setbacks and covenants, all</p> <p>7 that other stuff, are set for people to follow, you</p> <p>8 know. We just built our house approximately four</p> <p>9 years ago. February it will be four years that we've</p> <p>10 been in that house, and we did our surveying. We did</p> <p>11 our homework. We did everything that we were supposed</p> <p>12 to do to make sure that we were off of that 20-foot</p> <p>13 setback, and we are.</p> <p>14 So, you know, I think it's just a matter</p> <p>15 of overbuilding on the lot. And like I said, they</p> <p>16 were very well aware of it before they completed this</p> <p>17 build of this shop, and they continued to proceed. We</p> <p>18 had made plenty of phone calls to the borough. I've</p> <p>19 talked to numerous --</p> <p>20 CHAIRMAN BRANTLEY: I'm sorry. Your</p> <p>21 time limit has gone up. So if you could just</p> <p>22 finish --</p> <p>23 TROY TAYLOR: Okay. Well --</p> <p>24 CHAIRMAN BRANTLEY: -- your sentence</p> <p>25 here.</p>
<p style="text-align: right;">Page 15</p> <p>1 impeding traffic as well. So this does limit room for</p> <p>2 snow removal as well with them being 10 feet --</p> <p>3 approximately 10 to 12 feet with that pad off the side</p> <p>4 of the shop.</p> <p>5 Us -- and when we built -- I understand</p> <p>6 when they're building impeding traffic on GL Hollier,</p> <p>7 I did not have a problem with it at the time, but it</p> <p>8 has also limited us as far as backing out away from</p> <p>9 our house. And especially when vehicles are parked</p> <p>10 alongside the shop, which over time there has been</p> <p>11 times where I've had to go out and ask people to move</p> <p>12 their vehicles because I cannot even turn around in</p> <p>13 front of my house. I would have to back out into live</p> <p>14 traffic of Ross Drive.</p> <p>15 So I think there was other ways of</p> <p>16 accomplishing what they wanted built over there</p> <p>17 without impeding into the right-of-way. For one, a</p> <p>18 smaller shop could have been done. The house could</p> <p>19 have been built a little closer to the lake. The shop</p> <p>20 could have been pushed back off the line and still had</p> <p>21 plenty of room.</p> <p>22 I have also upgraded that GL Hollier</p> <p>23 Road out of my own pocket, put material on it, put rap</p> <p>24 on it to keep dust and everything down, which I have</p> <p>25 been in contact with the builder and with Steam On</p>	<p style="text-align: right;">Page 17</p> <p>1 MR. TAYLOR: I appreciate everybody's</p> <p>2 time. And I just believe that there was other ways of</p> <p>3 accomplishing what they needed, what they wanted over</p> <p>4 there. And that's all I have. Thank you.</p> <p>5 CHAIRMAN BRANTLEY: Thank you. Are</p> <p>6 there any questions for the testifier?</p> <p>7 All right. I don't see any hands</p> <p>8 raised, so thank you.</p> <p>9 TROY TAYLOR: Thank you.</p> <p>10 CHAIRMAN BRANTLEY: Is there anyone else</p> <p>11 from the general public wishing to comment on this?</p> <p>12 Okay. Seeing none, we will close public comment.</p> <p>13 The petitioner and applicant, you do</p> <p>14 have the opportunity to speak again if you'd like to.</p> <p>15 UNIDENTIFIED SPEAKER: Just push the</p> <p>16 button on the (indiscernible).</p> <p>17 NANCY WHITMORE: Thanks, whoever. Thank</p> <p>18 you.</p> <p>19 Like we said in our comment that we</p> <p>20 wrote, it was inadvertent. We didn't know about it.</p> <p>21 We had that -- a lot of the dirt work was done a year</p> <p>22 ago in the fall, and we had marked out the area for</p> <p>23 the shop with stakes. And Steam On Wheels had built</p> <p>24 the pad, the dirt pad, the gravel pad, and we had</p> <p>25 covered it with foam and wire, and it had sat there</p>

<p style="text-align: right;">Page 18</p> <p>1 all winter across the road from the neighbors who 2 apparently now are -- have never expressed a concern 3 to us personally about this. 4 And so they -- they were -- they were 5 aware of where we were planning to pour the slab and 6 build the garage through the whole course of the 7 winter and into the spring when the snow melted. 8 So I really wish they would have 9 approached us and said something, because we certainly 10 would have made it right. You know, we're not -- 11 we're not trying to violate anything. We're trying to 12 just use that shape of that oddly shaped lot with the 13 limitations we have for the neighboring wells and 14 septs and our well and septic. We're trying to put 15 three of those systems along that area of Ross there 16 and very -- and our area is very small. So it 17 certainly wasn't on purpose. 18 We have no intention of parking on the 19 GL Hollier side of our shop. I do know that some of 20 our construction workers have parked there, and we've 21 encouraged them not to do that. I also know that our 22 neighbors has guests who park there, which we're not 23 thrilled about, but we haven't done anything or said 24 anything about that. Like I said, it's not our 25 intention. We won't be putting things out there.</p>	<p style="text-align: right;">Page 20</p> <p>1 were told that at that point in time there wasn't 2 really enough information to have us do that, and so 3 we -- our contractor continued on with the building. 4 I'm not sure what we would have done at 5 that point, but -- I don't really know what else to 6 say. I'm sorry the neighbors aren't happy. They, you 7 know, they use their 20-foot setback to park multiple 8 vehicles and recreational equipment along there so, 9 you know, it's -- that's -- I don't know what to say 10 about that other than we're not going to use the 10 11 feet that we have left, but we have taken the 10 feet 12 with our building, not intentionally. 13 But I guess at this point, I mean, it is 14 what it is. So I don't know what else to say about 15 that. Are there -- anyone else have questions? 16 CHAIRMAN BRANTLEY: Commissioner Venuti, 17 go ahead. 18 If you're speaking, we can't hear you. 19 COMMISSIONER VENUTI: Excuse me, I 20 was -- excuse me, I was muted. 21 I understand how a person can make a 22 mistake, but understand I'm looking at this from the 23 viewpoint of somebody who's been a -- I've been 24 inspecting new construction projects for the last 30 25 years. And it's a very rare project that gets built</p>
<p style="text-align: right;">Page 19</p> <p>1 The additional 3-by-5-foot concrete pad 2 that went there was a concern to us, and the issue is 3 that our electrician had wired the shop for that 4 generator to be there, and we expressed concern about 5 that location for this reason. And we were told by 6 our contractor that they can -- well, the electrician 7 said that he needed to put it there to start, and the 8 contractor said if we need to move it, he can. It's a 9 small enough concrete pad he can pick it up with his 10 forklift and move it to the -- around the corner to 11 the other side of the shop. 12 So that was sort of done, again, with 13 our contractor and our electrician and not really with 14 our permission, I guess, is what I want to say. 15 Obviously, we feel really badly about 16 this and wish we could go back in time and make it 17 right. 18 The initial concern that we were too 19 close when the slab was poured and the walls were 20 under construction, the walls were up when we got a 21 phone call from the borough, someone at the borough 22 saying that this was an issue. We were actually in 23 Haines Junction coming up the highway and, you know, 24 had to wait until we could get to a place with cell 25 reception and asked if we needed to stop work, and</p>	<p style="text-align: right;">Page 21</p> <p>1 out of whack like this. 2 I understand you have -- you had a 3 contractor do this, but why didn't the contractor pay 4 attention to the rules? It's his responsibility as 5 well as yours. 6 NANCY WHITMORE: Well, you know, our 7 first reaction was, wow, there's a contractor and a 8 dirt guy. And, you know, I think everyone took a look 9 at the plat, but without the dotted line there to say 10 this is a setback, no one -- you know, no one really 11 took a hard enough look at it. And, you know, we 12 were -- it was suggested that we bring them along with 13 us tonight, but ultimately it's our responsibility. 14 So I don't know what else to say. 15 COMMISSIONER VENUTI: Well, it's not a 16 brand new road. It's been on the books for quite a 17 while. It would be really hard for me to support 18 this. 19 CHAIRMAN BRANTLEY: Any more questions 20 for the testifier? 21 All right. At this point, I'll close 22 public testimony and bring it back to the commission 23 for a motion. 24 COMMISSIONER MORGAN: I move to adopt PC 25 Resolution 2022-46 -- is that correct, Dan -- granting</p>

<p style="text-align: right;">Page 22</p> <p>1 a building setback encroachment permit to Lot 10, Lake 2 Estates Subdivision, Plat K-1648. 3 COMMISSIONER GILLHAM: Second that 4 motion. 5 CHAIRMAN BRANTLEY: We have a motion and 6 a second. Is there any discussion? Okay. 7 Commissioner Stutzer, go ahead. 8 COMMISSIONER STUTZER: Yes, thank you. 9 So in the past on this board, or this 10 commission, I'm usually very vocal about being 11 against, you know, not doing their homework and that 12 kind of thing, which is basically my -- still my 13 position, but there's a couple, well, for me, 14 mitigating factors. 15 One, I mean, they're very forthright. 16 They made a mistake. They're -- you know, they're 17 fairly early on in the project, granted, that the shop 18 is built. 19 But the road that we're talking about is 20 basically a driveway, right? And my inclination is to 21 say yeah. And there's no sight lines, as staff said, 22 sight lines being disturbed. It only accesses three 23 lots. 24 The one testifier, the neighbor, said, 25 you know, he has a problem with it, but they built</p>	<p style="text-align: right;">Page 24</p> <p>1 there is a -- if there's a problem with snow removal, 2 could they put a cul-de-sac shared between all three 3 of the lots to gain the -- to gain the dimensions? Go 4 to the northwest lot that -- I don't have a number on 5 it here, but we got 9, 10, and the northwest lot, and 6 if they all three was to make a cul-de-sac there, then 7 that would give them maybe somewhere to put the snow 8 if it's needed, if that's their concern, I suppose. 9 And, yeah, just as he had said, the 10 people parking in the -- they're parking in the 11 setback, so, like, that's the same thing. They can't 12 really complain about it. That's all I had. 13 CHAIRMAN BRANTLEY: Thank you. 14 Commissioner Morgan. 15 COMMISSIONER MORGAN: I am also inclined 16 to support this. I think I have a bigger frustration 17 with two contractors in the area who should know all 18 of this. It is a homeowner's job to do research, but 19 we also depend on our contractors to know their 20 business. And so I'm kind of disappointed in their 21 lack of researching before they started the work and 22 not getting good information to the homeowners. 23 COMMISSIONER GILLHAM: I would have to 24 concur with Commissioner Morgan in that I would put 25 most of the blame on the contractor who should have a</p>
<p style="text-align: right;">Page 23</p> <p>1 their house, it looks like by the map, right on the 2 20-foot setback line. So basically they're parking in 3 their setback, and they have to back into the driveway 4 just to get out of -- away from their house. 5 So, you know, I don't have a lot of 6 sympathy for them, because they kind of built the 7 house that way. So -- and, yeah, you've got a 8 neighbor now and a building there and snow removal is 9 a problem, but, you know, the road is always going to 10 be -- was designed not -- that the borough is not 11 going to take it over. So it's going to be a 12 neighborhood snowplow operation, and you'll just have 13 to figure out where you're going to push the snow. 14 I mean, there's -- to me, by the map, it 15 looks like you can push it on the neighbor's property 16 further up around the curve. You know, I mean, 17 granted, you know, I don't want to design solutions 18 for you. 19 But I don't know, it's a sticky 20 situation. I'm inclined to -- I mean, I hear what 21 Franco is saying. I'm inclined to approve this 22 petition, but I do have some concerns. So thank you. 23 CHAIRMAN BRANTLEY: Thank you, 24 Commissioner Stutzer. Any more discussion? 25 UNIDENTIFIED SPEAKER: I was thinking if</p>	<p style="text-align: right;">Page 25</p> <p>1 little bit more knowledge on this than the homeowner. 2 I'm not too concerned about parking in 3 the setback. That's still part of the property 4 owner's property. The setback is for building, not 5 parking. So that -- they should be able to pretty 6 much do with that whatever they choose as long as 7 they're not building in it. 8 But I am inclined to vote in favor of 9 this, mostly because I feel that this is more due to 10 the contractor's fault rather than the property 11 owner's fault. 12 CHAIRMAN BRANTLEY: Any more discussion 13 before we take a vote? 14 Well, I'll just say during some of the 15 testimony I think some terms got jumbled, and just to 16 remind the commissioners that it was inferred that 17 they were building into the right-of-way. I think one 18 of the -- the neighbor testified to that. And just to 19 remind you, this is not -- they are still on their 20 property by 10 feet or so. 21 They are not out in the right-of-way at 22 all, so I don't see how snow removal would be affected 23 anyway since they're not encroaching in the 24 right-of-way at all, just in the setback. 25 I do have some sympathy with the plat,</p>

Page 26

Page 28

1 an older plat and it not being very visible.
2 Contractors make mistakes. The only reason I asked
3 for the name was just to -- we've been on this
4 commission long enough that I kind of like to know who
5 did it, because there might be a recurring theme that
6 develops over time that could be addressed, but I
7 do -- these things do happen, and I will be voting in
8 favor to support this.
9 So if there's no more testimony, Ann --
10 or no more discussion -- we'll take a vote.
11 **MS. SHIRNBERG:** Gillham?
12 **COMMISSIONER GILLHAM:** Yes.
13 **MS. SHIRNBERG:** Hooper?
14 **COMMISSIONER HOOPER:** Yes.
15 **MS. SHIRNBERG:** Stutzer?
16 **COMMISSIONER STUTZER:** Yes.
17 **MS. SHIRNBERG:** Staggs?
18 **COMMISSIONER STAGGS:** Yes.
19 **MS. SHIRNBERG:** Slaughter?
20 **COMMISSIONER SLAUGHTER:** Yes.
21 **MS. SHIRNBERG:** Fikes?
22 **COMMISSIONER FIKES:** Yes.
23 **MS. SHIRNBERG:** Morgan?
24 **COMMISSIONER MORGAN:** Yes.
25 **MS. SHIRNBERG:** Horton?

Page 27

1 **COMMISSIONER HORTON:** Yes.
2 **MS. SHIRNBERG:** Tautfest?
3 **COMMISSIONER TAUTFEST:** Yes.
4 **MS. SHIRNBERG:** Venuti?
5 **COMMISSIONER VENUTI:** I'll say this very
6 slowly. Yes.
7 **MS. SHIRNBERG:** Brantley?
8 **CHAIRMAN BRANTLEY:** Yes.
9 The motion passes unanimously.
10 39:17
11 (This portion not requested)
12 1:09:36
13
14
15
16
17
18
19
20
21
22
23
24
25

1 **CERTIFICATE**
2 I, LEONARD J. DiPAOLO, Registered Professional
3 Reporter, Certified Realtime Reporter, Certified CART
4 Provider, and Notary Public in and for the State of
5 Alaska, do hereby certify:
6 That the tape recording, PC 102422 Audio was
7 transcribed under my direction by computer
8 transcription; that the foregoing is a true record of
9 the testimony and proceedings taken at that time to the
10 best of my ability; and that I am not a party to nor
11 have I any interest in the outcome of the action herein
12 contained.
13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my seal this 24th day of November,
15 2022.
16
17
18
19
20
21
22 **LEONARD J. DiPAOLO, RPR, CRR, CCP**
23 **Notary Public for Alaska**
24 **My Commission Expires: 2-3-2024**
25

A	Apparently (2) 13:1;18:2	Borough (8) 4:21;13:23;14:2,23; 16:18;19:21,21;23:10	19:24	7:14;18:2;19:2,4,18; 24:8
	appear (2) 3:24;6:6	borough-maintained (2) 14:17,22	certainly (2) 18:9,17	concerned (2) 7:16;25:2
able (1) 25:5	appears (2) 3:12;5:1	both (1) 3:1	Chair (1) 8:10	concerns (2) 13:20;23:22
abutting (1) 5:6	applicant (8) 5:21;6:15,25;8:8; 9:3;11:22;12:19;17:13	brand (1) 21:16	CHAIRMAN (25) 2:5;6:14,24;8:7,12, 20,22,25;10:4;11:21; 12:16;13:6,9,13;16:20, 24;17:5,10;20:16; 21:19;22:5;23:23; 24:13;25:12;27:8	concrete (5) 14:6,10,12;19:1,9
access (6) 4:9;5:3,6,10;7:20; 12:6	appreciate (2) 3:16;17:1	BRANTLEY (26) 2:5;6:14,24;8:7,12, 20,22,25;10:4;11:21; 12:16;13:6,9,13;16:20, 24;17:5,10;20:16; 21:19;22:5;23:23; 24:13;25:12;27:7,8	choose (1) 25:6	concur (1) 24:24
accessed (2) 7:2;12:2	approached (1) 18:9	bring (3) 2:5;21:12,22	cleared (2) 12:14;14:24	consideration (1) 3:16
accesses (1) 22:22	approval (1) 5:9	brought (5) 4:12;6:1;13:21,23; 14:1	Clearing (2) 14:16,18	constructed (1) 12:10
accomplishing (2) 15:16;17:3	approve (1) 23:21	build (6) 9:21;10:9;13:22; 14:7;16:17;18:6	clearly (1) 4:15	construction (5) 6:21;16:2;18:20; 19:20;20:24
acknowledge (1) 2:20	approved (1) 4:23	builder (2) 3:3;15:25	close (3) 17:12;19:19;21:21	contact (1) 15:25
across (7) 7:10,25;13:18; 14:20,22,25;18:1	approximately (3) 2:18;15:3;16:8	building (25) 2:6,9,16,24;3:20; 4:15;5:11;6:9;10:8,22, 24;12:7,19,23;13:25; 14:5,13;15:6;20:3,12; 22:1;23:8;25:4,7,17	closer (2) 11:14;15:19	continued (3) 14:7;16:17;20:3
actually (4) 10:19;13:20;14:15; 19:22	area (8) 2:12;3:1;4:1;7:19; 17:22;18:15,16;24:17	buildings (1) 10:18	Code (11) 2:21;4:13,22,25;5:3, 9,13;6:1,4,11;7:15	contractor (13) 8:9,19;12:20,22,24; 19:6,8,13;20:3;21:3,3, 7;24:25
added (1) 14:14	Arneson (1) 8:21	built (17) 2:17;9:11,14,15,22; 10:11;14:10,10;15:5, 16,19;16:8;17:23; 20:25;22:18,25;23:6	collective (1) 2:22	contractors (4) 8:15;24:17,19;26:2
addition (1) 14:14	around (3) 15:12;19:10;23:16	business (1) 24:20	coming (2) 12:11;19:23	contractor's (1) 25:10
additional (1) 19:1	arterial (1) 5:5	button (1) 17:16	comment (3) 17:11,12,19	corner (2) 3:22;19:10
address (4) 6:18,20;13:14,17	as-built (2) 6:2;9:25	buttoned (1) 10:12	comments (1) 13:10	corners (1) 13:2
addressed (1) 26:6	attention (6) 4:12;6:1;13:22,23; 14:1;21:4	call (1) 19:21	commission (4) 21:22;22:10;23:24; 26:4	couple (2) 14:3;22:13
adjacent (2) 3:6;5:5	aware (4) 3:4;7:3;16:16;18:5	calls (1) 16:18	COMMISSIONER (49) 7:1,14;8:6,10,13,16, 25;9:2,10,13,17,20,24; 10:3,4,6,13,15;11:2,5, 11,18,22,25;12:16,18, 24;13:5;20:16,19; 21:15,24;22:3,7,8; 24:14,15,23,24;26:12, 14,16,18,20,22,24; 27:1,3,5	course (1) 18:6
adopt (2) 6:10;21:24	away (3) 11:14;15:8;23:4	care (1) 14:24	commissioners (1) 25:16	covenants (1) 16:6
affected (1) 25:22		cause (1) 4:4	company (1) 3:4	covered (1) 17:25
Again (5) 2:13;8:4;14:5;17:14; 19:12	B	cell (1)	complain (1) 24:12	Craig (1) 6:20
against (1) 22:11	back (7) 7:21;15:13,20;16:2; 19:16;21:22;23:3		completed (1) 16:16	create (1) 3:15
ago (2) 16:9;17:22	backing (1) 15:8		completely (1) 14:9	created (1) 5:20
ahead (6) 9:1;10:5;12:17; 13:14;20:17;22:7	badly (1) 19:15		compliance (4) 4:13;6:1,4,11	cul-de-sac (2) 24:2,6
along (9) 3:20;4:1,15,18;5:18, 25;18:15;20:8;21:12	based (1) 6:8		comply (1) 5:8	curious (1) 10:21
alongside (1) 15:10	basically (3) 22:12,20;23:2		concern (6)	curve (4) 3:25;4:3;7:8;23:16
always (1) 23:9	bigger (1) 24:16			D
analysis (1) 4:5	bit (1) 25:1			Dan (1) 21:25
angled (1) 3:22	blame (1) 24:25			days (1) 14:4
Ann (1) 26:9	board (1) 22:9			dedicated (1) 4:7
	books (1) 21:16			dedication (2)

