

AGENDA ITEM E. NEW BUSINESS

ITEM 6 – RIVER QUEST 2021 REPLAT

<b>KPB File No.</b>	2021- 061
<b>Plat Committee Meeting:</b>	May 24, 2021
<b>Applicant / Owner:</b>	Robert Schalke Crosswhite Estate Gregory and Laraine Willkie
<b>Surveyor:</b>	McLane Consulting Inc.
<b>General Location:</b>	Soldotna Area, (Kalifornsky Beach Road to Ciechanski Rd. to Porter Rd. within the Kalifornsky APC

<b>Parent Parcel No.:</b>	055-033-70
<b>Legal Description:</b>	Lot 72, River Quest Phase 1 Amended, KN 2004-111
<b>Assessing Use:</b>	Residential Dwellings 2-4
<b>Zoning:</b>	Unrestricted
<b>Water / Wastewater</b>	Community water and wastewater system

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STAFF REPORT

**Specific Request / Scope of Subdivision:** The proposed plat will subdivide a 9,350 sq. ft. lot into two lots so that the two existing buildings are on separate lots. Proposed Lot 72A will be 4,704 sq. ft. and Lot 72B will be 4,617 sq. ft. Multiple owners own the lot and this subdivision will divide the improvements. An exception is required for 20.30.200 Lots - minimum lot size.

**Legal Access (existing and proposed):**

The existing access to the subdivision is on Davison Avenue which is a 30 foot private right of way within Tract C. Tract C is owned by Denco Inc. doing business as River Quest. Lot 72 does not front on a dedicated right of way that is open to the public. An exception is required for 20.30.210 Lots – Access to street.

A 2.5 foot pedestrian access easement affects both sides of the subdivision. A 5 foot pedestrian access easement affects the upland area adjoining the ordinary high water mark of the canal.

This subdivision is not within a closed block that complies with KPB code. The subdivision is affected by the Kenai River, sloughs, and existing development. **Staff recommends that the plat committee concur that this subdivision cannot dedicate a right of way to help with block length and an exception is not required.**

KPB Roads Dept. comments	Within KPB jurisdiction, no comments
SOA DOT comments	No comments

**Site Investigation:**

This subdivision is generally flat. A canal that provides water access to the Kenai River is located on the south boundary of the subdivision. The canal and the area around the canal is classified as 'disturbed' per the Kenai Watershed Forum wetland mapping. This lot wet area is depicted on the plat.

The property is affected by a 50 foot building setback from the canal per document recorded under serial no. 2004-009915-0 KRD.

A 50 foot Anadromous Waters Habitat Protection District affects this subdivision as the Kenai River and the canal are classified as anadromous waters.

This subdivision is located within a flood hazard area; zone A4 per FEMA map panel 020012-2045C. A floodway

does not affect this subdivision.

The correct notes for the flood hazard area and the anadromous waters habitat protection district are on the plat.

Floodplain Hazard Review	Floodplain Status: IS in flood hazard area Comments: Flood Zone: A4 Map Panel: 020012-2045C In Floodway: False
Anadromous Waters Habitat Protection District Review	Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD
State Parks Review	Reviewer: Russell, Pam Comments: No Comments

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### **Staff Analysis**

This subdivision is located with River Quest Subdivision, which is a planned community located on the Kenai River. After a remand of appeal by the KPB Board of Adjustment, the Planning Commission approved the plat in 2004. The subdivision encompasses an area that was grandfathered with seasonal cabins/trailers which did not comply with development standards under KPB Chapter 21. A conditional use permit was obtained with the parent plat and new development must comply with KPB Chapter 21.

Per the Declaration recorded under KN 2004-008260-0, River Quest Subdivision is subject to a Common Interest Ownership Community as allowed under AS 34.08. The Common Interest Ownership Community is managed by River Quest Subdivision Lot Owners Association, Inc.