5:2,12 defined (1) 4:25 definition (1) 5:4 department (2) 2:17;4:22 depend (1) 24:19 depict (1) 5:15 depiction (3) 4:16,16,17 design (1) 23:17 designed (1) 23:10 detached (2) 2:24;9:7 develops (1) 26:6 dimensions (1) 24:3 dirt (4) 8:23;17:21,24;21:8 disappointed (1) 24:20 discussion (5) 3:3;22:6;23:24; 25:12;26:10 distance (1) 3:15 distances (1) 3:24 disturbed (1) 22:22 done (9) 8:24;10:1;13:22; 15:18;16:2;17:21; 18:23;19:12;20:4 door (2) 12:4,5 dotted (2) 3:8;21:9 down (4) 2:6;11:15;14:16; 15:24 Drive (7) 3:2,11;4:7,16;13:17; 14:20;15:14 driveway (3) 11:24;22:20;23:3 Due (2) 5:22;25:9 during (2) 10:11;25:14 dust (1) 15:24	early (1) 22:17 electrician (3) 19:3,6,13 else (5) 17:10;20:5,14,15; 21:14 encouraged (1) 18:21 encroached (2) 6:3;7:18 encroaches (1) 3:20 encroaching (1) 25:23 encroachment (4) 2:7,10;6:9;22:1 end (6) 4:1;6:13;7:8;11:4; 12:5,8 ended (1) 11:16 enforcing (1) 5:17 enough (4) 19:9;20:2;21:11; 26:4 equipment (1) 20:8 Eric (1) 8:21 error (2) 2:23;3:11 especially (1) 15:9 Estates (4) 2:10,14;4:5;22:2 estimate (1) 14:11 even (2) 7:25;15:12 everybody's (1) 17:1 everyone (1) 21:8 excavation (1) 3:4 exception (3) 2:16;3:12;5:1 Excuse (3) 3:2;20:19,20 expressed (2) 18:2;19:4 extent (1) 13:3	17:22 far (2) 12:23;15:8 farther (1) 11:14 farthest (1) 7:24 fault (2) 25:10,11 favor (2) 25:8;26:8 February (1) 16:9 feel (2) 19:15;25:9 feet (14) 2:18;3:21,21,22; 4:21;7:18;8:3;14:13, 14:15;2,3;20:11,11; 25:20 few (1) 7:12 figure (1) 23:13 FIKES (5) 7:1,14;8:6;26:21,22 File (2) 2:7,11 fill (1) 14:22 findings (2) 6:5,6 finish (1) 16:22 finished (2) 9:5,7 first (3) 10:8;13:25;21:7 fit (1) 4:24 fits (1) 5:2 foam (1) 17:25 follow (1) 16:7 forklift (1) 19:10 forthright (1) 22:15 forward (1) 6:16 four (2) 16:8,9 Franco (1) 23:21 front (2) 11:4;15:13 frontage (1) 4:20 frustration (1) 24:16 further (1)	23:16 G gain (2) 24:3,3 garage (5) 2:17,24;12:4,5;18:6 garage-shop (2) 9:7;12:3 General (5) 2:11;8:9,14,18; 17:11 generator (2) 14:13;19:4 gets (1) 20:25 GILLHAM (4) 22:3;24:23;26:11,12 GL (22) 2:12,18;3:2,8,20,25; 4:7,8,18;5:18,19,25; 6:20;7:2;12:5,7;13:18, 19;14:12;15:6,22; 18:19 goes (1) 12:13 good (3) 11:12;13:24;24:22 gotcha (1) 11:18 Government (1) 4:10 grant (1) 6:9 granted (6) 3:19;4:8,24;5:1; 22:17;23:17 granting (1) 21:25 gravel (1) 17:24 guess (2) 19:14;20:13 guests (1) 18:22 guy (1) 21:8 guys (1) 9:21 H Haines (1) 19:23 hands (1) 17:7 happen (1) 26:7 happy (1) 20:6 hard (2) 21:11,17	hardened (1) 12:14 hazard (1) 3:16 hear (3) 13:12;20:18;23:20 hi (1) 13:11 highway (1) 19:23 highways (1) 5:6 Hollier (24) 2:12,18;3:2,8,20,25; 4:7,8,11,18;5:18,19, 25;6:21;7:2;12:2,5,7; 13:18,19;14:12;15:6, 22;18:19 home (4) 2:24;6:21;12:9,11 homeowner (1) 25:1 homeowners (1) 24:22 homeowner's (1) 24:18 homes (2) 7:2;8:5 homework (2) 16:11;22:11 Hooper (2) 26:13,14 Horton (2) 26:25;27:1 house (14) 10:9,10;11:6,8,10, 14;15:9,13,18;16:8,10; 23:1,4,7 I idea (1) 13:24 impact (2) 7:4,7 impacted (1) 3:25 impacting (1) 7:20 impeding (3) 15:1,6,17 inadvertent (1) 17:20 inclination (1) 22:20 inclined (4) 23:20,21;24:15;25:8 including (1) 3:6 indicate (1) 3:9 indicated (1) 5:16
E	F			
E-1 (1) 2:6	factors (1) 22:14 fairly (1) 22:17 fall (1)			

indiscernible (1) 17:16 inferred (1) 25:16 information (2) 20:2;24:22 initial (1) 19:18 inside (2) 9:5,8 inspecting (1) 20:24 intention (2) 18:18,25 intentional (1) 2:22 intentionally (1) 20:12 interfere (2) 3:13,15 interior (1) 5:17 into (8) 2:18;6:3;12:11; 15:13,17;18:7;23:3; 25:17 investigation (1) 3:18 issue (3) 4:14;19:2,22 issues (3) 4:4,12;5:25 item (2) 2:6,9	L	18:12;22:1;23:5;24:4, 5 lots (3) 5:20;22:23;24:3	21:23;22:4,5;27:9 move (4) 15:11;19:8,10;21:24 much (4) 11:4;13:7;14:4;25:6 multiple (1) 20:7 muted (1) 20:20 myself (1) 14:19	Obviously (1) 19:15 oddly (3) 2:25;10:25;18:12 off (11) 7:2;12:2,7,8,11,13; 14:11,24;15:3,20; 16:12 officer (2) 6:2,4 older (1) 26:1 One (10) 5:20;7:1;8:8;13:18; 15:17;21:10,10;22:15, 24;25:17 only (3) 5:19;22:22;26:2 onsite (1) 2:24 onto (1) 14:14 operation (1) 23:12 opportunity (1) 17:14 OSB (1) 9:8 out (18) 7:24;9:21,22;12:19, 23;14:2,15;15:8,11,13, 23;16:3;17:22;18:25; 21:1;23:4,13;25:21 outside (1) 4:3 over (7) 13:24;14:8;15:10, 16;17:3;23:11;26:6 overbuilding (1) 16:15 overbuilt (1) 13:24 own (2) 15:23;16:3 owner (1) 5:21 owners (2) 4:14;6:3 owner's (2) 25:4,11	
		M	maintained (3) 3:14;5:23;7:16 maintenance (3) 3:14;7:19;14:23 many (1) 13:20 map (3) 11:9;23:1,14 maps (1) 12:10 marginal (2) 5:3,10 marked (2) 13:2;17:22 material (1) 15:23 matter (4) 3:17;6:15;13:10; 16:14 maybe (4) 7:25;10:16,20;24:7 mean (8) 5:9;7:25;11:6;20:13; 22:15;23:14,16,20 melted (1) 18:7 middle (1) 11:17 might (1) 26:5 mike (1) 6:16 minimal (1) 5:13 Minor (1) 5:4 mistake (2) 20:22;22:16 mistakes (1) 26:2 mitigating (1) 22:14 more (10) 8:7;11:21;13:6; 21:19;23:24;25:1,9,12; 26:9,10 MORGAN (6) 21:24;24:14,15,24; 26:23,24 mortgage (1) 9:21 most (2) 7:9;24:25 mostly (1) 25:9 motion (4)	N name (5) 6:17,19;13:14,16; 26:3 Nancy (27) 6:19,19;7:6,22;8:18, 21,23;9:6,12,15,19,22; 10:2,10,14,24;11:3,8, 13,20;12:3,12,22;13:1, 8;17:17;21:6 narrow (1) 11:3 need (1) 19:8 needed (4) 17:3;19:7,25;24:8 neighbor (5) 7:7,10;22:24;23:8; 25:18 neighborhood (1) 23:12 neighboring (1) 18:13 neighbors (5) 3:7;7:3;18:1,22;20:6 neighbor's (1) 23:15 new (3) 6:2;20:24;21:16 none (1) 17:12 northern (1) 4:1 northwest (2) 24:4,5 note (3) 4:20;5:12,16 noted (1) 4:10 notes (1) 3:11 number (2) 2:13;24:4 numerous (1) 16:19	
J			O	P	
job (2) 14:3;24:18 jumbled (1) 25:15 Junction (1) 19:23	label (1) 4:17 lack (1) 24:21 Lake (6) 2:10,13,14;4:5; 15:19;22:1 land (1) 7:21 landlocked (2) 4:10;7:7 last (1) 20:24 leave (1) 14:23 left (1) 20:11 Legal (1) 4:21 length (1) 3:21 limit (2) 15:1;16:21 limitations (1) 18:13 limited (1) 15:8 line (5) 13:25;14:8;15:20; 21:9;23:2 lines (5) 3:9,15;5:17;22:21, 22 listed (1) 6:6 little (2) 15:19;25:1 live (1) 15:13 located (2) 4:2;13:17 location (2) 2:12;19:5 lock (1) 7:21 long (2) 25:6;26:4 look (2) 21:8,11 looking (1) 20:22 looks (2) 23:1,15 loss (1) 7:19 Lot (24) 2:10,13,23,25;4:10; 5:20;10:13,14,17,19, 22,25;11:1,10;12:12, 25;13:2;16:15;17:21;			objections (1) 2:23	pad (6) 15:3;17:24,24,24; 19:1,9 painted (1) 9:8 parallel (1) 5:5 parcel (2) 2:13;4:10 parent (1)
K					
K-1648 (3) 2:11;4:6;22:2 keep (1) 15:24 Kenai (1) 4:21 kind (5) 11:16;22:12;23:6; 24:20;26:4 knowing (1) 14:7 knowledge (1) 25:1 KPB (9) 2:7,11,16,21;4:13; 5:3;6:1,4,11					

2:13 park (4) 7:11,11;18:22;20:7 parked (2) 15:9;18:20 parking (6) 18:18;23:2;24:10, 10:25;2:5 part (2) 9:20;25:3 passes (1) 27:9 past (1) 22:9 pay (2) 16:3;21:3 PC (1) 21:24 Peninsula (1) 4:21 people (3) 15:11;16:7;24:10 percent (1) 14:18 permission (1) 19:14 permit (5) 2:7,10;3:19;6:10; 22:1 person (1) 20:21 personally (1) 18:3 person's (1) 7:20 petition (2) 5:21;23:22 petitioner (2) 6:15;17:13 phone (2) 16:18;19:21 photo (2) 10:16,17 PIAGENTINI (1) 2:9 pick (1) 19:9 picture (1) 10:20 place (2) 4:22;19:24 planning (3) 2:16,23;18:5 Plat (19) 2:11;3:9,10,12;4:6,7, 8,15,19,19,23,23;5:12, 15,16;21:9;22:2; 25:25;26:1 platting (1) 2:17 please (3) 2:8;6:18;13:15 plenty (2)	15:21;16:18 pocket (6) 9:21,23;12:20,23; 15:23;16:4 point (6) 7:24;14:5;20:1,5,13; 21:21 poor (2) 2:25;10:20 portion (3) 2:3;4:2;27:11 position (1) 22:13 possibly (1) 14:20 postponed (1) 14:3 pour (1) 18:5 poured (1) 19:19 power (1) 9:9 present (1) 5:13 pretty (4) 8:2;13:24;14:4;25:5 primer (1) 9:8 privately (2) 3:14;5:23 probably (1) 7:23 problem (4) 15:7;22:25;23:9; 24:1 proceed (1) 16:17 process (1) 13:4 produce (1) 9:25 project (2) 20:25;22:17 projects (1) 20:24 properties (1) 5:7 property (8) 4:11;7:9;10:9;23:15; 25:3,4,10,20 protection (1) 5:7 provide (2) 4:9;5:6 public (4) 13:9;17:11,12;21:22 purchased (1) 13:2 purpose (1) 18:17 push (4) 14:21;17:15;23:13,	15 pushed (3) 7:23,24;15:20 pushing (2) 14:20,25 put (8) 15:23,23;16:2; 18:14;19:7;24:2,7,24 putting (2) 11:16;18:25 Q quite (2) 7:12;21:16 R raised (1) 17:8 rap (1) 15:23 rare (1) 20:25 rather (1) 25:10 reaction (1) 21:7 reading (1) 3:11 really (9) 7:15;18:8;19:13,15; 20:2,5;21:10,17;24:12 reason (2) 19:5;26:2 reception (1) 19:25 recommendation (1) 6:8 recommends (1) 6:10 record (2) 6:18;13:15 recorded (1) 4:6 recreational (1) 20:8 recurring (1) 26:5 refer (1) 10:12 referred (1) 9:4 regulations (1) 16:6 related (1) 7:4 remind (2) 25:16,19 removal (5) 7:17;15:2;23:8;24:1; 25:22 repairing (1)	16:1 report (3) 2:7;4:25;6:13 request (1) 3:18 requested (2) 2:3;27:11 requesting (1) 2:15 required (2) 3:4;5:13 requirement (1) 9:25 research (1) 24:18 researching (1) 24:21 residents (1) 13:19 resolution (4) 4:14;6:5,10;21:25 responsibility (2) 21:4,13 restricted (1) 3:1 reviewed (1) 4:22 Ridgeway (1) 2:12 right (8) 8:13;12:14;17:7; 18:10;19:17;21:21; 22:20;23:1 right-of-way (10) 4:2,9;5:2,22,24; 14:15;15:17;25:17,21, 24 rightly (1) 13:7 road (21) 2:19;3:7,10,13,13, 14:5;20:7;8,9,19,24; 8:3;14:18,19,22,22; 15:23;18:1;21:16; 22:19;23:9 Roads (2) 2:21;4:25 room (2) 15:1,21 Ross (15) 3:1,11;4:7,16;7:25, 25;11:15;12:4,8,11,13; 13:17;14:20;15:14; 18:15 rules (2) 16:6;21:4 S safety (1) 3:16 same (2) 11:9;24:11	sat (1) 17:25 satellite (2) 10:17,20 saying (2) 19:22;23:21 Second (2) 22:3,6 sections (1) 6:12 Seeing (1) 17:12 seems (1) 8:2 sentence (1) 16:24 separation (1) 3:5 septic (4) 2:25;3:5,6;18:14 septics (1) 18:14 set (1) 16:7 setback (30) 2:6,10,16,18;3:8,10, 13;4:15,17,20;5:11,14, 16,18;6:3,9;7:11,17; 8:2,3;16:13;20:7; 21:10;22:1;23:2,3; 24:11;25:3,4,24 setbacks (3) 5:13,17;16:6 shape (1) 18:12 shaped (3) 2:25;10:25;18:12 shared (1) 24:2 shed (4) 3:20,23;9:4,6 SHIRNBERG (11) 26:11,13,15,17,19, 21,23,25;27:2,4,7 shop (15) 6:2;12:15;13:25; 14:9,11;15:4,10,18,19; 16:17;17:23;18:19; 19:3,11;22:17 show (2) 6:2;14:20 shown (2) 3:10;4:18 shows (2) 4:15;10:17 side (10) 4:3;5:22;12:4,6,7; 14:11,12;15:3;18:19; 19:11 sides (1) 14:25 sight (5) 3:15,24;4:4;22:21,
---	--	---	--	---

22 site (1) 3:18 situation (2) 6:5;23:20 slab (5) 14:6,10,12;18:5; 19:19 Slaughter (2) 26:19,20 slightly (1) 3:21 slope (1) 11:16 slowly (1) 27:6 small (2) 18:16;19:9 smaller (2) 12:6;15:18 snow (14) 7:17,23;14:16,18,21, 24,25;15:2;18:7;23:8, 13;24:1,7;25:22 snowplow (1) 23:12 soils (1) 3:1 solutions (1) 23:17 somebody (1) 20:23 someone (1) 19:21 somewhere (1) 24:7 soon (1) 13:22 Sorry (3) 13:13;16:20;20:6 sort (2) 11:15;19:12 southwest (1) 3:22 speak (2) 6:15;17:14 SPEAKER (5) 11:23;12:1,9;17:15; 23:25 speaking (1) 20:18 spring (1) 18:7 Staff (6) 2:7;4:5,25;6:10,13; 22:21 Staggs (2) 26:17,18 stakes (1) 17:23 standards (2) 6:7,9 start (1)	19:7 started (5) 12:25;13:3,25;14:5; 24:21 state (2) 6:17;13:14 stated (1) 14:20 states (1) 5:4 stating (1) 4:20 Steam (3) 8:24;15:25;17:23 sticky (1) 23:19 still (4) 15:20;22:12;25:3,19 stop (1) 19:25 stopped (1) 14:4 straight (1) 4:2 Street (16) 2:12,19;3:2,8,20,25; 4:7,8,18,20;5:10,18,19, 25;7:10;13:18 streets (4) 5:3,4,5,10 stuff (1) 16:7 Stutzer (13) 10:5,6,13,15;11:2,5, 11,18;22:7,8;23:24; 26:15,16 Subdivision (4) 2:11,14;4:6;22:2 subject (2) 5:11;6:11 substandard (2) 2:19;5:9 suggested (1) 21:12 summer (4) 9:16,18,19;10:11 support (4) 6:7;21:17;24:16; 26:8 suppose (1) 24:8 supposed (3) 14:21,24;16:11 sure (2) 16:12;20:4 survey (2) 12:25;13:3 surveying (1) 16:10 sympathy (2) 23:6;25:25 system (2) 3:5,6	systems (2) 2:25;18:15 T talked (1) 16:19 talking (1) 22:19 Tautfest (2) 27:2,3 TAYLOR (7) 13:11,12,16,17; 16:23;17:1,9 terms (1) 25:15 testified (1) 25:18 testifier (3) 17:6;21:20;22:24 testimony (3) 21:22;25:15;26:9 Thanks (2) 8:6;17:17 theme (1) 26:5 thinking (1) 23:25 three (9) 5:20;7:2;8:4,5; 13:19;18:15;22:22; 24:2,6 thrilled (1) 18:23 thus (1) 5:17 tight (1) 7:15 times (1) 15:11 told (2) 19:5;20:1 tonight (1) 21:13 took (2) 21:8,11 toward (1) 7:24 traffic (6) 5:7;12:13;14:25; 15:1,6,14 Troy (6) 13:11,11,16,16; 16:23;17:9 trying (4) 12:6;18:11,11,14 turn (2) 6:17;15:12 two (1) 24:17 type (1) 4:17 types (1)	4:25 U ultimately (1) 21:13 unanimously (1) 27:9 unaware (1) 3:7 under (3) 6:21;14:2;19:20 underneath (1) 12:10 UNIDENTIFIED (5) 11:23;12:1,9;17:15; 23:25 unnamed (1) 4:8 unrelated (1) 7:4 up (12) 10:12;11:16;12:14; 13:21;14:6,22,23; 16:21;19:9,20,23; 23:16 upgraded (1) 15:22 usable (1) 3:1 usage (1) 5:23 use (5) 7:8,13;18:12;20:7, 10 used (2) 2:23;5:19 usually (1) 22:10 V vehicle (1) 12:6 vehicles (4) 7:12;15:9,12;20:8 VENUTI (21) 8:10,13,16;9:1,2,10, 13,17,20,24;10:3; 11:25;12:17,18,24; 13:5;20:16,19;21:15; 27:4,5 viewpoint (1) 20:23 VINCE (1) 2:9 violate (1) 18:11 violation (2) 2:20,22 visible (1) 26:1 vocal (1)	22:10 vote (3) 25:8,13;26:10 voting (1) 26:7 W wait (1) 19:24 walls (3) 14:6;19:19,20 way (4) 7:5,12;16:2;23:7 ways (2) 15:15;17:2 wells (2) 3:6;18:13 west (1) 5:22 wet (1) 11:15 whack (1) 21:1 Wheels (3) 8:24;16:1;17:23 WHITMORE (27) 6:19,20;7:6,22;8:18, 21,23;9:6,12,15,19,22; 10:2,10,14,24;11:3,8, 13,20;12:3,12,22;13:1, 8;17:17;21:6 whole (1) 18:6 who's (1) 20:23 wide (1) 8:2 wider (1) 11:4 width (6) 4:23,24;5:1,8,9,22 winter (3) 8:1;18:1,7 wire (1) 17:25 wired (1) 19:3 wish (2) 18:8;19:16 wishing (1) 17:11 without (2) 15:17;21:9 work (4) 8:24;17:21;19:25; 24:21 workers (1) 18:20 working (3) 4:13;6:4;12:20 wow (1) 21:7
---	---	--	--	--

wrote (1) 17:20	20:7;23:2 24-foot (1) 3:19			
Y	25 (1) 4:21			
year (1) 17:21	25-foot (2) 4:15;5:15			
years (3) 16:9;9;20:25	3			
0	3 (2) 3:15;14:14			
0:00:00 (1) 2:2	30 (2) 8:3;20:24			
057-250-01 (1) 2:13	30-foot-wide (1) 4:9			
1	36602 (1) 6:20			
1 (2) 2:9;3:13	39:17 (1) 27:10			
1:09:36 (1) 27:12	3-by-5-foot (1) 19:1			
10 (21) 2:10,14,18;4:10;6:6; 7:18;10:13,14,19,22, 25;11:10,12;12:10; 15:2,3;20:10,11;22:1; 24:5;25:20	3-foot-by-5-foot (1) 14:12			
100-foot (1) 3:5	4			
10-foot (1) 8:3	43680 (1) 13:17			
11 (1) 10:17	48-foot (1) 3:12			
115 (1) 2:21	49 (1) 3:21			
12 (2) 6:6;15:3	49-foot (1) 3:19			
14-40-035 (1) 2:21	5			
14-40-15 (1) 2:21	5:06 (1) 2:4			
15 (1) 6:6	7			
1968 (1) 5:3	75 (1) 14:18			
1969 (1) 4:6	9			
2	9 (1) 24:5			
2 (1) 3:14	9.3 (1) 3:22			
20.10.110 (1) 6:11	9.4 (1) 14:13			
2022-121 (2) 2:7,11	9.8 (1) 3:21			
2022-46 (2) 6:10;21:25				
20-foot (11) 2:15;3:7;5:11,14,16, 18;7:11;8:2;16:12;				

ADDENDUM TO THE RECORD

ADDENDUM INDEX

Record Page #	Document
R-34 to R-35	Submittal
R-36	Justification
R-37 to R-38	Email 07-19-22 (2)
R-39 to R-41	Email 07-19-22
R-42 to R-42	Email 07-26-22
R-43	Application
R-44 to R-45	Email 07-28-22
R-46 to R-51	Email 09-27-22
R-52	Asbuilt Lot 10 – 36602 GL Hollier St.
R-53 to R-54	Email 10-07-22
R-55 to R-58	Public Notice
R-59	Asbuilt for Recording
R-60 To R-83	Ordinance 68-62

RECEIVED

JUL 25 2022



Planning Department

KPB PLANNING DEPT.

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

APPLICATION FOR BUILDING SETBACK ENCROACHMENT PERMIT

PUBLIC HEARING REQUIRED

- ☐ NAME: Nancy S. + David Craig Whitmore
- ☐ ADDRESS: 36602 GL Hollier St. Soldotna AK
- ☐ PHONE NO.: 907-299-7717, 907-299-5352
- ☐ EMAIL ADDRESS: nancywhitmore@gmail.com
dcwhitmore@gmail.com
- ☐ LEGAL DESCRIPTION OF PROPERTY FOR WHICH THE BUILDING SETBACK PERMIT IS BEING REQUESTED: Lake Estates Sub Lot 10
- ☐ JUSTIFICATION FOR REQUESTING THE BUILDING SETBACK PERMIT (ATTACH SEPARATE PAGES IF NECESSARY):

See attached

- ☐ APPLICATION FEE ATTACHED:
- RECORDING FEE
- ☐ ATTACHED (CONTACT KPB PLANNING DEPT. FOR THE RECORDING FEE AMOUNT)
- ☒ I WILL PAY THE RECORDING FEE AFTER THE PLANNING COMMISSION TAKES ACTION ON THE PERMIT REQUEST
- ☐ AS-BUILT SURVEY OR SITE SURVEY PREPARED BY A LICENSED LAND SURVEYOR
- To be provided by KPB*

Nancy S. Whitmore
PROPERTY OWNER SIGNATURE

7-25-22
DATE

David Craig Whitmore
PROPERTY OWNER SIGNATURE

7/25/2022
DATE

FOR OFFICE USE ONLY

RECEIVED BY _____

DATE SUBMITTED _____

KPB FILE # _____

20.10.110. Building setback encroachment permits.

- A. Unless otherwise regulated by city zoning ordinances of properties within its boundaries, any person desiring to construct, or cause, an encroachment within a building setback shall apply for a building setback encroachment permit to the planning department. Failure to obtain an encroachment permit is subject to remedies set forth in KPB 20.10.030.
- B. A permit fee shall be charged for building setback encroachment permit as provided in the current approved Kenai Peninsula Borough Schedule of Rates, Charges and Fees. A person who fails to apply for, and obtain, a building setback encroachment permit prior to an enforcement notice being issued pursuant to KPB 21.50.100 is subject to enforcement.
- C. All building setback encroachments, including those that pre-date the effective date of this ordinance, must apply for a building setback encroachment permit. Permits for building setback encroachments that existed prior to the effective date of this ordinance shall pay the same permit fee as applies to permits received prior to placement or construction of the encroachment.
- D. When the building setback encroachment permit application is complete, it will be scheduled for the next available planning commission meeting.
- 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.
 - 2. The building setback encroachment may not interfere with sight lines or distances.
 - 3. The building setback encroachment may not create a safety hazard.
- 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.
- H. A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 21.20.210, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

July 25, 2022

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 St, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115.

At our meeting with representatives 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*.

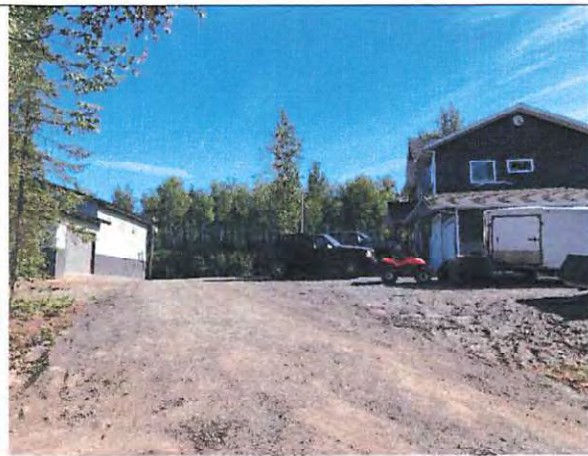
This violation was not intentional; it was a collective error in planning how to use our lot (Lot 10) to meet our objectives of building a detached garage, a home, and on-site well and septic systems. The lot is oddly shaped, with poor soils, having the useable area restricted by both Ross Dr. and GL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



Photo from Ross Dr looking at GL Hollier St.



GL Hollier St. looking south to Ross Dr.

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.

Hindman, Julie

From: Hindman, Julie
Sent: Tuesday, February 28, 2023 3:00 PM
To: Hindman, Julie
Subject: FW: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

From: Ogren, Eric <eogren@kpb.us>
Sent: Tuesday, July 19, 2022 10:59 AM
To: 'Nancy Whitmore' <nancywhitmore@gmail.com>
Cc: Hindman, Julie <jhindman@kpb.us>; Quainton, Madeleine <mquainton@kpb.us>
Subject: RE: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

Hello Nancy,

Email is a good method to communicate for me as well. We can meet and I can include the platting staff as well, as they are the experts. Do you have a date and time in mind, to meet?

Eric D. Ogren
Code Compliance Officer
Ph: (907) 714-2209
Fx: (907) 714-2378

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



From: Nancy Whitmore <nancywhitmore@gmail.com>
Sent: Tuesday, July 19, 2022 9:35 AM
To: Ogren, Eric <eogren@kpb.us>
Subject: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Are you able to meet with us in person to discuss this application for variance? We want to make sure that we do it correctly.--

We are very poor cell reception where we are currently staying, so it is probably best to respond via email.

Thank you.

Nancy and Craig. Whitmore

P.O. Box 1984
Homer, AK 99603

907-299-7717
907-299-5352

Hindman, Julie

From: Hindman, Julie
Sent: Tuesday, February 28, 2023 2:59 PM
To: Hindman, Julie
Subject: FW: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

From: Ogren, Eric <eogren@kpb.us>
Sent: Tuesday, July 19, 2022 11:32 AM
To: 'Nancy Whitmore' <nancywhitmore@gmail.com>
Cc: Piagentini, Vincent <vpagentini@kpb.us>; Quainton, Madeleine <mquainton@kpb.us>
Subject: RE: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

Hello Nancy,

Most have on open schedule for Friday at 10:00 am, is that fit with your schedule?

Eric D. Ogren
Code Compliance Officer
Ph: (907) 714-2209
Fx: (907) 714-2378

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99660



From: Nancy Whitmore <nancywhitmore@gmail.com>
Sent: Tuesday, July 19, 2022 11:25 AM
To: Ogren, Eric <eogren@kpb.us>
Subject: Re: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

We are very flexible after Thursday. We will work with whatever schedule you can set up for a meeting.

We look forward to having our questions answered.

Thank you!

On Tue, Jul 19, 2022 at 10:58 AM Ogren, Eric <eogren@kpb.us> wrote:

Hello Nancy,

Email is a good method to communicate for me as well. We can meet and I can include the platting staff as well, as they are the experts. Do you have a date and time in mind, to meet?

Eric D. Ogren

Code Compliance Officer

Ph: (907) 714-2209

Fx: (907) 714-2378

KENAI PENINSULA BOROUGH
144 North Sinklay Street
Seldovia, Alaska 99649



From: Nancy Whitmore <nancywhitmore@gmail.com>
Sent: Tuesday, July 19, 2022 9:35 AM
To: Ogren, Eric <eogren@kpb.us>
Subject: <EXTERNAL-SENDER>Questions re application for variance - Whitmore

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Are you able to meet with us in person to discuss this application for variance? We want to make sure that we do it correctly.--

We are very poor cell reception where we are currently staying, so it is probably best to respond via email.

Thank you.

Nancy and Craig. Whitmore

P.O. Box 1984

Homer, AK 99603

907-299-7717

907-299-5352

--

Nancy S. Whitmore
Whitmore Appraisal Services

P.O. Box 1984
Homer, AK 99603

907-299-7717

Hindman, Julie

From: Quainton, Madeleine
Sent: Thursday, February 23, 2023 11:25 AM
To: Hindman, Julie
Subject: FW: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception
Attachments: Application for 20' Setback Exception KPB July 2022.pdf

Madeleine

From: Nancy Whitmore <nancywhitmore@gmail.com>
Sent: Tuesday, July 26, 2022 10:58 AM
To: Quainton, Madeleine <mquainton@kpb.us>
Subject: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Thank you for meeting with us last Friday. We are grateful for the information provided as we navigate this process.

Attached please find our comments / justification. Please include this with our application.

Let me know if there is anything else we need to do.

--

Nancy S. Whitmore

P.O. Box 881
Soldotna, AK 99669

907-299-7717

July 25, 2022

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 St, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115.

At our meeting with representatives 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 objectives 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.



Photo from Ross Dr looking at GL Hollier St.



GL Hollier St. looking south to Ross Dr.

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.

Hindman, Julie

From: Quainton, Madeleine
Sent: Thursday, February 23, 2023 11:25 AM
To: Hindman, Julie
Subject: FW: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

Madeleine

From: Quainton, Madeleine
Sent: Thursday, July 28, 2022 8:11 AM
To: 'Nancy Whitmore' <nancywhitmore@gmail.com>
Subject: RE: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

Hello Nancy,

Thank for you sending this on. Eric Ogren has sent the as built job out for bid to local surveyors. I have asked him to let me know when the as built is complete and then I can get you guys on the calendar for the next available meeting.

Thank you,

Madeleine

From: Nancy Whitmore <nancywhitmore@gmail.com>
Sent: Tuesday, July 26, 2022 10:58 AM
To: Quainton, Madeleine <mquainton@kpb.us>
Subject: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Thank you for meeting with us last Friday. We are grateful for the information provided as we navigate this process.

Attached please find our comments / justification. Please include this with our application.

Let me know if there is anything else we need to do.

--

Nancy S. Whitmore

P.O. Box 881
Soldotna, AK 99669

907-299-7717

Hindman, Julie

From: Quainton, Madeleine
Sent: Thursday, February 23, 2023 11:24 AM
To: Hindman, Julie
Subject: FW: <EXTERNAL-SENDER>Encroachment Survey - Ross Drive and GL Hollier St
Attachments: Asbuilt Lot 10 - 36602 GL Hollier St.pdf

Madeleine

From: Ogren, Eric <eogren@kpb.us>
Sent: Tuesday, September 27, 2022 9:40 AM
To: Piagentini, Vincent <vpiagentini@kpb.us>; Hindman, Julie <jhindman@kpb.us>; Quainton, Madeleine <mquainton@kpb.us>
Cc: Ruffner, Robert <RRuffner@kpb.us>
Subject: FW: <EXTERNAL-SENDER>Encroachment Survey - Ross Drive and GL Hollier St

Hello All,

The attached is the As-built for the 20ft building setback for David and Nancy Whitmore Exception application. Madeleine please set for the next available meeting

Eric D. Ogren
Code Compliance Officer
Ph: (907) 714-2209
Fx: (907) 714-2378

KENAI PENINSULA BOROUGH
144 North Sinkley Street
Soldotna, Alaska 99669



From: JASON SCHOLLENBERG <jason@peninsulasurveying.com>
Sent: Tuesday, September 27, 2022 8:33 AM
To: Ogren, Eric <eogren@kpb.us>
Subject: Re: <EXTERNAL-SENDER>Encroachment Survey - Ross Drive and GL Hollier St

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Eric,
I don't think there is a need to track down the legal document at this time.

Here is the asbuilt for Lot 10. The structures in Lot 9 and Lot 12 are outside of the 20' setback. Let me know if you need anything else for those.

Thanks

Jason Schollenberg, PLS

Peninsula Surveying, LLC
10535 Katrina Blvd
Ninilchik, AK 99639

Phone: (907)306-7065
Fax: (907) 567-1017

On Tue, Sep 27, 2022 at 8:00 AM Ogren, Eric <eogren@kpb.us> wrote:

Good Morning Jason,

I had the same question and have received a decision from the KPB legal dept. It is to be considered a 20ft Building set back based on 1969 planning commission decision. If you need the documentation, I will see if A. Walker Steinhage, Deputy Borough Attorney will allow the release of his findings.

Eric D. Ogren

Code Compliance Officer

Ph: (907) 714-2209

Fx: (907) 714-2378

KENAI PENINSULA BOROUGH
144 North Sinkley Street
Seldotna, Alaska 99669



From: JASON SCHOLLENBERG <jason@peninsulasurveying.com>

Sent: Monday, September 26, 2022 4:52 PM

To: Ogren, Eric <eogren@kpb.us>

Subject: Re: <EXTERNAL-SENDER>Encroachment Survey - Ross Drive and GL Hollier St

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Eric,

Do you have any updated documentation about the building setbacks along GL Hollier St? The plat notes say that the setback along the ROW should be 25ft. I'm wondering if you want to stick with the 25ft, or if there is something else stating that we are going with the standard 20ft? I'm asking because the house on lot 9 is 24.2ft from the ROW.

Thank You

Jason Schollenberg, PLS

Peninsula Surveying, LLC

10535 Katrina Blvd

Ninilchik, AK 99639

Phone: (907)306-7065

Fax: (907) 567-1017

On Mon, Sep 26, 2022 at 7:23 AM JASON SCHOLLENBERG <jason@peninsulasurveying.com> wrote:

Eric,

I'll get them finished up in the next day or two. Thanks for your patience.

Jason Schollenberg, PLS

Peninsula Surveying, LLC

10535 Katrina Blvd

Ninilchik, AK 99639

Phone: (907)306-7065

Fax: (907) 567-1017

On Tue, Sep 20, 2022 at 12:08 PM Ogren, Eric <eogren@kpb.us> wrote:

Hello Jason,

How are you doing? Have you had an opportunity to make the As-builts for the GL Hollier and Ross surveys? One of the land owners has applied for the building setback variance, all ready, and is wanting to get the meeting scheduled. Please let me know, thank you

Eric D. Ogren

Code Compliance Officer

Ph: (907) 714-2209

Fx: (907) 714-2378

KENAI PENINSULA BOROUGH
144 North Sinkley Street
Soldotna, Alaska 99669



From: JASON SCHOLLENBERG <jason@peninsulasurveying.com>

Sent: Saturday, September 10, 2022 3:20 PM

To: Ogren, Eric <eogren@kpb.us>

Subject: Re: <EXTERNAL-SENDER>Encroachment Survey - Ross Drive and GL Hollier St

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

I didn't get them, but I can go back out and pick them up. I'll put together an asbuilt drawing for anything in the setbacks.

Jason Schollenberg, PLS

Peninsula Surveying, LLC

10535 Katrina Blvd

Ninilchik, AK 99639

Phone: (907)306-7065

Fax: (907) 567-1017

On Sat, Sep 10, 2022 at 1:35 PM Ogren, Eric <eogren@kpb.us> wrote:

Hello Jason

There is building set backs along Ross and GL Hollier and the buildings are believed to be too close to the ROW within the 20ft Setback. Do you have the measurements from the ROW to show if the structures are or are not in the setback. Thanks

Sent from my iPhone

On Sep 10, 2022, at 11:44 AM, JASON SCHOLLENBERG
<jason@peninsulasurveying.com> wrote:

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Eric,

I surveyed lots 9,10, and 12 on Ross Drive. There weren't any encroachments on Ross Drive or GL Hollier St. I flagged up the ROW and took a few pictures. I'm not planning on doing a drawing, as it won't show anything but lot lines.

Thank You

Jason Schollenberg, PLS
Peninsula Surveying, LLC
10535 Katrina Blvd
Ninilchik, AK 99639

Phone: (907)306-7065
Fax: (907) 567-1017

SPORTS LAKE

N86°28'00"E 98.70'

N00°32'00"E 98.40'

GOVT LOT 10

LAKE ESTATES SUBDIVISION

LOT 10

LOT 11

N00°09'00"E 290.80'

N 60°30'40.20"
W 151°02'53.15"

LOT 9

GL HOLLIER ST

SHOP

N 60°30'39.14"
W 151°02'53.18"

ROSS DRIVE

- NOTES
1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
 2. BUILDING DIMENSIONS ARE TO THE FACE OF THE BUILDING.
 3. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT KN 1648.

LEGEND

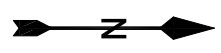
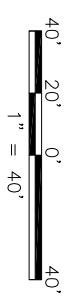
● FOUND REBAR

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 09/26/2022.

Jason L. Schollenberg 09/27/2022

JASON L. SCHOLLENBERG DATE
PLS 14488-S



PENINSULA SURVEYING, LLC 10535 KATRINA BOULEVARD NINILCHIK, AK 99639 (907)306-7065	
AS-BUILT SURVEY LOT 10, LAKE ESTATES SUBDIVISION SECTION 21, T5N, R10W, S.M.	
SCALE: 1" = 40'	DATE: 09/27/2022
DRAWN: JLS	SHEET: 1 OF 1

Hindman, Julie

From: Quainton, Madeleine
Sent: Thursday, February 23, 2023 11:22 AM
To: Hindman, Julie
Subject: FW: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception
Attachments: Notice Public.pdf

Madeleine

From: Quainton, Madeleine
Sent: Friday, October 7, 2022 12:05 PM
To: 'Nancy Whitmore' <nancywhitmore@gmail.com>
Subject: RE: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

Hi Nancy,

Craig left a message for Eric asking if the meeting date had been scheduled for your building setback permit yet and it has. I sent a letter out on Monday so you should see that in the mail very soon. I have attached a copy to this email as well. The meeting will be October 24th at 7:30 and you can attend in person or by ZOOM.

Thank you,

Madeleine

From: Quainton, Madeleine
Sent: Thursday, July 28, 2022 8:11 AM
To: 'Nancy Whitmore' <nancywhitmore@gmail.com>
Subject: RE: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

Hello Nancy,

Thank for you sending this on. Eric Ogren has sent the as built job out for bid to local surveyors. I have asked him to let me know when the as built is complete and then I can get you guys on the calendar for the next available meeting.

Thank you,

Madeleine

From: Nancy Whitmore <nancywhitmore@gmail.com>
Sent: Tuesday, July 26, 2022 10:58 AM

To: Quainton, Madeleine <mquainton@kpb.us>

Subject: <EXTERNAL-SENDER>Whitmore Justification for Application for 20' Setback Exception

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Thank you for meeting with us last Friday. We are grateful for the information provided as we navigate this process.

Attached please find our comments / justification. Please include this with our application.

Let me know if there is anything else we need to do.

--

Nancy S. Whitmore

P.O. Box 881
Soldotna, AK 99669

907-299-7717



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Mike Navarre
Borough Mayor

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF BUILDING SETBACK ENCROACHMENT PERMIT

Public notice is hereby given that a building setback encroachment permit application was received on 9/27/2022. You are being sent this notice because you are within 600 feet of the subject parcel and are invited to comment.

The building setback encroachment permit application is for the following property:

Request / Affected Property: Allows a 9.4 feet by 49 feet portion of a shop to remain in the building setback granted on Lake Estates Subdivision K-1648.

KPB File No. 2022-121

Petitioner(s) / Land Owner(s): David and Nancy Whitmore of Soldotna, AK.

Purpose as stated in 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 St, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115. At our meeting with representatives 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 objectives 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. 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.

Building setback encroachment permit reviews are conducted in accordance with KPB Subdivision Ordinance.

Public hearing will be held by the Kenai Peninsula Borough Planning Commission on **Monday, October 24, 2022**, commencing at **7:30 p.m.**, or as soon thereafter as business permits. The meeting is being held in person at the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, Alaska and remotely through Zoom.

To attend the meeting using Zoom from a computer visit <https://us06web.zoom.us/j9077142200>. You may also connect to Zoom by telephone, call toll free **1-888-788-0099** or **1-877-853-5247**. If calling in you will need the Meeting ID of 907 714 2200. Additional information about connecting to the meeting may be found at <https://www.kpb.us/planning-dept/planning-commission>.

Anyone wishing to testify may attend the meeting in person or through Zoom. Written testimony may be submitted by email to planning@kpb.us, or mailed to the attention of Madeleine Quainton, Kenai Peninsula Borough Planning Department, 144 N. Binkley Street, Soldotna, Alaska 99669. [Written comments may also be sent by Fax to 907-714-2378]. All written comments or documents must be submitted by **1:00 PM, Friday, October 21, 2022**. The deadline to submit written comments or documents does not impact the ability to provide verbal testimony at the public hearing.

Additional information such as staff reports and comments are available online. This information is available the Monday prior to the meeting and found at <https://kpb.legistar.com/Calendar.aspx>. Use the search options to find the correct timeframe and committee.