Typically a Common Interest Ownership Community consists of individually owned units in addition to shared facilities and common areas. In this case, individuals own the units, which coincide with the lots depicted on parent subdivision plat, and they share ownership of common areas, which include Tract C (access road) and Tract D (community septic system). The declaration states that the development rights may be amended by a 100% vote, or 100% approval, of the owners. ***Staff recommends documentation be provided showing that the River Quest Subdivision Lot Owners Association, Inc. has meet and agrees to the amendment of the development rights of the Common Interest Community.***

Canals and boat launches within the subdivision provide water access to the Kenai River. The lots within the subdivision are seasonal lots and used in the summer season as staff believes the water / wastewater system is turned off and the gate is closed during the winter.

A community water and wastewater system serve the development. ***Staff recommends documentation be provided to show that both lots are served by the community water and wastewater system.***

Per the preliminary Certificate to Plat, beneficial interest holders do not affect the proposed plat. Notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states the property is affected by beneficial interest holders.

Kalifornsky Advisory Planning Commission minutes were not available when the staff report was prepared (KPB 21.02.020). These will be provided with the desk packet if available.

The plat depicts an improvement located in the northwest corner of the subdivision. A street view image appears to show this improvement is a shed. The shed encroaches within the 2.5 foot pedestrian access easement. ***Staff recommends that documentation is provided to show that the encroachment is remedied before the final plat is approved.***

It does not appear that this subdivision is affected by a local option zoning district or a material site under KPB review.

### **Utility Easements**

The subdivision is served by HEA and ENSTAR utility providers. The record easements granted to HEA have been noted on the plat.

**Staff recommends** a plat note be added for the easement to ENSTAR per Bk. 595 Pg 181 KRD.

**Staff recommendation:** The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Grant utility easements requested by the utility providers.**

### **Utility provider review:**

HEA	Reviewed / no comments
ENSTAR	
ACS	No objections
GCI	Approved as shown

### **KPB department / agency review:**

Addressing – Derek Haws	
Code Compliance – Eric Ogren	No comments.
Planner – Bryan Taylor	
Assessing – Adeena Wilcox	No comments.
City Advisory Comments	
Advisory Planning Commission	

The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

### **STAFF RECOMMENDATIONS**

#### **CORRECTIONS / EDITS**

KPB 20.25.070 - Form and contents required.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

**Staff recommendation:** *Update the ownership information within the title block.*

G. The status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the propose subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

**Staff recommendation:** *Depict and label all parcels within 100 feet of the subdivision boundary. Provide a label for Tract C and note that Davison Avenue as a 30' private right of way.*

- N. Apparent encroachments, with a statement indicating how the encroachments will be resolved prior to final plat approval;  
**Staff recommendation:** *Prior to final plat approval, provide documentation showing how the encroachment of the shed within the 2.5 foot pedestrian access easement will be resolved.*

20.30.030. Proposed street layout-Requirements.

- A. The streets provided on the plat must provide fee simple right-of-way dedications to the appropriate governmental entity. These dedications must provide for the continuation or appropriate projection of all streets in surrounding areas and provide reasonable means of ingress for surrounding acreage tracts. Adequate and safe access for emergency and service vehicle traffic shall be considered in street layout.  
**Staff recommendation:** *Concur that this subdivision plat fronts on a private right of way within Tract C and is not able to provide a fee simple right-of-way dedication.*

- 20.30.180. Pedestrian ways required when. Pedestrian ways not less than 8 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.  
**Staff recommendation:** *Concur that the pedestrian access easements of record provide access for the neighboring land owners to access the canal and additional pedestrian ways are not required for this platting action.*

- 20.30.210. Lots-Access to street. Each lot shall abut on a fee simple dedicated street except as provided by KPB 20.30.030(B).  
**Staff recommendation:** *Concur that access to the subdivision is via Tract C, which is a private right of way, and an exception is not required. This design was approved on the patent platting action.*

20.30.240. Building setbacks.

- A. A minimum 20-foot building setback shall be required for dedicated rights-of-way in subdivisions located outside incorporated cities.
- A. The setback shall be graphically depicted and labeled on the lots; if such depiction will interfere with the legibility of the plat, a typical lot showing the depiction and label may be provided on the plat, clearly indicating that the typical setback applies to all lots created by the plat.
- B. The setback shall be noted on the plat in the following format:  
Building setback- A setback of 20 feet is required from all dedicated street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.  
**Staff recommendation:** *Concur that this subdivision does not front on a dedicated right of way and is not subject to the 20 foot building setback per KPB 20.30.240.*