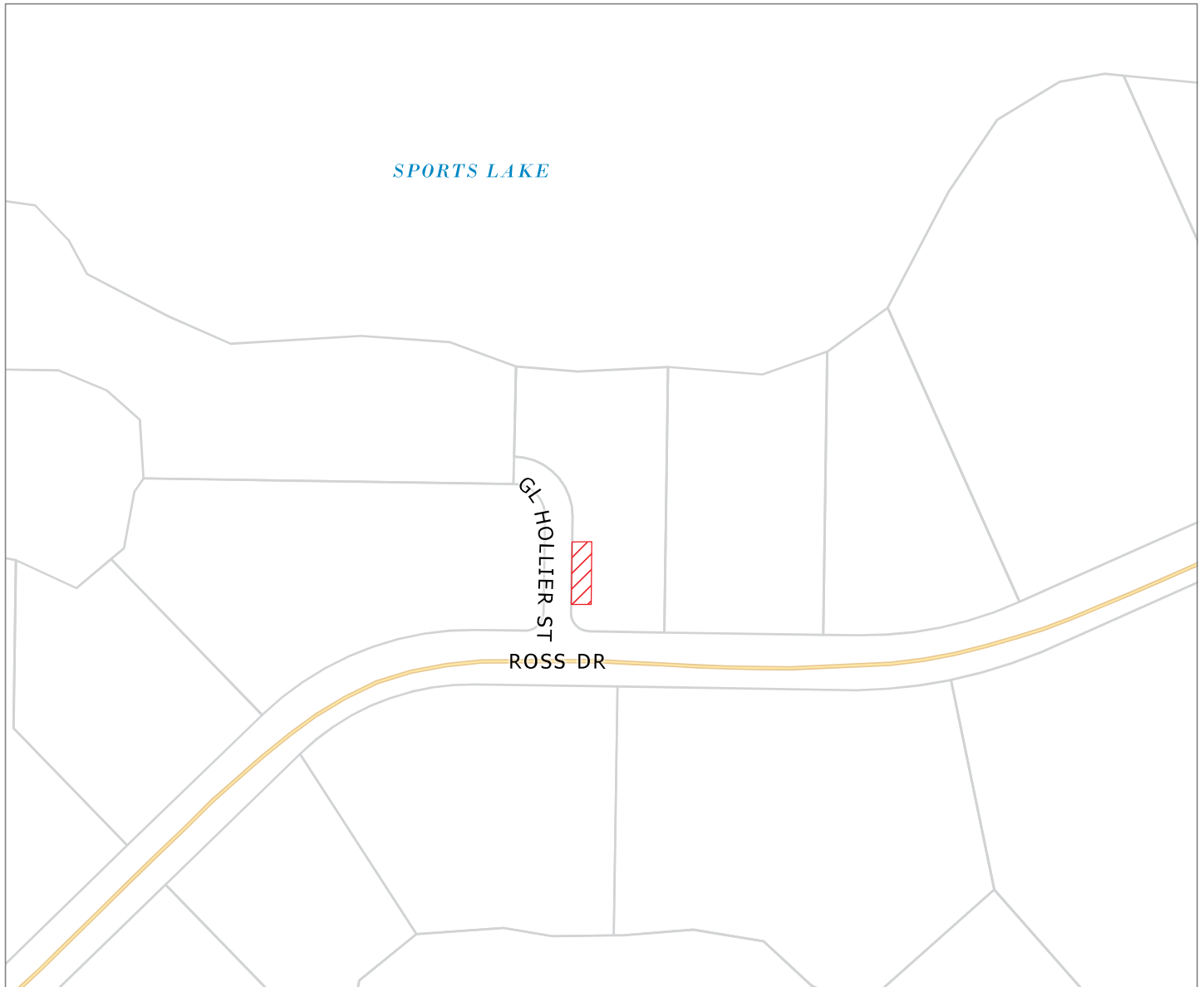
For additional information contact Madeleine Quainton (mquainton@kpb.us) or Julie Hindman (jhindman@kpb.us), Planning Department, 714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough).

Mailed 10/4/2022



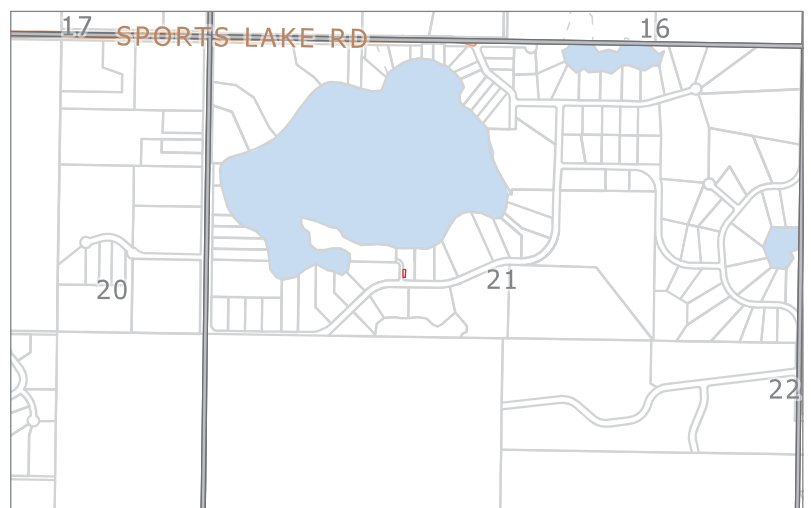
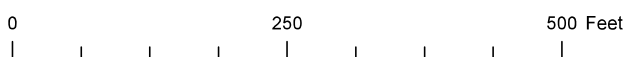
Kenai Peninsula Borough Planning Department

Vicinity Map



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

9/28/2022



SPORTS LAKE

S86°01'00"E 68.25' N86°28'00"E 98.70'

GOVT LOT 10

N00°32'00"E 98.40'

R=65.00'
L=101.65'

LAKE ESTATES SUBDIVISION

LOT 10

LOT 11

N00°09'00"E 105.60'
N 60°30'40.20"
W 151°02'53.15"
N00°09'00"E 290.80'

LOT 9

GL HOLLIER ST

SHOP

10.2'
10.7'
20' BUILDING SETBACK
N 60°30'39.14"
W 151°02'53.18"
R=31.40'
L=31.40'
S89°51'00"E 82.7'

ROSS DRIVE 60'

KPB 2022-121

NOTES

1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
2. BUILDING DIMENSIONS ARE TO THE FACE OF THE BUILDING.
3. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT KN 1648.

LEGEND

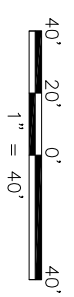
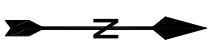
● FOUND REBAR

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 09/26/2022.

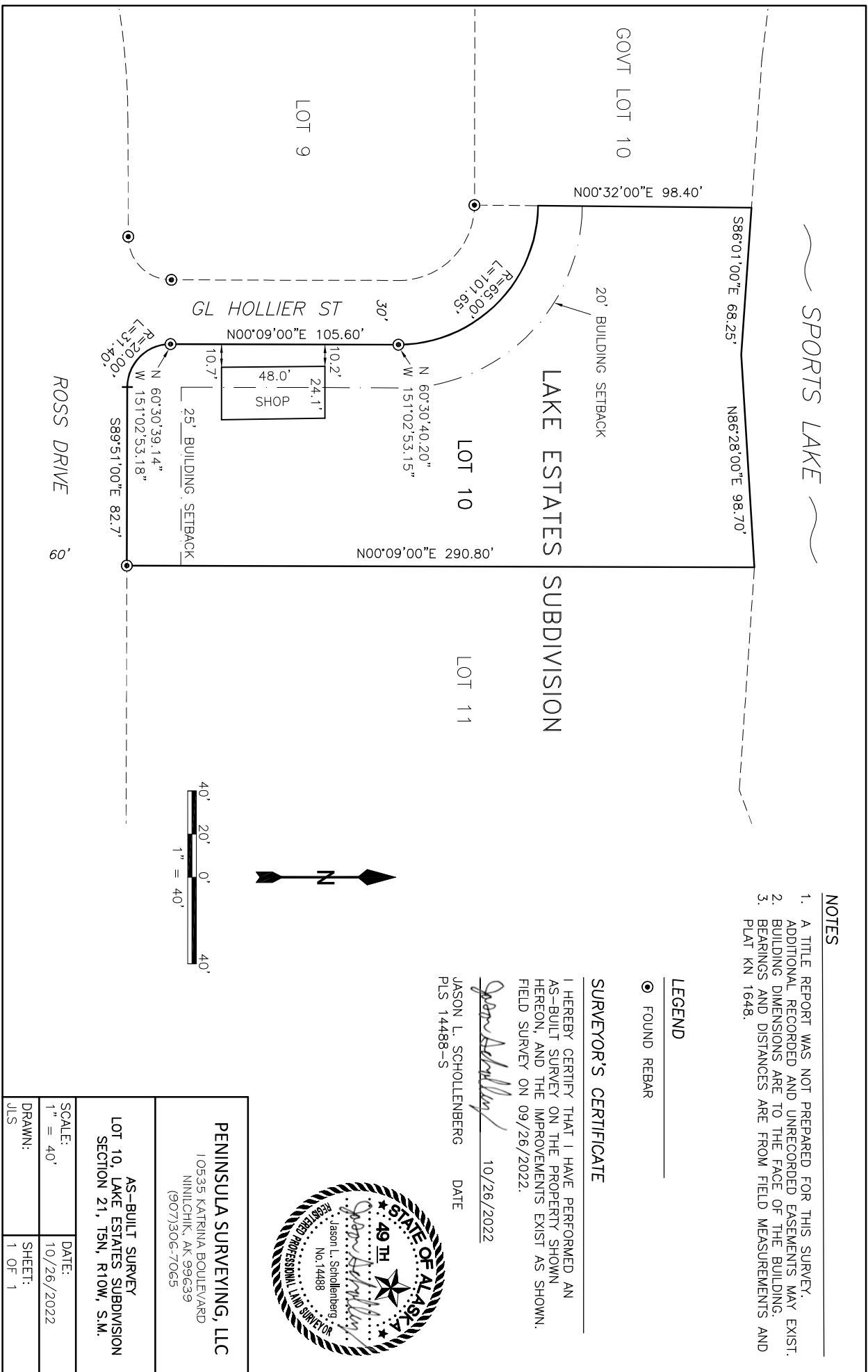
Jason L. Schollenberg 09/27/2022

JASON L. SCHOLLENBERG DATE
PLS 14488-S



PENINSULA SURVEYING, LLC 10535 KATRINA BOULEVARD NINILCHIK, AK 99639 (907)306-7065	
AS-BUILT SURVEY LOT 10, LAKE ESTATES SUBDIVISION SECTION 21, T5N, R10W, S.M.	
SCALE: 1" = 40'	DATE: 09/27/2022
DRAWN: JLS	SHEET: 1 OF 1

SPORTS LAKE



NOTES

1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
2. BUILDING DIMENSIONS ARE TO THE FACE OF THE BUILDING.
3. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT KN 1648.

LEGEND

- FOUND REBAR

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 09/26/2022.

Jason L. Schollenberg 10/26/2022

JASON L. SCHOLLENBERG DATE
PLS 14488-S

KENAI PENINSULA BOROUGH

ORDINANCE NO. 26

AN ORDINANCE RELATING TO SUBDIVISION PLATS AND PLATTING.

BE IT ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH;

Section 1. Title 20 of the Kenai Peninsula Borough Code of Ordinances is amended by adding a new chapter to read;

CHAPTER 15. PLATTING

ARTICLE I - GENERAL PROVISIONS

20.15.010 Purpose. The purpose of this chapter is to promote an adequate and efficient street and road system, to prevent congestion on streets and promote traffic safety, to secure desirable public spaces, to insure the proper distribution of population, to provide for adequate utilities and public improvements, to insure the accurate survey and proper preparation of plats, and to protect and improve the health, safety and general welfare of the people.

20.15.015 Authority. This chapter is adopted under the authority of AS 07.15.340 and AS 40.15.

20.15.020 Jurisdiction. This chapter shall govern subdivision of all land within the Kenai Peninsula Borough. No subdivision plat requiring commission approval may be recorded unless approved by the commission.

20.15.025 Plats required. No subdivision shall be approved by the commission except upon the submission of a plat prepared in accordance with section .035 - .070 of this chapter, provided;

(1) Subdivisions of land outside the limits of first class citites into aliquot parts no one of which is less than 40 acres hereby approved and no submission to the commission is required.

(2) Plats of subdivisions of lands outside the limits of first class citites into aliquot parts no one of which is less than 10 acres are not required to comply with the survey and monumentation provisions of Sec. .065.

(3) Subdivisions containing six or less parcels may be submitted, at the option of the subdivider, on a final plat omitting the preliminary plat required by sections .040 - .050.

20.15.030 Definitions. In this chapter unless otherwise provided or the context otherwise requires:

(1) "aliquot part" means a $1/2$, $1/4$, $1/8$, $1/16$, $1/32$, or $1/64$ th rectangular portion of a regular section, or regular part of a section, excluding fractional lots.

(2) "alley" means a public secondary access and utilities right-of-way.

(3) "block" means a piece or parcel of land entirely surrounded by public streets, streams, railroads, right-of-ways, and parks, etc., or a combination thereof.

(4) "commission" means Kenai Peninsula Borough Planning Commission.

(5) "cul-de-dac" means a short dead end street having a vehicular turn-around.

(6) "lot" means a protion of a subdivision intended as a unit for transfer of ownership or for building development.

(7) "lot depth" means the average distance from street right-of-way to the rear lot line, which is the lot line opposite and most distant from said street right-of-way.

(8) "lot width" means the distance between straight lines connecting front and rear lot lines at each side of the lot, measured between the mid-points of such lines.

(9) "Major street" means a street shown as a major street on the major street plan or comprehensive plan adopted by the Kenai Peninsula Borough.

(10) "planting strip" means a strip of land between the roadway and the sidewalk or sidewalk site.

(11) "roadway" means the portion of a street designate for vehicular traffic. Where curbs are laid it is the portion between curbs.

(12) "sidewalk" means the portion of a street or crosswalk intended for pedestrian use only.

(13) "street" is a general term used to describe a right-of-way serving as a means of vehicular and pedestrian travel, also furnishing spaces for sewers, public utilities and shade trees; includes avenues, boulevards, roads, lanes and other ways. Streets are classified as follows:

(A) Primary Arterial Streets (Highways) move through traffic to major traffic generators and from community to community.

(B) Community Arterial Streets collect and distribute traffic from higher type arterial highways to less important streets, or directly to traffic destinations and serve secondary traffic generators and traffic

from neighborhood to neighborhood within a community.
(To serve a maximum of 1500 lots or units.)

(C) Neighborhood Collector Streets collect and distribute traffic from higher-type arterial streets, to access streets, or directly to traffic destinations or serve neighborhood traffic generators. (To serve a maximum of 350 lots or units.)

(D) Commercial Access Streets provide access to commercial properties in business, commercial, and industrial areas.

(E) Residential Access Streets provide access to residential property. (To serve a maximum of 100 lots or units.)

(F) Marginal Access Streets are 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.

(14) "subdivider" means any person, group, corporation or other entity acting as a unit, or any agent thereof, dividing or proposing to divide lands so as to constitute a subdivision as defined herein.

(15) "subdivision" means the division of a tract or parcel of land into two or more lots, sites or other divisions for the purpose, whether immediate or future, of sale or building development, and includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or areas subdivided.

ARTICLE II. APPROVAL OF PLATS

20.15.035 Preliminary discussion. The subdivider is strongly urged to discuss informally his preliminary studies and layout with the commission in order to facilitate the preparation of the required plans and plats in accordance with this chapter and to avoid unnecessary delay and expense.

20.15.040 Preliminary plat.

(a) A subdivider shall prepare a preliminary plat of his proposed subdivision which shall comply with the requirements of sec. .045 and other pertinent provisions of this chapter except as provided in sec. .025.

(b) Six black or blue line prints or the preliminary plat shall be submitted to the commission.

(c) The fee established by the commission shall accompany the submission of the preliminary plat, except in the case of a final plat submitted under sec. .025 (3), the fee shall accompany the final plat.

(d) Upon submission of a plat subdividing land within a first class city the commission shall transmit three prints of the plat to the City Advisory Planning Commission for its review.

20.15.045 Preliminary plat - Form.

(a) The preliminary plat shall be drawn to scale of sufficient size to be clearly legible and shall show the following:

(1) Name of the subdivision. (The name shall not be the same as an existing city, town, tract or subdivision or land in the borough, of which a map or plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion.)

(2) Legal description, location, and total area in acres of the proposed subdivision.

(3) Name and address of owner, subdivider and engineer or land surveyor.

(4) Date and north point.

(5) The location, width and name of existing or platted streets and public ways within 300 feet of the subdivision, railroad rights-of-way and other important features such as section lines, political subdivision or municipal corporation boundaries.

(6) A vicinity map showing location of proposed subdivision in relation to surrounding countryside.

(7) All parcels of land intended to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision, together with the purposes, conditions or limitations of such reservations.

(8) Block and lot numbers and approximate dimensions and total numbers of proposed lots.

(9) The names and widths of public streets and alleys and easemental, existing and proposed, within the subdivision.

(10) Location of existing sewers, water mains, culverts, and other utilities within the subdivision and immediately adjacent thereto.

(11) Space for approval of this commission.

(12) A statement of proposed land uses.

(13) The names of adjacent subdivisions and plotted lots and streets or an indication that the adjacent land is not subdivided.

(14) Sufficient spot elevations or contours to determine the general slope of the land may be required by the commission.

(15) Approximate locations of areas subject to inundation or storm water overflow; the location, width, and direction of the flow of water courses; and if adjacent to tidewater, the line of higher high water

(b) Information which can not be practicably shown on the plat shall be presented in a written statement together with the following information:

(1) Proposed drainage and flood control measures.

(2) Information on proposed water supply. If such water supply is to be provided by:

(A) A public utility; a letter from the public utility should be submitted showing its ability to serve the proposed subdivision and evidence indicating that a satisfactory agreement has been entered into for such service.

(B) A mutual system, the subdivider shall give such guarantee or shall post such bond as deemed necessary to insure the installation of such system.

(3) Information on proposed sewage disposal system. If such system is to be provided by:

(A) A public utility, a letter from the public utility should be submitted showing its ability to serve the proposed subdivision;

(B) A mutual system, the subdivider shall give such guarantee or shall post such bond as deemed necessary to insure the installation of such system.

(4) Justification and reasons for any exception to the provisions of these rules and regulation.

20.15.050. Approval (a) Within 30 days after filing the commission shall determine whether the preliminary plat complies with the provisions of law and this chapter, and shall approve, conditionally approve, or disapprove it and notify the subdivider of its action. The commission's action shall be noted on two copies of the plat and one copy shall be returned to the subdivider.

(b) Approval of a preliminary plat shall not constitute approval of the final plat, but shall be deemed an expression of approval of the preliminary plat as a guide to the preparation of the final plat. Approval of the preliminary plat shall expire after one year unless a final plat is submitted to the commission for approval or the commission extends the time.

ARTICLE III. Final Plats

20.15.055. Filing: The final plat shall be prepared in accordance with Secs. 060 and .065 and the preliminary plat as

approved. The final plat may constitute only that portion of the preliminary plat which the subdivider proposes to record and develop at the time.

(b) The subdivider shall file the final plat together with four blue or black line prints having all required signatures affixed. The original and all copies shall be signed. If the subdivision is located within a first class city the subdivider shall also file a certificate of approval from the city that required improvements have been provided for.

(c) A certificate of the borough tax collector stating that all taxes levied upon the property within the subdivision have been paid shall be submitted with the final plat.

20.15.060 Form.

(a) The final subdivision plat shall be clearly and legibly drawn to scale upon tracing cloth, or on good quality polyester film (equal to Dupont Mylar). All lines, letters, figures, certifications, acknowledgments and signatures shall be made in permanent ink. The plat shall be so made, and shall be in such condition when filed, that legible prints and negatives can be made therefrom. Sheets shall be one of five sizes: 8 1/2" x 14"; 18" x 24"; 24" x 36"; 31 1/2" x 14" or 36" x 42". When more than one sheet is required an index sheet shall be filed showing the entire subdivision, indicating the portion contained on each sheet and each sheet showing the total number (e.g. sheet 1 of 3). When more than one sheet is submitted, all

sheets shall be the same size.

(b) The index sheet shall contain the name of the subdivision.

(c) Plats filed for the purpose of reverting subdivided land to acreage shall be conspicuously designated "THE PURPOSE OF THIS PLAT IS A REVISION TO ACREAGE".

(d) Sufficient data must be shown to determine readily the bearing and length of every lot line, block line, and boundary line. Dimensions of lots shall be given as net dimensions to the boundaries of adjoining streets and shall be shown in feet. No ditto marks shall be used. Bearings and distances of straight lines, and radii and arc length for all curves as may be necessary to determine the location of the centers of curves shall be shown.

(e) All linear measurements shall be shown to the nearest 1/10th foot, meaning plus or minus .05 feet. Minimum angle accuracy shall be the nearest minute, meaning plus or minus .5 minutes.

(f) All areas shall be shown to the nearest ten square feet or to the nearest one-thousandth of total acres.

(g) The map shall show the line of higher high water in case the subdivision is adjacent to tidewater and the areas subject to periodic inundation by flood water.

(h) The boundary of the tract shall be designated by a wider border and shall not interfere with the legibility of figures or other data.

(i) In tracts containing more than one block, blocks

shall be numbered in numerical order commencing with the numeral "1" with no omissions or duplications. Lot numbers shall begin with the number "1" in each block and shall continue consecutively with no omissions or duplication. If possible, each block should be shown entirely on one sheet; each lot shall be shown entirely on one sheet.

(j) The plats shall show the side lines of all street the total width of all streets, the width of the portion being dedicated, the width of existing dedications, and the width of any railroad right-of-way appearing on the plat.

(k) The plat shall show the side lines of all easements to which the lots are subject. The easement must be clearly labeled and identified and if already of record, the recorded reference given. If any easement is not definitely located of record, a statement of such easement must appear on the title sheet. Easements for storm drain sewers and other purposes shall be indicated by dotted lines of the same width as the lines denoting street boundaries. Distances and bearings on the side lines of lots which are cut by an easement; must be arrowed or so shown that the map will indicate clearly the actual lengths of the lot lines. The width of the easement and sufficient lengths and bearings of the lines thereof to definitely locate the easement with respect to the lot lines must be shown. If easements are being dedicated by the plat

They shall be properly shown in the owners

they shall be properly set out in the owner's certification of dedication.

(l) In order to avoid duplication, names to be used for new streets shall be subject to the approval of the commission.

(m) The plat shall show all other data that is or may be required by law.

(n) The final plat shall particularly define and delineate all lots intended for sale or reserved for private purposes, all parcels offered for dedication for any purpose, with all dimensions, boundaries and courses clearly shown and defined in every case.

(o) The following certificates and acknowledgements shall appear on the final plat, such certificates may be combined where appropriate.

(1) A certificate signed and acknowledged by all parties having any interest of record in the land subdivided, consenting to the preparation and recordation of said plat provided, however, that the signatures of parties owing the following types of interests may be omitted if their names and the nature of their interests are endorsed on the plat.

(A) Rights-of-way, easements or other interests, none of which can ripen into a fee.

(B) Rights-of-way, easements or reversions, which by reason of changed conditions, long disuse or laches appear to be no longer of practical use or value and which signature

it is impossible or impractical to obtain.
In this case, a reasonable statement of the
circumstances preventing the procurement of
the signatures shall be endorsed on the plat
(C) Dedication certificate; A certificate
signed and acknowledged offering for dedica-
tion for public use those certain parcels of
land which said parties are required to
dedicate. Example;

CERTIFICATE OF OWNERSHIP AND DEDICATION

I (We) hereby certify that I am (we are) the owner (s) of the property
shown and described hereon and that I (we) hereby adopt this plan of
subdivision, and dedicate all streets, alleys, walks, parks, utility ease-
ments, and other open spaces to public use.

Date _____, 19____.

Owner _____

STATE OF ALASKA)
 ; ss.
THIRD JUDICIAL DISTRICT)

On this _____ day of _____, 19____, before
me, the undersigned, a Notary Public for the State of Alaska, personally
appeared _____ to me known to be the person described
in and who executed the foregoing certificate of ownership and dedication,
and acknowledged to me that he executed the same as his free and voluntary
act.

Witness my hand and official seal the day, month and year
hereinabove written.

Notary Public for Alaska
My commission expires _____

(4) Engineer's Certificate: The final plat shall show the surveyor's seal and signature of the civil engineer or licensed surveyor responsible for the survey and final map.

(p) The following form of certification shall be printed on the final plat by the person preparing the plat, to be filled in after approval by the commission

PLAT APPROVAL

Plat approved by the commission this _____ day of --
_____, 19____.

Chairman

Secretary

20.15.065 Survey & Monumentation.

(a) All subdivisions shall be surveyed except as provided in sec. .025.

(b) The subdivision of sections into aliquot parts and the restoration of lost corners shall be performed in accordance with the U.S. Bureau of Land Management 1947 Manual of Surveying Instructions. All section subdivisions details executed as part of the surveyor's work shall be shown on the plat. A minimum survey accuracy of 1:5000 is required.

(c) All corners of aliquot parts over twenty (20) acres shall be capped monuments.

(d) All monuments shall be stamped with the date the identification of the monument and the registered number of the surveyor.

(e) All corners found and set shall be shown and described on the plat.

(f) Where monuments are set in untraveled areas the brass cap shall be two to six inches above the ground.

All monuments found and set shall be protected by a guard post of durable material. In traveled areas monuments shall be set 6" below the surface. Control points in roadways or traveled area need only be a two foot iron rod driven below the surface with at least two brass cap reference monuments on the adjacent property line.

(g) Every subdivision shall contain at least two intervisible monuments as a base line, but in the case of a resubdivision, the commission may waive additional monument installation if sufficient monuments already exist. As used in this particular paragraph, the words "monument" and "marker" shall be synonymous.

It is desirable that monuments be set at all exterior angle points in a subdivision. A three-quarter inch by thirty inch galvanized iron pipe shall be set in a manner similar to that described above at all exterior angle points which are not monumented. The distance and bearings between monuments shall be shown. The distance between required monuments shall be further than 1320' +/- . No part of any subdivision shall be

further than 1320' +/- from a monument. All monuments shall be tied to the subdivision lines. All lot corners shall be marked in a professional manner.

(h) True bearings and distances to the nearest established street lines and official GLO or BLM MONUMENTS shall be accurately described and delineated on the plat.

20.15.070 Approval.

(a) The commission shall approve or disapprove the plat of subdivision or dedication within 30 days after the filing thereof, or shall return such plat to the applicant for modification or correction within 30 days from the filing thereof; otherwise, such plat shall be deemed to have been approved and a certificate to the effect shall be issued by the commission on demand; provided, however, that the applicant for plat approval may consent to the extension of such period. The grounds of disapproval of any plat shall be stated upon the record of the commission and the applicant shall be advised of the commission's disapproval in writing.

(b) When the final plat has been approved by the commission, one copy shall be returned to the subdivider with the approval of the commission certified thereon. One copy shall be filed with the District Recorder by the commission within 10 days after approval unless the subdivider requests postponement. The original tracing containing the certification by the

commission will be retained by the commission. Plats will be furnished at cost.

ARTICLE IV. DESIGN REQUIREMENTS

20.15.075 Standards. In its consideration of subdivision plats the commission shall apply the following standards;

(1) Basic Considerations. The general requirements of the community, the particular requirements of the neighborhood, and the best use of the land to be subdivided. Particular attention shall be given to specific requirements for parks, playgrounds, school sites, public building sites, major streets, the adequacy of street connections and the suitability of the land for development.

(2) Large Lots. Subdivisions containing larger parcels than ordinary building lots may be required to allow for the opening of future streets and logical further subdivision.

(3) Reserved Strips. There shall be no reserve strips controlling access to land dedicated or intended to be dedicated to public use, except when the control and disposition of land comprising such strips is placed within the jurisdiction of the borough under conditions specified by the commission and attached to the final plat.

(4) The proposed street layout shall be made according to good land planning practice for the type development proposed and shall be co-ordinated with the street systems of the surrounding areas. All streets must provide for the continuation or appropriate projection of principal streets in surrounding areas and provide reasonable means of ingress

for surrounding acreage tracts.

(5) Restriction of Access to Major Streets. Residential lots fronting on major streets shall be provided with interior or frontage access unless, because of size, topography or other physical characteristics substantial hardship would result.

(6) Discouragement of Traffic. Residential access streets shall be so laid out that their use by through traffic will be discouraged.

(7) Partial Subdivision. Where the subdivision includes only a part of the subdivider's tract, street and utility system shall be considered in the light of proposed plans for the entire area.

(8) Intersections. There shall be a minimum number of intersections of residential streets with arterial or major streets.

(9) Alleys. Alleys shall be provided to the rear of all lots used for business purposes and shall not be provided in residential blocks, except where the subdivider produces evidence satisfactory to the commission and the advisory planning commission of the desirability of alleys. Where two alleys intersect, 10 foot radius corner cutoffs measured on the property lines from the point of intersection shall be required.

(10) Street Grades. Grades on arterial streets should not exceed six percent. Grades on other streets shall not exceed ten percent. To assure that this provision is satisfied, the commission may require spot elevation within proposed street right-of-ways.

(11) Cul-de-sacs. Streets designed to have one end permanently closed shall be not more than 600 feet long and shall be provided at the closed end with a suitable turn-around with a minimum radius of 50 feet to the property line.

(12) Half Streets. Where a dedicated half street or alley is adjacent to the tract to be subdivided, the other half of the street or alley shall be dedicated.

(13) Alignment and Visibility. Clear visibility, measured along the center line shall be provided for at least 600 feet on the community arterial streets; 400 feet on neighborhood collector streets; and 200 feet on all other streets.

(14) Street Widths. The minimum right-of-way width of streets shall be as follows:

Primary arterial street	100'
Community arterial street	80'
Neighborhood collector street	70'
Commercial access street	60'
Residential access street	50'
Cul-de-sacs	50'
Marginal access street	40'
Alleys	20'

(15) Curves

(15) Curves. Where a deflection angle of more than ten degrees in the alignment of a street occurs, a curve of reasonable radius shall be introduced. On streets 60 feet or more in width, the center line radius of curvature shall be not less than 300 feet; on other streets not less than 100 feet.

(16) Reverse Curve. Between reversed curves on all streets there should be a tangent at least 100 feet long.

(17) Street Intersection. Street intersections shall

be as nearly at right angles as possible, and no intersection shall be at an angle of less than 60 degrees.

(18) Grade at Intersections. Flat grades are preferred from 50 to 100 feet away from an intersection, but in no case shall grades exceed four percent for a distance of at least 100 feet from all intersections.

(19) Temporary Dead End Streets. Streets which are stub streets designed to provide future connection with adjoining areas must provide some type of temporary turnaround at the stub end.

(20) Street Names. Streets shall be named in such manner as to conform to adjacent areas and to avoid duplication.

(21) Layout. The length, width, and shapes of blocks shall be determined with due regard to the special needs of the types of use contemplated; to needs for convenient access and circulation; to topography; and to the conservation of building sites.

(22) Long Blocks. Long blocks shall be provided adjacent to main thoroughfares for the purpose of reducing the number of intersections; however, blocks shall not be less than 300 feet or more than 1400 feet in length unless existing conditions justify a variation from this requirement.

(23) Block Width. Blocks shall be wide enough to allow two tiers of lots of minimum depth, except when fronted on major streets, prevented by topographical conditions or size of the property, or other particular conditions.

(24) Business. Blocks planned for commercial use shall not be more than 600 feet or less than 300 feet in length.

(25) Pedestrian Ways. Pedestrian ways not less than ten feet wide shall be required in blocks longer than 600 feet where reasonably deemed necessary to provide circulation or access to schools, playgrounds, shopping centers, transportation or other community facilities

(26) Block Corners. At street intersections block corners maybe required to be rounded at the property lines by a radius of not less than 20 feet.

(27) Lot Dimensions. The size and shape of lots shall be such as proper for the locality in which the subdivision is located and in conformance with the requirements of any zoning ordinance effective for the area in which the proposed subdivision is located. In no case shall lot lines be less than 60 feet on the building line, nor the depth less than that necessary to provide 6,000 sq. ft., nor shall the depth be less than 85 feet not greater than three times the width, provided, however, that the commission may grant exception thereto where lots are located on , or adjacent to steep hillsides, lakes, rivers or creeks or where property is to be used for business or industrial purposes.

(28) Minimum Lot Size. Lots must contain a minimum of:

(A) 6,000 square feet if served by public water and sewer service,

(B) 9,600 square feet if the lots must have either

their own well or sewer disposal.

(C) 12,000 square feet if both the well and sewer disposal are to be provided on the lot.

In those cases where a subdivider wishes to provide lots smaller than 12,000 square feet but not less than 9,600 square feet, with each lot to be served by individual water and sewer disposal systems, the commission may allow such provided:

(A) Only every other lot may be built upon until a state approved community water or sewer system is funded. Those lots which may be built upon shall be determined by the commission through conference with the developer. Lots approved for building shall be so noted on the final plat, or

(B) The subdivider secures the approval of the State Health Department.

In those cases where a subdivider wishes to provide lots smaller than 9,600 square feet but not less than 7,200 square feet, with each lot to be served by individual water and sewer disposal systems, the commission may allow such provided:

(A) Only every other lot may be built upon until a state approved community water and sewer system is funded. Those lots which may be built upon shall be determined by the commission through conference with the developer. Said buildable lots shall be so noted on the final plat, or

(B) The subdivider secures the approval of the State Health Department.

(29) Access to Street. Each lot shall abut on a dedicated street.

(30) Corner Lots. A corner lot shall be at least 65 feet in width.

(31) Side Lot Lines. Side lines of lots shall be approximately at right angles or radial to the street line.

(32) Through Lots. Double frontage lots, with depths less than 250 feet will not be approved except where necessitated by topographic or other physical conditions.

(33) Building Set Back Lines. The commission shall require a minimum 20 foot building set back line for all residential lots, said set back to be maintained on all street frontages on corner lots.

ARTICLE V. IMPROVEMENTS & EXCEPTIONS

20.15.080 Improvements. No final plat of a subdivision located within a first class city shall be approved unless the subdivider has an agreement with the city providing for installation of all required improvements and evidence of such agreement shall have been filed with the commission.

20.15.085 Exceptions.

(a) The commission may authorize exceptions to any of the requirements set forth in these regulations. Application for any such exception shall be made by a verified petition of the subdivider, stating fully the grounds of the application and the facts relied upon. Such petition shall be filed with the preliminary plat of the subdivider. The commission shall

find the following facts before granting any exceptions:

(1) That special circumstances or conditions affect the property.

(2) That the exception is necessary for the preservation and enjoyment of a substantial property right of the petitioner.

(3) That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.

(b) The commission shall set forth any exception fully and specifically and may require such conditions as are necessary to preserve the intent of this chapter as to light, air, public health, safety, welfare and convenience. The commission may impose such restrictions necessary to insure that the exceptions and conditions are complied with.

Section 2. This ordinance shall become effective 30 days after enactment.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7th DAY OF MAY, 1968

/s/ Bob Ross
Assembly President

ATTEST:

/s/ Frances Brymer
Assembly Clerk

DESK PACKET

(MATERIALS SUBMITTED AFTER MEETING PACKET PUBLICATION)

G. OTHER

1. Remand Hearing

Building Setback Encroachment; KPB File 2022-121

Lot 10, Lake Estates Subdivision, Plat KN 1648

Applicants: David & Nancy Whitmore

General Location: GL Hollier Street

Ridgeway Area

(First Heard At October 24, 2022 PC Meeting)

MEMORANDUM

TO: Jeremy Brantley, Chair
Members, Kenai Peninsula Borough Planning Commission

FROM: A. Walker Steinhage, Deputy Borough Attorney

CC: Robert Ruffner, Director of Planning

DATE: September 25, 2023

SUBJECT: Setting the Remand Hearing Date in ITMO: Setback Encroachment Permit Along GL Hollier Street

The purpose of this scheduling discussion is for the Planning Commission to set a date to consider this matter consistent with the Office of Administrative Hearings's ("OAH") Decision. The Commission should not discuss the merits during the scheduling discussion.

On May 22, 2023, OAH Administrative Law Judge Lisa M. Toussaint issued her *Decision After Reconsideration* in the matter of the Commission's decision through Commission Resolution 2022-46 to approve Lot 10, Lake Estates Subdivision building setback encroachment permit located on GL Hollier Street, OAH No. 22-0925-MUN (the "OAH Decision"). The OAH Decision is attached. An excerpt from pages 17 through 20 of the OAH Decision is provided to highlight direction and guidance from OAH:

In deciding how to proceed on remand, the Borough is advised that the record developed before the Planning Commission to date is exceedingly sparse as to information relevant to *each* of the three criteria in KP.B 20.10.110(E). The Commission should be mindful that issuing a building setback encroachment permit is an exception to the rule prohibiting such encroachments. The Commission may only approve such an encroachment permit if there is substantial evidence showing that each of the three criteria is met – i.e., that the encroaching shop will not interfere with road maintenance, it will not interfere with sight lines or distances, and it will not create a safety hazard. If this threshold is not met as to any of the three criteria, the permit may not be issued. These are affirmative findings, and the applicant has the burden to demonstrate with substantial evidence that they are true. It is immaterial whether there is substantial evidence showing the opposite conclusion (that the shop will interfere with road maintenance, will interfere with sight lines or distances, and will create a safety hazard), because that is not the applicable standard. I caution the Commission against trying to do the required analysis under KP.B 20.10.110(E) with an extremely thin record.

Further, the Commission should be cognizant that it must apply each of the three criteria in KP.B 20.10.110(E). There is evidence that at least some Commissioners may have applied a different standard, rather than

those in KPB 20.10.110(E), in voting to approve the permit. Comments by Commissioner Morgan and Commissioner Gillham during the October 24, 2022 public hearing suggest they may have felt compelled to approve the permit because they believed the Whitmores' contractor was to blame for the shop encroaching into the setback.

...

But whether the contractor or the homeowner failed to determine that the shop would be an encroachment into the building setback is not relevant to the analysis under KPB 20.10.110(E). Thus, it cannot be used as an independent basis for the Commissioners to approve the permit.

I also am concerned that some Commissioners may have misunderstood how to evaluate whether road maintenance will be impacted by the present of the shop on Lot 10. A comment by Commissioner Stutzer suggests that the fact that the road is privately, rather than publicly, maintained may have influenced his vote on the permit[.]

...

But as Judge Sullivan correctly pointed out in the April 18, 2023 decision, it is immaterial for the analysis whether the road is privately or publicly maintained. The Planning Commissioner was required to determine whether the shop will interfere with road maintenance, irrespective of whether the road is publicly or privately maintained.

Finally, a comment by Commissioner Brantley suggests that he voted in favor of the permit because the encroachment was into the building setback, which is the Whitmores' private property, rather than into the public right-of-way.... But as explained previously, whether the encroachment is into the right-of-way is not the end of the analysis. Said another way, just because the property within the setback is the Whitmores' private property, it is not a foregone conclusion that the encroachment will interfere [*sic*] with road maintenance. The shop could interfere with snow removal, for example, if it is necessary for some snow to be placed in the setback to clear GL Hollier Street, and there is insufficient space within the setback to place the snow due to the presence of the shop. In any event, it is the Commissioners' responsibility to evaluate whether the presence of the shop on the setback will interfere with road maintenance, no matter the nature of the encroachment. It may well be the case that Commission [*sic*] will decide it needs more evidence to make an adequate finding in that regard.

....

There is not substantial evidence to support the Commission's conclusions that each of the mandatory standards in KPB 20.10.110(E) has been met. The matter is remanded to the Commission to (1) make additional findings and conclusions supported by substantial evidence in the existing record as to each of the three criteria in KPB 20.10.110(E), or, alternatively,

September 20, 2023

Re: Setting the Remand Hearing Date in

ITMO: Setback Encroachment Along GL Hollier Street

(2) KPB 20.10.110(E), take additional evidence from the parties and the public and make new findings and conclusions under each of the three criteria, based on the augmented record.

There are no items on the agenda for the Commission's regularly-scheduled meeting of October 9, 2023. As such, it is recommended the Commission first consider the viability of that date for the remand hearing. The other alternatives are to schedule the remand hearing for another regular meeting or to set a special meeting. The other matter for the Commission to decide is whether to reopen the record for additional evidence and, if so, the deadline for submittal. If the Commission elects to reopen the record, it should also consider and decide whether it desires a new staff report after additional information and investigation in light of OAH's guidance. Deputy Borough Attorney Todd Sherwood will attend to advise and assist the Planning Commission as needed.

Finally, this is a quasi-judicial matter. The Commission is reminded to be aware of and refrain from ex parte communication.

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
BEHALF OF THE KENAI PENINSULA BOROUGH PLANNING COMMISSION**

In the matter of the Kenai Peninsula Borough)
Planning Commission's decision to conditionally)
approve Lot 10, Lake Estates Subdivision Building)
Setback Encroachment Permit, KPB File)
2022-121; KPB Resolution 2022-46 located)
on GL Hollier Street,)
)
TROY & AUTUMN TAYLOR,)
)
Appellants.)
_____)

OAH No. 22-0925-MUN
Agency No. 2022-06-PCA

DECISION AFTER RECONSIDERATION

I. Introduction

Applicants David and Nancy Whitmore were granted a building setback permit by the Kenai Peninsula Borough Planning Commission on October 24, 2022. A garage the Whitmores built on their property encroaches into the building setback for the lot. Troy and Autumn Taylor own the residential lot across the street from the encroachment. They appealed the Planning Commission's decision, asserting among other things that KPB's setback requirements were disregarded. The case was fully briefed, and oral argument occurred. Based on that briefing, argument and record, the Planning Commission's decision approving the setback permit is remanded.

II. Facts and Proceedings

A. *The Property at Issue*

The Whitmores own Lot 10, Lake Estates Subdivision, per Plat Number K-1648, Records of the Kenai Recording District, Third Judicial District (KPB Parcel ID 05724008).¹ The appellants, the Taylors, own Lot 9, Lake Estates Subdivision (KPB Parcel ID 05724001).² Below is an aerial image of the parties' respective parcels, showing the approximate location of the Whitmore encroachment with red hash marks³

¹ Record (R.) 12, 26.

² T. 4, R. 26.

³ R. 16. The image was taken before the Whitmores constructed their encroaching building, and therefore does not depict it. *See also* R. 13.



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

R-16

The parties' respective parcels were created by the Lake Estates Subdivision Plat in 1969. Per that Plat, all lots within the subdivision, including Lots 9 and 10, were required to have 20-foot building setback limits from all interior sides and 25-foot building setback limits from all sides with street frontage. The owners also explicitly "dedicate[d] to public use and to the use of the public utilities the streets shown hereon."⁴ The strip of land referred to in this decision as the "GL Hollier Access," situated between the parties' lots, was dedicated as a 30-foot public use street and Ross Drive, the main roadway leading through the subdivision to the parties' parcels, was dedicated as a 60-foot public use street. The Lake Estates Subdivision Plat was ultimately approved by the KPB Planning Commission on September 8, 1969.⁵

⁴ R. 19.

⁵ R. 19, 20.

The 1969 KPB Planning Commission minutes approving the Plat acknowledged that the 30-foot road dedication to the Holliers' property did not meet the minimum width required for roads within the subdivision. The minutes approving the Plat state that "[t]he 30 foot road dedication to the Holliers [sic] 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."⁶ Moreover, the KPB staff report in this matter notes that the width is substandard and contends that a 20-foot setback is justified:

[t]he dedication for GL Hollier Street is only 30 feet wide. **The 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 width that was granted did not fit the width of any of the types of roads defined in the code. Per the staff report it appears an exception to width was granted. This right-of-way fits the definition of Marginal Access Streets in 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 the 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 the 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.⁷

During the fall of 2021, the Whitmores began prepping for construction of a 24-foot wide by 49-foot-long garage. They began pouring concrete on May 4, 2022. The Taylors saw the garage foundation being poured and realized that it was well within the subdivision's setback requirements per the Plat, and they immediately contacted a compliance officer in the KPB Planning Department. That person said it would take some time for the Borough to look into the issue. By the time the Borough sent staff out to investigate several weeks later, the walls on the garage were already constructed. Below are photos of what the construction project looked like by the time Planning Department staff came out to investigate.⁸

⁶ R. 20 (emphasis added).

⁷ R. 13 (emphasis added).

⁸ T. 2, 4-5; R. 12.