20.40.010 Wastewater disposal.

*Platting Staff Comments: The proposed wastewater disposal will be to a community system.*

**Staff recommendation:** *Comply with KPB 20.40 specifically KPB 20.40.070 Connection to an existing system.*

- A. If any lots within a subdivision will be connected to an existing collector wastewater and treatment system, the following requirements must be met:
1. Proof that the owner of the collector wastewater and treatment system has agreed to allow the lots to be connected;
  2. Documentation from the municipality, ADEC or system design engineer that the receiving system is adequate to accept the additional hydraulic and organic loading; and
  3. The minimum lot size necessary to maintain the applicable separation distance pursuant to 18 AAC 72.020 from any part of the wastewater system.
- B. Before a final plat is filed for subdivision, the qualified engineer or surveyor, as applicable, must complete the following plat note which shall be placed on the plat:

**WASTEWATER DISPOSAL:** *Plans for wastewater disposal that meet regulatory requirements are on file at the Department of Environmental Conservation.*

\_\_\_\_\_  
(Signature of) Engineer

\_\_\_\_\_  
License #

\_\_\_\_\_  
Date

**Staff recommends** comply with Chapter 20.60 Final plat.

The subdivision is affected by covenants, conditions, and restrictions. **Staff recommends** a plat note be added stating, 'The borough will not enforce private covenants, easements, or deed restrictions per KPB 20.60.170(B).'

**Staff recommends** labels be added to the drawing to identify the improvements.

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**EXCEPTIONS REQUESTED:**

**KPB 20.30.190A Lots – Dimensions**

Lots shall be at least 60 feet wide on the building setback line. The minimum depth shall be no less than 100 feet, and the average depth shall be no greater than three times the average width.)

**KPB 20.30.200A Lots – Minimum size**

Except in cities where zoning and subdivision regulations establish different minimums, lots must be designed to meet the following area requirements:

- A. Lots shall contain at least 6,000 square feet if served by public wastewater disposal and water systems.

**Staff Discussion:**

The two sections of code are being combined into one exception request as both deal with the shape and size of the lot split. The commission can vote on each exception request separately if they choose.

Parent Lot 72 has a 2.18:1 depth to width ratio and complies with the 3:1 depth with width ratio requirement. Proposed Lot 72A will have a 3.98:1 depth to width ratio and does not comply. Proposed Lot 72B will have a 4.7:1 depth to width ratio and does not comply.

The subdivision is affected by a 50 foot building setback from the canal which limits the area available to be developed. When this setback is taken into consideration. Lot 72A will have a developable area with a 2.13:1 depth to width ratio and Lot 72B will a developable area with a 2.53:1 depth to width ratio.

All lots in the parent subdivision are larger than 6,000 sq. ft. and were designed around existing improvements to comply with KPB minimum lot size requirements. Proposed Lot 72A will be 4,704 sq. ft. and proposed Lot 72B will be 4,617 sq. ft. When accounting for the 50 foot building setback from the canal, Lot 72A and 72B will each have approximately 2,960 sq. ft. of developable area.

KPB code states that lots served by community water and wastewater system shall be at least 6,000 sq. ft. in size.

Shared ownership on a parcel of land is allowable.

On site well and septic is not available as River Quest development is served by a community water and wastewater system.

No lots in the parent subdivision have been further subdivided. Only one subdivision has occurred within the parent subdivision and that was to combine 3 lots into 2 lots.

KPB 20.30.030(A) prohibits a person from transferring, selling, or offering to sell a portion of land that must be subdivided under KPB code. It does not prohibit a person from transferring any interest they may have in property.

If denied, the subdivision will not comply with KPB subdivision standards and cannot be completed.