Page 1 of 4

R-12

On May 20, 2022, Mrs. Taylor again contacted the KPB Planning Department and spoke with the Department Director, Robert Ruffner. She asked why work was not being stopped on the Whitmores' garage. She also said that before construction got too far along, it seemed that the Whitmores should be told to stop construction so that the building could be moved to comply with the setback requirements. According to Mrs. Taylor, she was informed that the issue was with the KPB legal department, and they were investigating the setback requirements. She was also instructed that if there were further concerns, she and her husband would be notified by mail about a public hearing.⁹

By July 22, 2022, the Whitmores were actively preparing an application for a building setback encroachment permit. KPB also confirmed that a surveyor performing work for the Borough in the subdivision would prepare an as-built survey so that it could be used for their permit.¹⁰

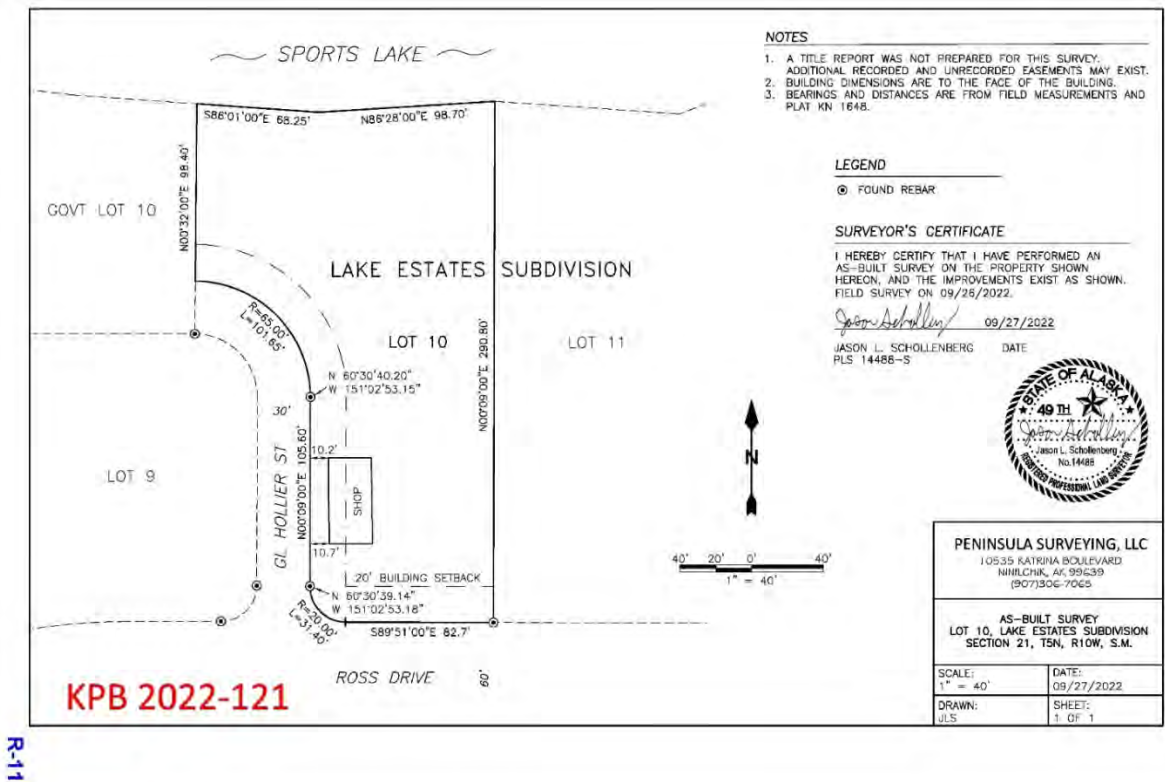
The as-built survey for Lot 10, which was prepared on September 27, 2022, shows that the Whitmores' garage is located between 10.2 feet and 10.7 feet from their property line and the edge of the 30-foot-wide GL Hollier Access. The survey also shows the setback as 20 feet along the two sides of the Whitmores' property.¹¹

⁹ *Id.*

¹⁰ R. 12.

¹¹ The Lake Estates Subdivision Plat indicated that all lots would have 20-foot building setback limits from all interior sides and 25-foot setback limits from all sides with street frontage. R. 19. Contrary to the Plat, KPB has taken the position that the setback requirement applicable to Lot 10 is a 20-foot setback along its sides at issue here. R. 11, 13.

A copy of the as-built survey is shown below:



The image below is an aerial image depicting the Taylors' Lot 9, the Whitmores' Lot 10, the parties' respective homes, the Whitmores' garage, and GL Hollier Street, located between the parties' respective properties.



As the record and argument at the hearing confirmed, the specific details of the Whitmores' garage are not disputed. The garage is 49 feet long by 24 feet wide and approximately 1,176 square feet. It has approximately 14-foot-high walls. It also has in-floor heating and a half bath. It has two garage doors for vehicles. One garage door opens onto Ross Drive and the second garage door opens onto GL Hollier Street across from the Whitmores' home. Mrs. Whitmore has indicated that she intends to use the garage entrance opening onto GL Hollier Street to house her personal vehicle.¹²



On October 4, 2022, the KPB Planning Department published notice that it had received an encroachment permit application from the Whitmores for their garage. Nearby property owners were also informed that the Planning Commission would hold a public hearing regarding the Whitmores' application for an encroachment permit on October 24, 2022.¹³

B. The Proceedings Before the Commission

The Whitmores' application for an encroachment permit was heard before the KPB Planning Commission on October 24, 2022. Eleven of the twelve Commission members participated, as did Nancy Whitmore, Troy Taylor and KPB Planning Department staff.¹⁴ Prior to the meeting, the KPB staff report regarding the permit was circulated and provided to the

¹² R. 12 – 15; T. 4; Taylors' Opposition to Motion to Dismiss at 18. In addition to the concrete foundation for the garage itself, there is also a concrete generator pad along the wall bordering GL Hollier Street. T. 5 - 6.

¹³ R. 22 - 28. As the notice indicated, the Whitmores' application was received by the Planning Department on September 27, 2022. R. 22.

¹⁴ R. 29 – 33.

Commission members.¹⁵ Although the KPB staff report describes the encroaching structure as a “shed,”¹⁶ the building is in fact a detached “garage/shop,” as Mrs. Whitmore herself confirmed in testimony before the Commission.¹⁷ The staff report recommended adopting the encroachment permit application, as Resolution 2022-46, subject to compliance with KPB 20.10.110, Sections F and G.¹⁸

Per KPB 20.10.110(E), the Commission was required to apply the three standards in considering the permit application: 1) the building setback encroachment may not interfere with road maintenance; 2) the building setback encroachment may not interfere with sight lines or distances; and 3) the building setback encroachment may not create a safety hazard.

After some discussion and questioning by the Commission members, a vote was taken and the Whitmores’ application for the permit was unanimously approved.¹⁹ In doing so, the Commission adopted each of the findings proposed by the Planning Department staff in its staff report and placed the following conditions on the permit’s approval:

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

Findings:

10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
12. The road is constructed by privately maintained [sic].²⁰
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.

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

Findings:

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 [sic].

¹⁵ R. 12 – 20.

¹⁶ R. 13.

¹⁷ R. 31; T. 3.

¹⁸ R. 15.

¹⁹ R. 1 (Planning Commission Resolution 2022-46).

²⁰ It is inferred that this finding was intended to state that “the road is 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.
- Standard 3. The building setback encroachment may not create a safety hazard.

Findings:

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 [sic].
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.

The approval is subject to:

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).
2. That any new, replacement and/or additional construction will be subject to the twenty-foot building setback limit.
3. That the twenty-foot building setback shall apply to the remainder of said lot.
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.
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.
6. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.²¹

C. The Proceedings During This Appeal

The Taylors, acting *pro se*, timely appealed the Commission's approval of the Whitmores' encroachment permit. They alleged several errors regarding the Commission's

²¹

R. 2 – 3.

findings, and claimed that “all parties involved in the building of this shop disregarded the requirements after it was brought to their attention. . .”²² The matter was then referred to the Office of Administrative Hearings (OAH).²³ Entries of appearance were subsequently filed by Deputy KPB attorney, A. Walker Steinhage, and by Craig and Nancy Whitmore.²⁴

The day after the case was referred to OAH, and before the record was produced, KPB filed a motion to dismiss the Taylors’ appeal and to stay of production of the record.²⁵ The Taylors submitted an opposition to the motion and provided supporting documentation.²⁶ The Administrative Law Judge denied KPB’s motion to dismiss.²⁷

KPB then produced an initial 33-page record, and a 14-page transcript from the public hearing in the matter before the Planning Commission.²⁸ Next, KPB filed a motion to strike what it alleged was improperly submitted new evidence from the Taylors and, a motion for reconsideration of the earlier order denying its motion to dismiss.²⁹ Both motions were denied.³⁰

A telephonic hearing was held on February 23, 2023. Following the hearing, an order was issued expanding the record with additional specific items, including items required by KPB 21.20.270(A), such as the Whitmores’ original encroachment permit application and supporting information, and portions of the 1968 KPB Code referenced in the briefing and at the hearing.³¹

III. Discussion

A. Procedural and Substantive Requirements

KPB procedures for addressing encroachment issues along lot lines are contained in KPB Title 20, Chapter 10. KPB 20.10.010 specifies that “[t]he purpose of this title is to promote an adequate and efficient street and road system, to provide necessary easements, to provide

²² Appeal of Planning Commission Decision (November 8, 2022).

²³ Case Referral Notice (December 1, 2022).

²⁴ Notice and Copies of Entries of Appearance (November 30, 2022). At the hearing, Mr. Whitmore confirmed that his middle name is Craig, his first name is David, and that he generally uses his middle name.

²⁵ Motion to Dismiss and Request to Stay Record Preparation (December 2, 2022). The primary contention of the motion to dismiss was lack of standing.

²⁶ Taylors’ Opposition to Motion to Dismiss (December 12, 2022).

²⁷ Order Denying KPB’s Motion to Dismiss. As the order noted, the Taylors, as the Whitmores’ neighbors closest to the encroachment, plainly have standing.

²⁸ Appeal Record (December 21, 2022), R. 1 – 56.

²⁹ Motion to Strike Improperly-Submitted New Evidence and Motion for Reconsideration (December 28, 2022).

³⁰ Order Denying Motions.

³¹ Order for Supplementation of the Record and Opportunity to Object (February 23, 2023).

minimum standards of survey accuracy and proper preparation of plats, and to protect and improve the health, safety and general welfare of the people.”³²

Encroachment permits under Title 20, Chapter 10, are required any time a person seeks to construct, or cause an encroachment within a building setback. When that occurs, a person must apply for an encroachment permit from the KPB Planning Department.³³ After the application is filed, it is then scheduled to be heard at the next available meeting of the KPB Planning Commission.³⁴

The Planning Commission is required to either approve or deny the permit application, considering at the three criteria set out in Part II-B above.³⁵ Its decision is appealable to a hearing officer.³⁶

B. Standard of Review

The applicable standards of review for the approval of the encroachment permit are set by the KPB Code. On purely legal issues, the standard of review is one of independent judgment. However, “due consideration shall be given to the expertise and experience of the planning commission in its interpretations of KPB titles 20 and 21.”³⁷

As to findings of fact, the hearing officer shall defer to the Planning Commission if they are supported in the record by substantial evidence.³⁸ “Substantial evidence” is “relevant evidence a reasonable mind might accept as adequate to support a conclusion.”³⁹ Thus, the substantial evidence standard requires the reviewer to uphold the original factual findings if they are supported by substantial evidence, even if the reviewer may have a different view of the evidence.

In a case reviewed on the substantial evidence standard, “[i]t is not the function of the [hearing officer] to reweigh the evidence or choose between competing inferences, but only to determine whether such evidence exists.”⁴⁰ This said, if substantial evidence in the

³² KPB 20.10.010.

³³ KPB 20.10.110(A).

³⁴ KPB 20.10.110(D).

³⁵ KPB 20.10.110(E).

³⁶ KPB 20.10.110(H).

³⁷ KPB 21.20.320(1).

³⁸ KPB 21.20.320(2).

³⁹ KPB 21.20.210(7).

⁴⁰ *Interior Paint Co. v. Rodgers*, 522 P.2d 164, 170 (Alaska 1974).

record does not support the Commission's findings the hearing officer may make a different finding on the factual issues based on substantial evidence in the record.⁴¹ Alternatively, the hearing officer has discretion to remand the matter to the Commission for new findings.⁴²

When evaluating whether evidence for a finding is substantial, it is proper to "take into account whatever in the record fairly detracts from its weight."⁴³ The Alaska Supreme Court has adopted the requirement of substantial evidence in light of the whole record,⁴⁴ citing approvingly to the U.S. Supreme Court's discussion of this issue:

Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting a Labor Board decision merely on the basis of evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the new legislation definitely precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. This is clearly the significance of the requirement in both statutes that courts consider the whole record....

To be sure, the requirement for canvassing "the whole record" in order to ascertain substantiality does not ... mean that even as to matters not requiring expertise a court may displace the Board's choice between two fairly conflicting views even though the court would justifiably have made a different choice had the matter been before it de novo. Congress has merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view.⁴⁵

C. Analysis

1. The depth of the setback

There is a question as to whether the depth of the building setback on Lot 10 is 20 feet or 25 feet. The plat establishing the Lake Estates subdivision in 1969 does not depict a setback on GL Hollier Street, but it does show a 25-foot setback on Ross Drive.⁴⁶ The plat also contains a plat note

⁴¹ KPB 21.20.320(3).

⁴² *Id.*

⁴³ *Lopez v. Administrator, Public Employees' Retirement System*, 20 P.3d 568, 571 (Alaska 2001).

⁴⁴ *Keiner v. City of Anchorage*, 378 P.2d. 406 (Alaska 1963).

⁴⁵ *Delaney v. Alaska Airlines*, 693 P.2d 859, 863, n.2 (Alaska 1985) *overruled on other grounds* 741 P.2d 634, 639 (Alaska 1987) (quoting approvingly, *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487-90, 71 S.Ct. 456, 464-66, 95 L.Ed. 456, 467-68 (1950)).

⁴⁶ R-19.

stating that “[s]urface building limits from property lines shall be: Interior sides 20’ and *street Frontage 25’*.” KPB staff concluded that the setback is 20 feet, however. This determination was based on language in the Borough Code in place at the time, which allowed for a less restrictive setback, and the staff’s determination that GL Hollier Street is a Marginal Access Street -i.e., a minor street rather than a more substantial arterial street.⁴⁷

Whether a 20 or 25-foot setback applies in this case may be debatable, but it is not a matter that needs to be resolved in the context of this administrative appeal.⁴⁸ It is clear that the Whitmores’ shop encroaches into the setback on Lot 10, irrespective of whether a 20 or 25-foot setback applies. No matter the depth of the setback, the encroaching shop is located approximately 10 feet from the property line abutting GL Hollier Street. It is this encroachment – the presence of a shop 10 feet from the property line – that the Planning Commission was required to evaluate against each of the three criteria in KPB 20.10.110(E).

2. Does substantial evidence support the Planning Commission’s decision to approve the encroachment permit?

The Commission concluded that the Whitmores met each of the three standards in KPB 21.10.110(E), and made findings that are essentially the same for each. For the first standard, the Commission concluded that the encroachment will not interfere with road maintenance, based on the following findings:

10. The shop is slightly angled with the northeast corner being the furthest encroachment into the setback at 9.8 feet into the setback.
12. The road is constructed by privately maintained [sic].
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.⁴⁹

The Commission made the same findings for its conclusions that the second and third standards (concerning interference with sight lines or distances, and the creation of a safety hazard, respectively) will be met, but added one more finding, Finding 11, which states:

⁴⁷ R. 13 (emphasis added).

⁴⁸ It is possible that a 25-foot setback exists on Lot 10, and that it is enforceable by a private landowner against another.

⁴⁹ R. 2.

11. There does not appear to be any line of sight issues.⁵⁰

a. Whether the encroachment interferes with road maintenance.

The first standard in KPB 21.10.110(E) requires that the encroachment will not interfere with road maintenance.⁵¹ Although the Commission concluded that the first standard will be met, its conclusion is not supported by substantial evidence.

The Commission's conclusion is based on findings that contain largely factually correct information, but they nevertheless do not show how the standard will be met. Finding 12, for example, correctly states that GL Hollier Street is privately maintained.⁵² But the standard in KPB 21.10.110(E)(1) is not limited to whether the encroachment may interfere with the Borough's maintenance of a roadway. The standard requires that the encroachment not interfere with road maintenance at all, irrespective of whether the road is publicly or privately maintained. Thus, the Commission's finding that the road is privately maintained is immaterial to and does not advance the required analysis under the standard.

Similarly, findings 13 (the road is unlikely to serve additional lots), 14 (the encroachment is along a straight portion of the right-of-way), and 15 (there are no terrain issues within the roadway) do not show whether or how the encroachment will not interfere with road maintenance. While these findings may contain accurate statements, without further explanation, it is unclear how these findings support the Commission's conclusion that the shop will not interfere with road maintenance.

The truth of the matter is that the record is extremely sparse. The evidence includes the testimony of Ms. Whitmore and Mr. Taylor at the October 24, 2023 public meeting. The testimony was in response to a concern posed by Commissioner Fikes about the potential impact of the shop on road maintenance. The Commissioner asked:

[My] concern is that's really tight, and its not to code, and so its also not maintained, so I would be concerned about snow removal if that setback is already going to be encroached by 10 feet. Is that loss of road maintenance area, is that going to be impacting the person's access to the back land lock[ed parcel]?⁵³

⁵⁰ R. 2-3.

⁵¹ R. 2-3; KPB 20.10.110(E)(1).

⁵² R. 2, 5.

⁵³ T. 3.

In response to the Commissioner's question, Ms. Whitmore acknowledged that she had not over-wintered on the property but answered that she thought GL Hollier could be cleared by pushing snow towards and across Ross Drive. She stated:

I would think the snow being pushed would probably be pushed from the farthest point of the road out toward Ross and maybe even across Ross. I don't – I mean, I don't know. We haven't been there for a winter, but it seems pretty wide with their 20-foot setback and our 10-foot setback and the 30 feet of road.⁵⁴

But Mr. Taylor, who does the vast majority of the snow clearing himself, later testified that he does not believe pushing snow across Ross Drive is a viable option, and the encroaching shop will in fact impact the removal of snow from GL Hollier Street:

Clearing the snow down through there – like, it is not – yes, it's not a borough-maintained road, which 75 percent of the snow clearing on this road I do myself, and we are not going to – it was stated of possibly pushing snow across Ross Drive. Well, as we know, we're not supposed to push snow across a borough-maintained road and fill up the road and leave it up to the borough maintenance to take care of. The snow is supposed to be cleared off to the sides and not pushing snow across traffic and impeding traffic as well. So this does limit room for snow removal as well with them being 10 feet – approximately 10 to 12 feet with that pad.

It is unclear whether and how the Commission took Mr. Taylor's testimony about road maintenance into account in reaching its conclusions, and how it reconciled Ms. Whitmore's testimony suggesting that snow may be pushed across Ross Drive, with Mr. Taylor's testimony suggesting it cannot be. Nor was there any evidence documenting the Borough's actual requirements as to whether snow may be cleared from a privately maintained road across a publicly maintained one like Ross Drive. Given these deficiencies and the inadequacies in the Commission's findings, I cannot conclude there is substantial evidence to support the Commission's determination that the shop will not interfere with road maintenance. The matter will be remanded under KPB 21.20.33(B) for the Commission to either make new findings and conclusions supported by substantial evidence in the existing record as to the first standard in 21.10.110(E)(1), or to take additional evidence and issue new findings and conclusions.

b. Whether the encroachment interferes with sight lines and distances.

The second standard that must be satisfied for an encroachment permit to be issued is that it must not interfere with sight lines or distances. The Planning Commission concluded that the shop meets this standard.⁵⁵

Before standard two is addressed in detail, however, it is important to understand what is meant by the reference in KPB 20.10.110(E) to the terms “sight lines or distances.” These terms are not defined by the KPB Code. As such, we need to look elsewhere to determine their intended meaning.

The purpose of the setback requirement is to promote safe public access, areas for emergency response, and ‘traffic sight distance.’ Permanent structures are prohibited in a setback without a permit, and minor improvements are only allowed in a setback without a permit if they “do not interfere with the sight distance *from the right-of-way*.”⁵⁶

The language of a former KPB design standard further sheds light on the meaning of sight lines and distances.⁵⁷ Specifically, the former KPB design standard required that “[c]lear visibility, measured along the center line shall be provided for” within specified distances of different types of streets.⁵⁸

A standard legal treatise specifies that a key purpose of setbacks in planning and zoning law is to “protect[] sight lines for automobiles.”⁵⁹ As all the above references demonstrate, the requirement that the encroachment not interfere with sight lines or distances means that for persons travelling on roads near the encroachment, the encroachment itself cannot cause a traveler’s clear line of sight, for things such as vehicles, hazards, obstructions, etc., to be obscured.

Turning to the Commission’s findings, the only difference between the findings relied upon for the Commission’s conclusion regarding road maintenance and the findings relied upon

⁵⁵ R. 2-3; KPB 20.10.110(E).

⁵⁶ KPB 20.90.010 (definition of “Permanent structures”) (emphasis added).

⁵⁷ This standard is not being referenced to suggest that it applies here. Instead, it is merely referenced to demonstrate what is likely intended by the Code’s existing requirement that an encroachment not interfere with “sight lines or distances.”

⁵⁸ R. 78.

⁵⁹ 83 Am. Jur. 2d Zoning and Planning § 116 (2023).

for its conclusion that there will be no interference with sight lines and distances is Finding 11, which states “[t]here does not appear to be any line of sight issues.”⁶⁰

Although a number of the findings under standard two are factually correct, they do not show how the shop satisfies the standard. For example, Finding 12 (the road is privately maintained) and Finding 13 (the road is unlikely to serve additional lots) appear to have no bearing on whether sight lines and distances are impacted. And Finding 11 is a conclusory statement that is legally insufficient to create a factual basis or support findings of fact for appellate review.⁶¹

Only Finding 14 - that the road section is straight - and potentially Finding 15 – that there are no terrain issues within the dedication - appear at all relevant to the criteria concerning sight lines and distances. But even so, there is no analysis as to how these findings lead to the conclusion that sight lines will not be impacted. Moreover, the record as to the application of this standard is exceptionally thin. Absent from the record, for example, are any comments from a traffic engineer or other person experienced in evaluating roadway sight lines. Given that the matter must be remanded in any event regarding the other required showings, the Commission will be given the opportunity to better explain its reasoning on the second criterion and to revisit whether there is substantial evidence to support a determination that the shop will not interfere with sight lines or distances under the second standard in 21.10.110(E).

c. Whether the encroachment creates a safety hazard.

The third standard that must be satisfied for an encroachment permit to be issued is that the encroachment will not create a safety hazard.⁶² Although the Planning Commission determined that this standard has been met, some of the Commission’s underlying findings contain deficiencies similar to those in the findings under the other two standards, and the record is sparse in any event.⁶³ Because it has already been determined that the matter will be remanded back to the Planning Commission, the Commission may endeavor to make new findings and conclusions, supported by substantial evidence in the existing record, under the third standard in

⁶⁰ R. 5.

⁶¹ *Stephens v. ITT/Felec Services*, 915 P.2d 620, 626-27 (Alaska 1996); *Schug v. Moore*, 233 P.3d 1114, 1117 (Alaska 2010).

⁶² R. 2-3; KPB 20.10.110(E).

⁶³ As with the standard concerning sight lines, comments from a person with expertise on road safety issues would have been useful for the Commission’s analysis under this standard.

KPB 20.10.110(E). Alternatively, it may take additional evidence and issue new findings under this standard.⁶⁴

IV. Concluding Guidance

In deciding how to proceed on remand, the Borough is advised that the record developed before the Planning Commission to date is exceedingly sparse as to information relevant to *each* of the three criteria in KPB 20.10.110(E). The Commission should be mindful that issuing a building setback encroachment permit is an exception to the rule prohibiting such encroachments. The Commission may only approve an encroachment permit if there is substantial evidence showing that each of the three criteria is met – i.e., that the encroaching shop will not interfere with road maintenance, it will not interfere with sight lines or distances, and it will not create a safety hazard. If this threshold is not met as to any of the three criteria, the permit may not be issued. These are affirmative findings, and the applicant has the burden to demonstrate with substantial evidence that they are true. It is immaterial whether there is substantial evidence showing the opposite conclusion (that the shop will interfere with road maintenance, will interfere with sight lines or distances, and will create a safety hazard), because that is not the applicable standard. I caution the Commission against trying to do the required analysis under KPB 20.10.110(E) with an extremely thin record.

Further, the Commission should be cognizant that it must apply each of three criteria in KPB 20.10.110(E).⁶⁵ There is evidence that at least some Commissioners may have applied a different standard, rather than those in KPB 20.10.110(E), in voting to approve the permit. Comments by Commissioner Morgan and Commission Gillham during the October 24, 2022 public hearing suggest they may have felt compelled to approve the permit because they believed the Whitmores' contractor was to blame for the shop encroaching into the setback. Commissioner Morgan stated:

I am also included to support this. I think I have a bigger frustration with two contractors in the area who should know all of this. It is the homeowner's job to do research, but we also depend on our contractors to know their business. And so I'm kind of disappointed in their lack of researching before they started the work and not getting good information to the homeowners.⁶⁶

⁶⁴ R. 5-6, 13-14.

⁶⁵ The language of the KPB Code does not affirmatively state that a building setback encroachment permit must be issued if each of the three standards in KPB 20.10.110(E) is met. It merely states that a person seeking to construct within a building setback must apply for a permit, and the three standards must be considered by the Planning Commission. KPB 20.10.110(A) and (E).

⁶⁶ T-7.

Commissioner Gillham commented similarly:

I would have to concur with Commissioner Morgan in that I would put most of the blame on the contractor who should have a little bit more knowledge on this than the homeowner. . . . I am inclined to vote in favor of this, mostly because I feel that this is more due to the contractor's fault rather than the property owner's fault.⁶⁷

But whether the contractor or the homeowner failed to determine that the shop would be an encroachment into the building setback is not relevant to the analysis under KPB 20.10.110(E). Thus, it cannot be used as an independent basis for the Commissioners to approve the permit.

I also am concerned that some Commissioners may have misunderstood how to evaluate whether road maintenance will be impacted by the presence of the shop on Lot 10. A comment by Commissioner Stutzer suggests that the fact that the road is privately, rather than publicly, maintained may have influenced his vote on the permit:

So – and yeah, you've got a neighbor now and a building there and snow removal is a problem, but, you know, the road is always going to be – was designed not – that the borough is not going to take it over. So it's going to be a neighborhood snowplow operation, and you'll just have to figure out where you're going to push the snow.

But as Judge Sullivan correctly pointed out in the April 18, 2023 decision, it is immaterial for the analysis whether the road is privately or publicly maintained. The Planning Commissioner was required to determine whether the shop will interfere with road maintenance, irrespective of whether the road is publicly or privately maintained.

Finally, a comment by Commissioner Brantley suggests that he voted in favor of the permit because the encroachment was into the building setback, which is the Whitmores' private property, rather than into the public right-of-way. He stated, "They are not out in the right-if-way at all, so I don't see how snow removal would be affected anyway since they're not encroaching in the right-of-way at all, just in the setback."⁶⁸ But as explained previously, whether the encroachment is into the right-of-way is not the end of the analysis. Said another way, just because the property within the setback is the Whitmores' private property, it is not a foregone conclusion that the encroachment will

⁶⁷ T-7.

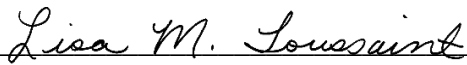
⁶⁸ T-7.

not interference with road maintenance. The shop could interfere with snow removal, for example, if it is necessary for some snow to be placed in the setback to clear GL Hollier Street, and there is insufficient space within the setback to place the snow due to the presence of the shop. In any event, it is the Commissioners' responsibility to evaluate whether the presence of the shop on the setback will interfere with road maintenance, no matter the nature of the encroachment. It may well be the case that Commission will decide it needs more evidence to make an adequate finding in that regard.

V. Conclusion

There is not substantial evidence to support the Commission's conclusions that each of the mandatory standards in KPB 21.20.110(E) has been met. The matter is remanded to the Commission to (1) make additional findings and conclusions supported by substantial evidence in the existing record as to each of the three criteria in KPB 21.20.110(E), or, alternatively, (2) KPB 21.20.110(E), take additional evidence from the parties and the public and make new findings and conclusions under each of the three criteria, based on the augmented record.

DATED this 22nd day of May, 2023.



Lisa M. Toussaint
Administrative Law Judge

Certificate of Service: I hereby certify that on May 22, 2023, a true and correct copy of this document was served on the following by email, or mail if email is unavailable, to the following listed below:

Troy & Autumn Taylor 43680 Ross Drive Soldotna, Alaska 99669 auttytaylor@yahoo.com troytaylor32@yahoo.com	David & Nancy Whitmore P.O. Box 881 Soldotna, Alaska 99669 nancywhitmore@gmail.com dcwhitmore@gmail.com
Jason Schollenberg Peninsula Surveying, LLC 10535 Katrina Blvd. Ninilchik, Alaska 99639 jason@peninsulasurveying.com	Julie Hindman KPB Platting Specialist 144 N. Binkley Street Soldotna, Alaska 99669 jhindman@kpb.us
Robert Ruffner KPB Planning Director 144 N. Binkley Street Soldotna, Alaska 99669 rruffner@kpb.us	Michele Turner, MMC Borough Clerk 144 N. Binkley Street Soldotna, Alaska 99669 micheleturner@kpb.us
A. Walker Steinhage KPB Deputy Attorney 144 N. Binkley Street Soldotna, Alaska 99669 wsteinhage@kpb.us legal@kpb.us	

By: *Haley Canfield*
Office of Administrative Hearings

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL BY THE KENAI BOROUGH PLANNING COMMISSION**

In the matter of the Kenai Peninsula Borough)
Planning Commission's decision to conditionally)
approve Lot 10, Lake Estates Subdivision Building)
Setback Encroachment Permit, KPB File)
2022-121; KPB Resolution 2022-46 located)
on GL Hollier Street,)
)
TROY & AUTUMN TAYLOR,)
)
Appellants.)
_____)

OAH No. 22-0925-MUN
Agency No. 2022-06-PCA

ORDER GRANTING RECONSIDERATION

I. Background

David and Nancy Whitmore built a 49-foot by 24-foot shop on Lot 10 in the Lake Estates Subdivision in the Kenai Peninsula Borough. Because the shop encroaches into the building setback for the lot, the Whitmores applied for a building setback encroachment permit under KPB 21.10.110. After the Borough Planning Commission unanimously approved the permit on October 24, 2022, Troy and Autumn Taylor, the owners of a lot directly across the street from Whitmores, appealed the decision.

The Borough moved to dismiss the appeal, arguing that the Taylors lacked standing. The Taylors filed an opposition, including photos of the shop and its location on the lot and the surrounding area. The photos were eventually added to the record, against the Borough's objection, pursuant to an order explaining that the photos "do not change the facts, nor do they add additional facts," but rather clarified the evidence that had already been presented to the Commission.

Following briefing and oral argument, Administrative Law Judge Kent Sullivan issued a decision on April 18, 2023, reversing the approval of the permit on the grounds that substantial evidence did not support the Commission's conclusion that the encroaching shop will not interfere with road maintenance under the first of the three criteria set forth in KPB 20.10.110(E). Instead, the judge found that substantial evidence supported the opposite conclusion – that the encroachment will interfere with road maintenance – and adopted sixteen new factual findings.

On May 1, 2023, the Borough moved for reconsideration of the decision on several grounds, including that it contained findings based on information outside the record developed before the Planning Commission; misconstrued the depth of the building setback; misconceived the nature of the setback and the encroachment, and road maintenance on GL Hollier Street; and misapplied the relevant sections of KPB 21.20.330 in reversing, rather than remanding, the Planning Commission's decision.

The Taylors and the Whitmores were given until May 11, 2023 to respond to the motion for reconsideration. The Taylors responded on May 8, 2023, arguing that reconsideration is unnecessary because the Commission's findings under the first criterion in KPB 21.20.110(E) were not supported by substantial evidence. The Whitmores responded on May 11, 2023, reiterating many of the same points raised by the Borough but disagreeing that a remand is appropriate. Instead, they argued that the Planning Commission's approval of the permit should be approved because it is supported by substantial evidence as to each of the three criteria.

In accordance with KPB 21.20.350(C), this order responds to the motion for reconsideration and addresses the arguments in the motion. The arguments have led to clarification or correction of language in the original decision, which will be accomplished through a "Decision After Reconsideration" issued later today. The outcome of the case will change, as the matter will be remanded to the Commission to (1) make additional findings and conclusions supported by substantial evidence in the existing record as to each of the three criteria in KPB 21.20.110(E), or, alternatively, (2) open the record to take additional evidence from the parties and the public and make new findings and conclusions under each of the three criteria, based on the augmented record.

II. Commentary on the Borough's and Applicant's Arguments¹

A. *Arguments about findings based on evidence not before the Planning Commission*

1. Argument about Finding 14 (drainage)

Citing to KPB 21.20.030(3), which allows a hearing officer to "make a different finding on a factual issue, based on the evidence in the record before the planning commission," the Borough asserts that Judge Sullivan improperly adopted findings predicated upon information

¹ Because many of the Borough's and the Whitmores' arguments are largely the same, the Whitmore's arguments will be discussed separately only where they raised new points not presented by the Borough.

outside the record before the Planning Commission. The Borough points to one finding - Finding 14 - which states that “[t]he encroachment has caused drainage issues.” The judge explained that “snow sloughing from the roof could be an issue with this encroachment.” His conclusion was based on “a detailed explanation and photographic evidence” (namely, Photo 3) provided by the Taylors in their opposition to the Borough’s motion to dismiss, which shows “how water from the roof” of the encroaching shop “has drained into GL Hollier Street, apparently causing erosion and impacting maintenance.”² The judge eventually expanded the record after oral argument to include the photo, as well as others in the Taylor’s opposition to the motion to dismiss, explaining that the photos did not “change . . . or add additional facts” but rather clarified the evidence that had already been presented to the Commission.³

The Taylors may have legitimate concerns about drainage from the shop roof impacting the GL Hollier Street, but they did not articulate those concerns in writing to the Planning Commission (indeed, there were no written comments submitted on the proposed permit at all), or in their testimony at the October 24, 2022 public meeting. They raised those concerns for the first time in their opposition to the Borough’s motion to dismiss. Although that information could have been provided to the Planning Commission earlier, it was not before the Commission when the Commission approved the permit on October 24, 2022. Thus, the information about drainage, while appropriate to consider in the context of a motion to dismiss based on standing, should not have been considered as to concerns not previously raised to the Commission. Finding 14 was based on information not before the Planning Commission when it approved the permit, and was used as an additional factual basis for Judge Sullivan’s conclusion that the shop will impact road maintenance, rather than to merely clarifying existing evidence. The Decision After Reconsideration will remove that finding and make other related adjustments as necessary.

2. Argument about fire safety

The Whitmores argue that Judge Sullivan misapplied KPB 21.20.270(c). That section requires that an appeal “shall be on the record,” and that the record may not be supplemented absent a showing that “even with due diligence the new evidence could not have been provided before the planning commission and a reasonable opportunity is provided” for the other parties to respond to it. The Whitmores claim that Judge Sullivan erred in relying on photos and testimonial evidence offered by the Taylors in their opposition to the motion to dismiss because

² Decision at 20.

³ Order Expanding the Record at 3.

that information could have been submitted to the Commission previously, but it was not. They point to the judge's statements in the decision about fire safety. He described the "close proximity of the Whitmore's [sic] garage to the Taylors' home" as creating a "safety hazard in the event the structure is ever fully engulfed in a fire," and noted that "radiant heat from the fire may well cause the Taylors' home to catch fire."

As with the Taylors' concerns about drainage, they may have valid fire safety concerns related to the shop. But those concerns were not before the Planning Commission when it approved the permit on October 24, 2022, because the Taylors did not raise those concerns until they filed their opposition to the Borough's motion to dismiss. They could have provided that information in writing or orally at the public hearing, but they did not do so. Thus, the information should not have been considered in Judge Sullivan's April 18, 2023 decision as to concerns not previously raised to the Commission. Adjustments will be made in the Decision After Reconsideration accordingly.

3. Argument about information in opposition to motion to dismiss

The Whitmores broadly assert that the new information in the Taylors' opposition to the motion to dismiss, including the photos, were "highly prejudicial" to them. No examples were provided other than those concerning drainage (Finding 14) and fire safety, which have already been discussed above. Nonetheless, new information in the opposition to the motion to dismiss will not be used as a factual basis for any of the conclusions in the Decision After Reconsideration. The photos will only be used to the extent they help clarify the location of the shop on the lot and in the surrounding area.

B. Arguments about the depth of the setback

The Borough alleges that Judge Sullivan erred in finding the building setback on the lot to be 25 feet from the property line, rather than 20 feet, and that this error impacted three of his findings (Findings 3, 4, and 5). The judge's conclusion was based on a 25-foot setback specified in a plat note on the 1969 subdivision plat establishing the Lake Estates subdivision. Citing language in a footnote in *Yankee v. City of Borough of Juneau*, 407 P.13d 460 (Alaska 2017), Judge Sullivan determined that the plat note specifying the setback constituted a covenant that runs with the land and binds all subsequent landowners, including the Whitmores, despite

language in the Borough Code in place at the time, which *allowed* developers to specify a less restrictive setback.⁴

The Borough claims Judge Sullivan’s reliance on *Yankee* was misplaced, arguing that provision at issue in that case, a section of the City and Borough of Juneau Code, is distinguishable from the KPB Code. While the Juneau code expressly describes a plat note as a restrictive covenant that runs with the land in favor of the municipality and the public, enforceable against future owners, the KPB Code contained no such language in 1968. Moreover, the *Yankee* court held that the City and Borough of Juneau had discretion, but not the obligation, to enforce the restrictive covenant at issue. Thus, even if were the case that a plat note is a covenant running with the land under the KPB code, the Borough would not be required to enforce it. Thus, the Borough argues that Judge Sullivan lacked the authority to compel the Borough to apply the 25-foot setback in the plat note.

Whether a 20 or 25-foot setback applies in this case may be debatable, but it is not a matter that needs to be resolved in the context of this administrative appeal.⁵ It is clear that the Whitmores’ shop encroaches into the setback on Lot 10, irrespective of whether a 20 or 25-foot setback applies. No matter the depth of the setback, the encroaching shop is located approximately 10 feet from the property line abutting GL Hollier Street. It is this encroachment – the presence of a shop 10 feet from the property line – that the Planning Commission was required to evaluate against each of the three criteria in KPB 20.10.110(E).

The Decision After Reconsideration will remove the findings concerning the depth of the setback and otherwise correct the manner in which this subject was handled in the original decision. Because this matter is being remanded back to the Planning Commission to take additional evidence and make new findings, if the Borough believes the depth of the setback is relevant to its analysis under KPB 20.10.110(E), it is free to explore that subject further on remand.

C. Arguments about the nature of the setback and the encroachment, and road maintenance

1. Argument about the nature of the setback and the encroachment

⁴ The 1969 Borough Code allowed for a “minimum 20-foot building setback for dedicated rights-of-way in subdivisions.

⁵ It is possible that a 25-foot setback exists on Lot 10, and that it is enforceable by a private landowner against another through a civil action.

Relying on Mr. Taylor's testimony at the October 24, 2022 public meeting, Judge Sullivan concluded that the encroaching shop will impact road maintenance by making snow removal, the vast majority of which is done by Mr. Taylor, more difficult by limiting the space available for snow cleared from GL Hollier Street. The Borough challenges the judge's findings (Findings 13, 15, and 16) supporting this conclusion, claiming he misconstrued the setback as an easement rather than private property, and he conflated the building setback encroachment here with an encroachment into the right-of-way. The Borough focuses on the judge's statement that "KPB was anxious to avoid any conclusion that the encroachment was an encroachment into a public right-of-way," and statements suggesting the setback may be used for snow cleared from the road. According to the Borough, no portion of the setback was ever available for that purpose because the setback is private property, and pushing snow onto it would be a trespass. The Borough appears to suggest that the shop could not possibly impact road maintenance because any snow removal or other maintenance occurring in the setback, the Whitmores' private property, would be illegal.

The Borough is correct that the setback on Lot 10 is private property, and the encroachment is into the building setback – not into the right-of-way (GL Hollier Street). But the contention that Judge Sullivan determined otherwise is incorrect. Nevertheless, in the Decision After Reconsideration, adjustments will be made to statements in the original decision that could potentially be misconstrued as suggesting that the encroachment here was into the right-of-way.

2. Argument about trespass

Regarding the assertion that Mr. Taylor would be committing a trespass if he were to place any snow cleared from the street onto the setback, this argument strains logic. Snow removed from a 30-foot-wide road needs to go somewhere. Logic dictates that when snow is pushed from a road, some amount may need to be placed (or may incidentally spill) onto property abutting the road. This would occur whether the road is publicly maintained by an entity like the Borough, or privately maintained by a person like Mr. Taylor. But no one could legitimately contend that the Borough would be committing a trespass in those circumstances. Nor can a legitimate argument be made that Mr. Taylor would be committing a trespass in those circumstances either.⁶ The suggestion that the shop will not interfere with road maintenance,

⁶ There could be a trespass if Mr. Taylor were to remove snow from his own property and place it on the Whitmores' setback. But there is no evidence of this occurring. Nor is there any evidence that Mr.

including snow removal, simply because the setback is on private property (i.e., the encroachment is not into the right-of-way) where no snow can be placed, is incorrect. Indeed, such an interpretation would effectively render the requirement of KPB 21.20.110(E) meaningless—a result inconsistent with the rules of statutory construction requiring that a statute be interpreted “to give effect to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.”⁷

3. Argument about snow clearing across public roads

The Borough also challenges Finding 13 in the April 18, 2023 decision, which reads, “Because the Borough mandates that snow cannot be pushed across public roadways, snow removal is now restricted on three of four sides. . . .” The authority cited for the finding is Mr. Taylor’s testimony before the Planning Commission, summarized on page 18 of the decision, and a footnote referencing a Borough website containing information about illegal snow clearing activities. The website states that “[i]t is illegal to plow snow into the roads, ditches, and rights of way *from private property*,” but, as the Borough points out, it is silent as to snow plowed from a public right-of-way. Thus, the Borough contends that Finding 13 is misconceived.

The Borough’s point is well-taken. Finding 13 will be removed, and other adjustments will be made in the Decision After Reconsideration, accordingly.

D. Arguments about the application of KPB 21.20.320 and 21.20.330

Claiming that the judge made findings “based upon a mix of misconceived facts” and evidence outside the record before the Planning Commission, the Borough contends the judge misapplied KPB 21.20.330 and 21.20.330, and should have remanded rather than reversed the Commission’s decision. The Borough points to language in KPB 21.20.330(3), which states:

The hearing officer may revise and supplement the planning commission’s findings of fact. Where the hearing officer decides that a finding of fact made by the planning commission is not supported by substantial evidence, the hearing officer may make a different finding on the factual issues, ***based on the evidence in the record developed before the planning commission*** if it concludes a different finding was supported by substantial evidence, or may remand the matter to the planning commission as provided in KPB 21.20.330(B). (Emphasis supplied.)

Taylor places a disproportionate amount of snow removed from the roadway onto the Whitmores’ setback when he plows the road.

⁷ *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1128, 1139 (Alaska 2012) (quoting 2A Norman J. Singer & Shambie Singer, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 46:6 (7th ed. 2007)).

KPB 21.20.330(A) and (B), in turn, provide:

A. *Changed circumstances.* An appeal alleging changed circumstances or new relevant evidence, which with due diligence could not have been presented to the planning commission, shall be remanded to the planning commission.

B. *Lack of findings.* Appeals from the planning commission decisions which lack findings of fact and conclusions by the planning commission ***or contain findings of fact and conclusions which are not supported by substantial evidence*** shall be remanded to the planning commission with an order to make adequate findings of fact and conclusions. (Emphasis supplied.)

As explained previously, the Decision After Reconsideration will reflect adjustments to the original decision to account for problems with some of the factual findings, including that one finding was based on information outside the record before the Planning Commission (Finding 14), and that others were predicated on various misconceptions. I agree that remand is the appropriate remedy here. The matter will be remanded back to the Planning Commission to (1) make findings of fact and conclusion supported by substantial evidence in the existing record as to each of the three criteria in KPB 21.20.110(E), or, alternatively, (2) take additional evidence from the parties and the public and make new findings and conclusions under each of the three criteria, based on the augmented record.

E. Argument that the Planning Commission's findings should be affirmed

The Whitmores argue that substantial evidence supports the Commission's conclusions that each of the three standards in KPB 21.20.110(E). I disagree. The record in this case is extremely thin as to evidence relevant to each of the three standards. The matter will be remanded back to the Commission, where there will be an opportunity to take additional evidence and make new findings and conclusions. Because the Whitmores have the burden on each of the three criteria, they may wish to participate in the remand proceeding.