### **Surveyor Findings:**

1. The lot was purchased in November 2004 by Alan and Karen Crosswhite and Robert Schalke (50/50)
2. Two residences were constructed on the lot which was authorized by the River Quest Homeowners Association.
3. August 2007, the River Quest complex experienced a severe flood, and all the homes has to be moved back from the river and rebuilt.
4. Both Mr. Schalke and the Crosswhites built two substantial residences. Their locations are shown on the proposed River Quest Replat. Those two residences remain at the property.
5. When the Crosswhites built their residence on Lot 72 following the flood, they conveyed a 50% undivided interest to Gregory and Lorraine Wilke who contributed to the cost of rebuilding.
6. One which is shown as Lot 72B on the proposed replat has been treated by the parties as owned exclusively by the Crosswhites and Wilkes. The other shown as Lot 72A has been treated as exclusively owned by Robert Schalke.
7. Alan and Karen Crosswhite have passed away, and the Estate has no use for the residence it owns on Lot 72. The Wilkies are elderly, live Outside, and not interested in using Lot 72 in the future.
8. Mr. Schalke is aging and is not interested in owning two residences on Lot 72. For that reason, he is not interested in buying out the Estate.
9. The River Quest Homeowners Association lists Lot 72 as a lot for two separate residences.
10. The River quest Homeowners Association is not opposed to the proposed subdivision.
11. The River Quest community system for water and wastewater currently accommodates both residences.
12. KPBC 20.10.030 A indicates that were the estate to offer to transfer, sell or offer to sell its interest to someone other than Mr. Schalkle, or the Wilkes, it would be a violation of the code.
13. The use of Lot 72 with two discreet residences has been ongoing for more than 15 years, in full compliance with all of the Homeowners Association covenants, and rules, and all provisions of the KPB Code. Approval of the proposed Plat will normalize the status quo: and will cause no negative consequences to the neighborhood, or the homeowners association.

### **Staff findings:**

14. Parent Lot 72 has a 2.2:1 depth to width ratio and complies with the 3:1 depth with width ratio requirement.
15. Proposed Lot 72A will have a 4.0:1 depth to width ratio and does not comply.
16. Proposed Lot 72B will have a 4.7:1 depth to width ratio and does not comply.
17. The subdivision is affected by a 50 foot building setback which limits the area available to be developed. When the 50 foot building setback from canal is taken into consideration Lot 72A will have a developable area with a 2.1:1 depth to width ratio and Lot 72B will a developable area with a 2.5:1 depth to width ratio.
18. All lots in the parent subdivision are larger than 6,000 sq. ft. and were designed around existing improvements to comply with KPB minimum lot size requirements.
19. Proposed Lot 72A will be 4,704 sq. ft. and proposed Lot 72B will be 4,617 sq. ft.
20. When accounting for the 50 foot building setback from the canal, Lot 72A and 72B will each have approximately 2,960 sq. ft. of developable area.
21. Shared ownership on a parcel of land is allowable.
22. On site well and septic is not available.
23. KPB code states that lots served by community water and wastewater system shall be at least 6,000 sq. ft.
24. No lots in the parent subdivision have been further subdivided.
25. Only one subdivision has occurred within the parent subdivision and that was to combine 3 lots into 2 lots.
26. KPB 20.30.030(A) prohibits a person from transferring, selling, or offering to sell a portion of land that must be subdivided under KPB code. KPB 20.30.030(A) does not prohibit a person from transferring any interest they may have in specific property.
27. This property is subject to a Common Interest Ownership Community.

Staff reviewed the exception and based on findings 4, 5, 9, 14-16, 18-21, 24, 26, 27 does not recommend approval.

Findings 6, 10, 11, 13 and 17 appear to support the exception request.

Staff recommends the Committee select the findings they determine are applicable, make additional findings if

needed, tie the findings to the following standards, and vote on the exception in a separate motion.

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

The commission (committee) shall make findings of fact meeting the following standards before granting any exception:

1. That special circumstances or conditions affecting the property have been shown by application;
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;
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.

**Staff recommendation:** place notes on the final plat indicating any exceptions granted by the Plat Committee with the meeting date.

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**RECOMMENDATION:**

**STAFF RECOMMENDS DENIAL OF THE PRELIMINARY PLAT.**

**IF THE EXCEPTION IS GRANTED AND THE PLAT IS APPROVED, THEN STAFF RECOMMENDS**

- THE PRELIMINARY PLAT BE SUBJECT TO STAFF RECOMMENDATIONS, AND
- THE PLAT COMPLIES WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.

**NOTE: 20.25.120. - REVIEW AND APPEAL.**

**A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.**

**A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.**

**END OF STAFF REPORT**