III. Concluding Guidance

In deciding how to proceed on remand, the Borough is cautioned that the record developed before the Planning Commission to date is exceedingly sparse as to information relevant to *each* of the three criteria in KPB 20.10.110(E). The Commission should be mindful that issuing a building setback encroachment permit is an exception to the rule prohibiting such encroachments. The Commission may only approve an encroachment permit if there is substantial evidence showing that each of the three criteria is met – i.e., that the encroaching

shop will not interfere with road maintenance, it will not interfere with sight lines or distances, and it will not create a safety hazard.⁸ If this threshold is not met as to any of the three criteria, the permit may not be issued. These are affirmative findings, and the applicant has the burden to demonstrate with substantial evidence that they are true. It is immaterial whether there is substantial evidence showing the opposite conclusion (that the shop will interfere with road maintenance, will interfere with sight lines or distances, and will create a safety hazard), because that is not the applicable standard. I caution the Commission against trying to do the required analysis under KPB 20.10.110(E) with an extremely thin record.

Further, the Commission should be cognizant that it must apply each of three criteria in KPB 20.10.110(E).⁹ There is evidence that at least some Commissioners may have applied a different standard, rather than those in KPB 20.10.110(E), in voting to approve the permit. Comments by Commissioner Morgan and Commission Gillham during the October 24, 2022 public hearing suggest they may have felt compelled to approve the permit because they believed the Whitmores' contractor was to blame for the shop encroaching into the setback.

Commissioner Morgan stated:

I am also included to support this. I think I have a bigger frustration with two contractors in the area who should know all of this. It is the homeowner's job to do research, but we also depend on our contractors to know their business. And so I'm kind of disappointed in their lack of researching before they started the work and not getting good information to the homeowners.¹⁰

Commissioner Gillham commented similarly:

I would have to concur with Commissioner Morgan in that I would put most of the blame on the contractor who should have a little bit more knowledge on this than the homeowner. . . . I am inclined to vote in favor of this, mostly because I feel that this is more due to the contractor's fault rather than the property owner's fault.¹¹

⁸ To approve the permit, there must be substantial evidence to show that each the three criteria will be met. It is immaterial whether there is substantial evidence showing the opposite conclusion (that the shop will interfere with road maintenance, will interfere with sight lines or distances, and will create a safety hazard), because that is not the applicable standard.)

⁹ The language of the KPB Code does not affirmatively state that a building setback encroachment permit must be issued if each of the three standards in KPB 20.10.110(E) is met. It merely states that a person seeking to construct within a building setback must apply for a permit, and the three standards must be considered by the Planning Commission. KPB 20.10.110(A) and (E).

¹⁰ T-7.

¹¹ T-7.

But whether the contractor or the homeowner failed to determine that the shop would be an encroachment into the building setback is not relevant to the analysis under KPB 20.10.110(E). Thus, it cannot be used as an independent basis for the Commissioners to approve the permit.

I also am concerned that some Commissioners may have misunderstood how to evaluate whether road maintenance will be impacted by the presence of the shop on Lot 10. A comment by Commissioner Stutzer suggests that the fact that the road is privately, rather than publicly, maintained may have influenced his vote on the permit:

So – and yeah, you’ve got a neighbor now and a building there and snow removal is a problem, but, you know, the road is always going to be – was designed not – that the borough is not going to take it over. So it’s going to be a neighborhood snowplow operation, and you’ll just have to figure out where you’re going to push the snow.

But as Judge Sullivan correctly pointed out in the April 18, 2023 decision, it is immaterial for the analysis whether the road is privately or publicly maintained. The Planning Commissioner was required to determine whether the shop will interfere with road maintenance, irrespective of whether the road is publicly or privately maintained.

Finally, a comment by Commissioner Brantley suggests that he voted in favor of the permit because the encroachment was into the building setback, which is the Whitmores’ private property, rather than into the public right-of-way. He stated, “They are not out in the right-if-way at all, so I don’t see how snow removal would be affected anyway since they’re not encroaching in the right-of-way at all, just in the setback.”¹² But as explained previously, whether the encroachment is into the right-of-way is not the end of the analysis. Said another way, just because the property within the setback is the Whitmores’ private property, it is not a foregone conclusion that the encroachment will not interference with road maintenance. The shop could interfere with snow removal, for example, if it is necessary for some snow to be placed in the setback to clear GL Hollier Street, and there is insufficient space within the setback to place the snow due to the presence of the shop. In any event, it is the Commissioners’ responsibility to evaluate whether the presence of the shop on the setback will interfere with road maintenance, no matter the nature of the encroachment. It may well be the case that Commission will decide it needs more evidence to make an adequate finding in that regard.

¹²

T-7.

IV. Order

The motion for reconsideration is granted. A revised decision will be issued later today.

DATED: May 22, 2023.

By: Lisa M. Toussaint
Lisa M. Toussaint
Administrative Law Judge

Certificate of Service: I hereby certify that on May 22, 2023, a true and correct copy of this document was served on the following by email, or mail if email is unavailable, to the following listed below:

Troy & Autumn Taylor 43680 Ross Drive Soldotna, Alaska 99669 auttytaylor@yahoo.com troytaylor32@yahoo.com	David & Nancy Whitmore P.O. Box 881 Soldotna, Alaska 99669 nancywhitmore@gmail.com dcwhitmore@gmail.com
Jason Schollenberg Peninsula Surveying, LLC 10535 Katrina Blvd. Ninilchik, Alaska 99639 jason@peninsulasurveying.com	Julie Hindman KPB Platting Specialist 144 N. Binkley Street Soldotna, Alaska 99669 jhindman@kpb.us
Robert Ruffner KPB Planning Director 144 N. Binkley Street Soldotna, Alaska 99669 rruffner@kpb.us	Michele Turner, MMC Borough Clerk 144 N. Binkley Street Soldotna, Alaska 99669 micheleturner@kpb.us
A. Walker Steinhage KPB Deputy Attorney 144 N. Binkley Street Soldotna, Alaska 99669 wsteinhage@kpb.us legal@kpb.us	

By: Halley Canfield
Office of Administrative Hearings



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Peter A. Micciche
Borough Mayor

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF BUILDING SETBACK ENCROACHMENT PERMIT

Public notice is hereby given of a remand hearing on a building setback encroachment permit application, originally received on 9/27/2022. You are being sent this notice because you are within 600 feet of the subject parcel and are invited to comment.

The building setback encroachment permit application is for the following property:

Request / Affected Property: Allows a 9.4 feet by 49 feet portion of a shop to remain in the building setback granted on Lake Estates Subdivision K-1648.

KPB File No. 2022-121

Petitioner(s) / Land Owner(s): David and Nancy Whitmore of Soldotna, AK.

Purpose as stated in 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 St, a substandard road. We acknowledge that we are in violation of KPB roads code 14.40.035: 14.40.115. At our meeting with representatives 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 objectives 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. 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.

Building setback encroachment permit reviews are conducted in accordance with KPB Subdivision Ordinance.

Public hearing will be held by the Kenai Peninsula Borough Planning Commission on **Monday, October 9, 2023**, commencing at **7:30 p.m.**, or as soon thereafter as business permits. The meeting is being held in person at the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, Alaska and remotely through Zoom.

To attend the meeting using Zoom from a computer visit <https://us06web.zoom.us/j9077142200>. You may also connect to Zoom by telephone, call toll free **1-888-788-0099** or **1-877-853-5247**. If calling in you will need the Meeting ID of 907 714 2200. Additional information about connecting to the meeting may be found at <https://www.kpb.us/planning-dept/planning-commission>.

Anyone wishing to testify may attend the meeting in person or through Zoom. Written testimony may be submitted by email to planning@kpb.us, or mailed to the attention of Beverly Carpenter, Kenai Peninsula Borough Planning Department, 144 N. Binkley Street, Soldotna, Alaska 99669. [Written comments may also be sent by Fax to 907-714-2378]. All written comments or documents must be submitted by **1:00 PM, Friday, October 6, 2023**. The deadline to submit written comments or documents does not impact the ability to provide verbal testimony at the public hearing.

Additional information such as staff reports and comments are available online. This information is available the Monday prior to the meeting and found at <https://kpb.legistar.com/Calendar.aspx>. Use the search options to find the correct timeframe and committee.

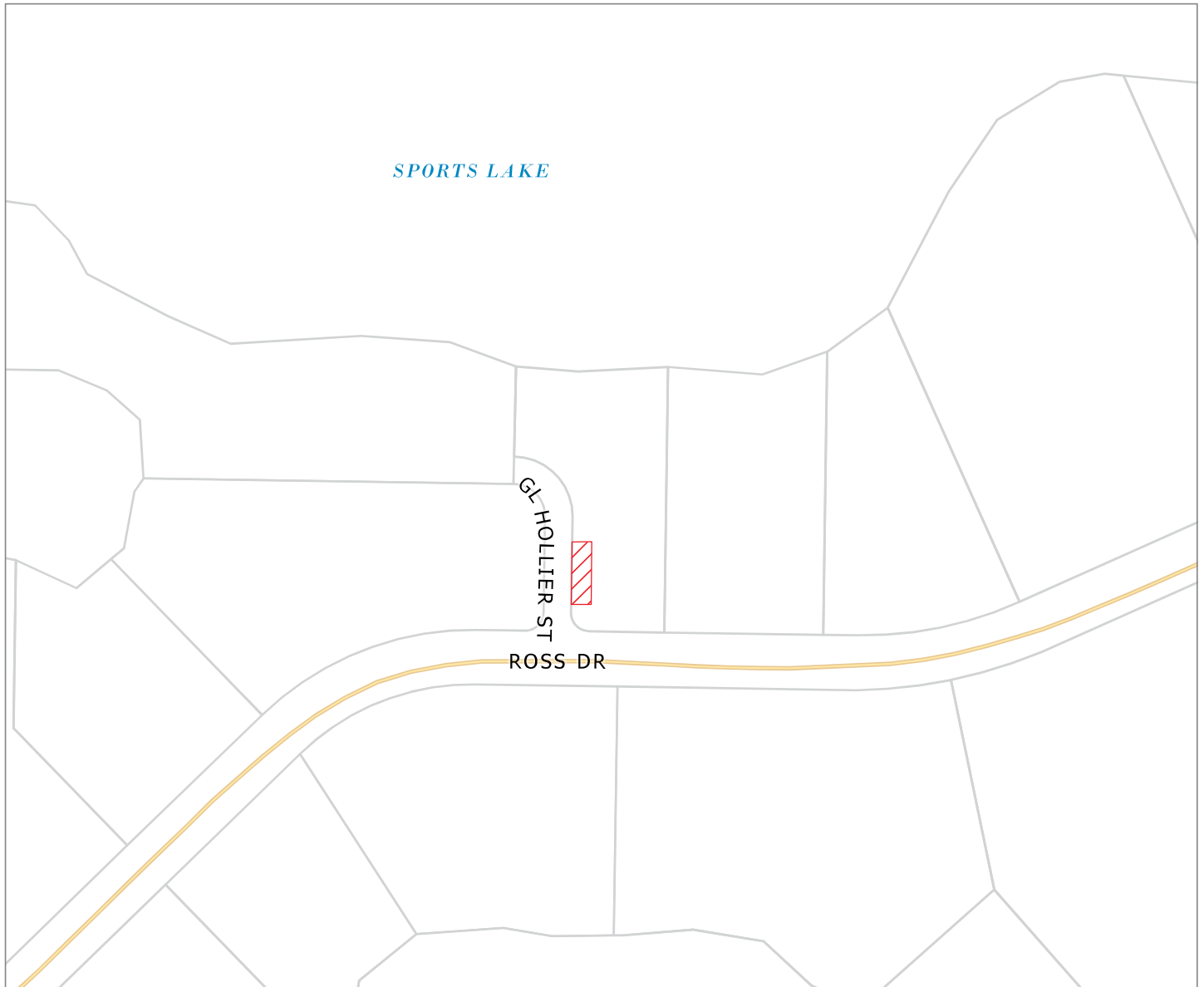
For additional information contact Beverly Carpenter (bcarpenter@kpb.us) or Madeleine Quainton (mquainton@kpb.us), Planning Department, 714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough).

Mailed September 26, 2023



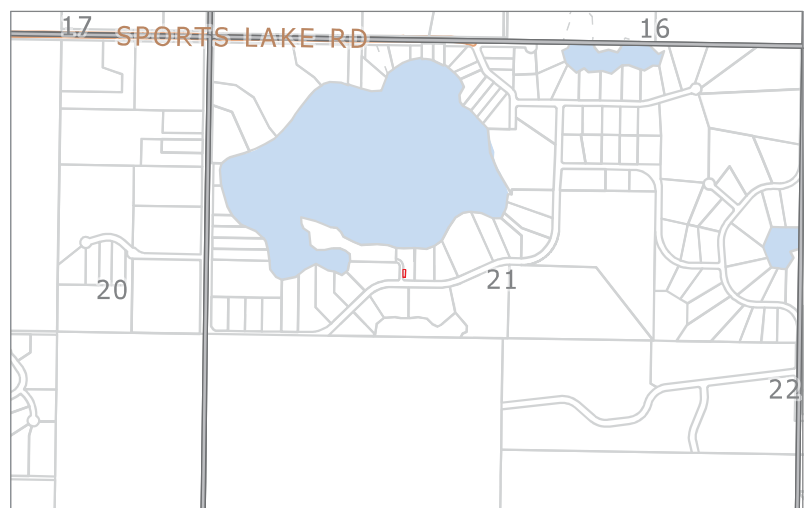
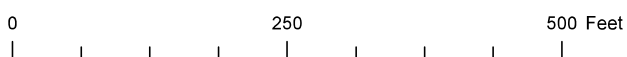
Kenai Peninsula Borough Planning Department

Vicinity Map



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

9/26/2023



NOTES

1. A TITLE REPORT WAS NOT PREPARED FOR THIS SURVEY. ADDITIONAL RECORDED AND UNRECORDED EASEMENTS MAY EXIST.
2. BUILDING DIMENSIONS ARE TO THE FACE OF THE BUILDING.
3. BEARINGS AND DISTANCES ARE FROM FIELD MEASUREMENTS AND PLAT KN 1648.

LEGEND

- FOUND REBAR

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 09/26/2022.

Jason L. Schollenberg 09/27/2022
JASON L. SCHOLLENBERG DATE
PLS 14488-S



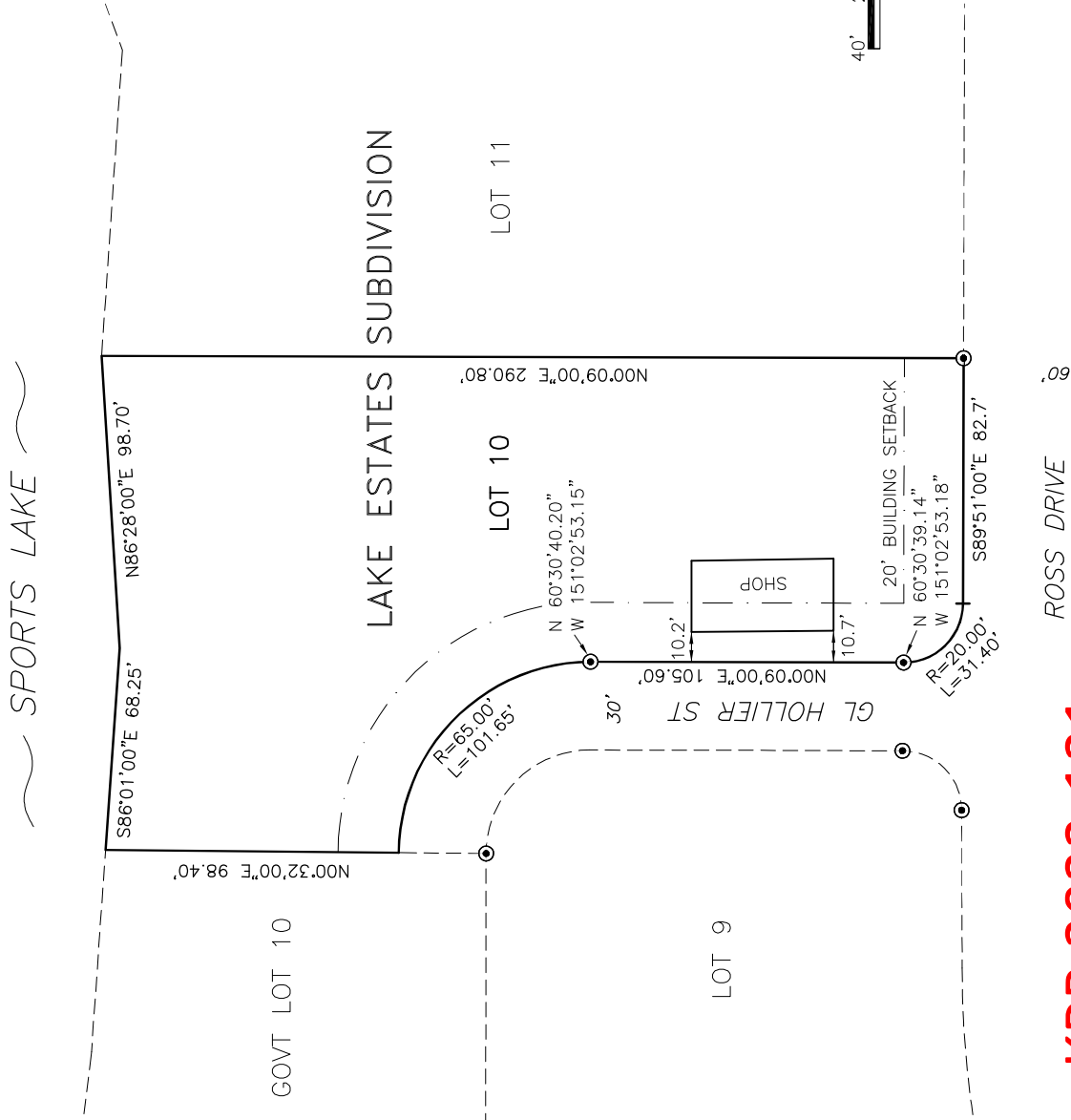
PENINSULA SURVEYING, LLC

10535 KATRINA BOULEVARD
NINILCHIK, AK 99639
(907)306-7065

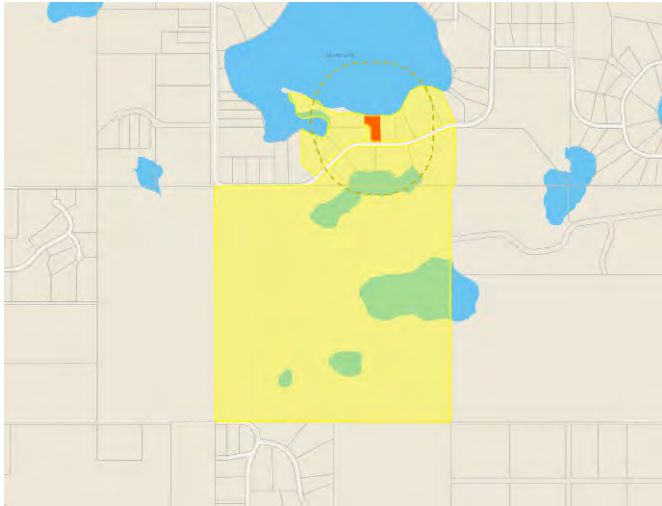
AS-BUILT SURVEY
LOT 10, LAKE ESTATES SUBDIVISION
SECTION 21, T5N, R10W, S.M.

SCALE: 1" = 40'
DATE: 09/27/2022

DRAWN: JLS
SHEET: 1 OF 1



KPB 2022-121



- Input parcel(s)
- Parcels within 600ft
- Parcels within 300 feet (when applicable).

Notification Report

Tuesday, September 26, 2023

Report generated for KPB Parcel(s):
05725001



The following list was created by applying a 600 ft buffer to the parcel or parcels indicated above. Questions or comments can be relayed to BCarpenter@kpb.us.

All Ownership Records

PARCEL_ID	OWNER	ADDRESS	CITY	STATE	ZIP
05704414	MARKHAM ERICA	3374 E VALLEJO CT	GILBERT	AZ	85298
05723007	MILLER FRITZ W & CINDY A	43850 ROSS DR	SOLDOTNA	AK	99669
05723008	GIOVANELLI TERRI L	43732 ROSS DR	SOLDOTNA	AK	99669
05724001	TAYLOR AUTUMN R	43680 ROSS DR	SOLDOTNA	AK	99669
05725001	WHITMORE NANCY	PO BOX 881	SOLDOTNA	AK	99669
05725002	WALKER DONALD G	PO BOX 3161	MONTROSE	CO	81402
05725003	HAWKES RENAE SALLY	43610 ROSS DR	SOLDOTNA	AK	99669
05704413	INNES DAVID SCOTT	740 E REDOUBT AVE	SOLDOTNA	AK	99669
05724003	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669
05724007	RODGERS CHARLES R & JEANETTE K	43725 ROSS DR	SOLDOTNA	AK	99669
05725003	HAWKES BRADFORD JAY	43610 ROSS DR	SOLDOTNA	AK	99669
05725011	IVERSON JAMES P & HEIDI L	43530 ROSS DR	SOLDOTNA	AK	99669
05704414	MARKHAM ZACHARY	3374 E VALLEJO CT	GILBERT	AZ	85298
05724004	MARCOTTE TAMAR G	43625 ROSS DR	SOLDOTNA	AK	99669
05724008	RAWSON JOYCE	43565 ROSS DR	SOLDOTNA	AK	99669
05724008	RAWSON SETH	43565 ROSS DR	SOLDOTNA	AK	99669
05725001	WHITMORE DAVID C	PO BOX 881	SOLDOTNA	AK	99669
05725006	IVERSON JAMES P & HEIDI L	43530 ROSS DR	SOLDOTNA	AK	99669
05704414	MARKHAM MICHAEL	3374 E VALLEJO CT	GILBERT	AZ	85298
05704414	MARKHAM MICHELE	3374 E VALLEJO CT	GILBERT	AZ	85298
05723009	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669
05724001	TAYLOR TROY R	43680 ROSS DR	SOLDOTNA	AK	99669
05724002	RODGERS CHARLES & JEANETTE	43725 ROSS DR	SOLDOTNA	AK	99669