

AGENDA ITEM E. NEW BUSINESS

ITEM 1 - FOWLERS BENCH

<b>KPB File No.</b>	2021-067
<b>Plat Committee Meeting:</b>	June 14, 2021
<b>Applicant / Owner:</b>	John G. Fowler 10305 Main Tree Dr. Anchorage, AK 99507
<b>Surveyor:</b>	Seabright Survey + Design/Kenton T. Bloom
<b>General Location:</b>	City of Homer, located north of Bear Creek Drive from East End Road and south of Dorothy Drive from Skyline Drive

<b>Parent Parcel No.:</b>	174-060-11
<b>Legal Description:</b>	The N1/2 NE1/4 Section 10 Township 6 South Range 11 West Excepting Therefrom the West 330'
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Residential
<b>Water / Wastewater</b>	On Site

---

STAFF REPORT

**Specific Request / Scope of Subdivision:** The proposed plat is located within the City of Homer and will subdivide a 70 acre parcel into two tracts. Proposed Trac A will be 55 acres and proposed Tract B will be 15 acres.

**Legal Access (existing and proposed):** The legal access to the subdivision is by way of Birch Lane and Plunging Way right of ways. Both are 33 foot dedicated right of ways with corresponding 33 foot section line easements for a total access width of 66 feet. Both legal access right of ways are affected by very steep terrain / gullies. It is unlikely that either right of way can provide physical access.

33 foot section line easements affect the east and north boundary of this subdivision. **Staff recommends** the section line easements be depicted and labeled on the plat.

A section line easement right of way also exists from the north, but a portion of has been reduced to a 20 foot wide pedestrian easement and it is also affected by steep terrain.

The proposed access to this subdivision will be via a private easement agreement for a shared driveway and utilities per document 2015-002185-0 HM.

This subdivision is subject to a Public Recreational Easement per document 2013-002025-0 HM. **Staff recommends** this easement be depicted if possible or noted within the plat notes.

The City of Homer requested the following, *"Dedicate a north south easement per the Homer Non-Motorized Transportation and Trail Plan, A copy of page 38 of the Homer Non-Motorized Transportation and Trails Plan, part of the City's adopted Comprehensive Plan, is attached."* A copy of the map is included in the packet.

The plat is depicting the existing trail easement as granted per plat 2018-07. The plat is also depicting a new trail easement that will be granted this plat extending from the current trail easement to follow the common boundary between Tract A and Tract B to connect with the section line easement / Birch Lane ROW on the east boundary.

All right of ways will be under the jurisdiction of the City of Homer.

The plat is depicting a new T-type of turnaround easement near the common south boundary of Tract A and Tract B. Private access easements are not allowed to be granted by plat and must be recorded as a separate document.

KPB Roads Dept. comments	Out of jurisdiction, no comments.
SOA DOT comments	No comments provided.

**Site Investigation:** This subdivision is affected by steep terrain with Bear Creek Canyon located on the west side. The two proposed Tract will each contain a bench area where improvements can be located.

Bear Creek drainage is located on the west side and an unnamed drainage is depicted within Tract B. The City of Homer typically requires drainage easement to be thirty feet in width centered on the drainage. The final width of the easement will depend on the ability to access the drainage with heavy equipment. **Staff recommends** the drainage easement location and width be worked out with the City of Homer and provide an acceptance statement for the City of Homer to sign for the new drainage easements.

Floodplain Hazard Review	Within City of Homer. N/A.
Anadromous Waters Habitat Protection District Review	Not within a HPD.
State Parks Review	No comments.

**Staff Analysis** The parent parcel is an unsubdivided remainder of the N1/2 NE1/4, Section 10, excluding the west 10 acres and has not been through the platting process.

The lands to the east were subdivided in 1976. The lands to the north were originally subdivided in 1993 with a right of way vacation for a portion of Dorothy Drive completed in 2019. The lands to the south were subdivided in 2012. Per HM 2012-13 a trail, utility, and slope easement was granted which provides public, pedestrian access from Kestrel Circle right of way, through lots 17, 16, 14, 13, 15, and Tract A to the south boundary of this subdivision.

Water and wastewater services will be on site. Both new tracts are larger than 200,000 sq. ft. and a soils analysis report will not be required.

Notice of the proposed plat was mailed to the beneficial interest holder on May 14, 2021. The beneficial interest holder will be given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

The City of Homer Planning and Zoning Commission reviewed the plat at their meeting of April 21, 2021 and recommended approval with the following comments:

1. Include a plat note stating "Property owner should contact the Army Corps of Engineers prior to any on-site development or construction activity to obtain the most current wetland designation (if any). Property owners are responsible for obtaining all required local, state and federal permits."
2. Dedicate a north south easement per the Homer Non-Motorized Transportation and trail Plan.
3. Label Homer and Kachemak City Limits on the plat.
4. Label Kachemak City on the vicinity map.
5. Depict the approximate location of Bear Creek.
6. Depict the approximate location of the top of the steep canyon banks.

**Utility Easements** The parcel is not subject to any utility easements of record. The private shared driveway easement of record may also be used for underground utilities. This easement allows utilities to be brought to the

subdivision boundary but does not provide a connection to Tract B. **Staff recommends** this platting action grant an extension of the utility easement from the end of the shared driveway / utility easement to allow a connection to both Tracts A and B.

This plat is subject to several easements of record for ingress and egress for the use of a water spring. **Staff recommends** the easements of record be depicted or noted on the plat.

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

**Utility provider review:**

HEA	Reviewed, no comments.
ENSTAR	No comments or recommendations.
ACS	Reviewed, no comments.
GCI	Reviewed, no comments.

**KPB department / agency review:**

Addressing – Derek Haws	No affected addresses.
Code Compliance – Eric Ogren	No comments.
Planner – Bryan Taylor	This is located within the City of Homer and not subject to Local Option Zoning Districts or KPB material site reviews.
Assessing – Adeena Wilcox	No comments.

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.

- C. The location, width, and name of existing or platted streets and public ways, railroad rights-of-way, and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;

**Staff recommendation:** *Correct the street name from Shelton Drive to Plunging Way.*

- E. All parcels of land including those intended for private ownership and those 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 reservations that could affect the subdivision;

**Staff recommendation:** *The access easement depicted on the plat appears to be for a future easement. If the easement is recorded before the plat is finalized then add the serial no.*

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 comments:** *To comply with this section of code a right of way dedication would be required to match Birch Lane right of way and extend Plunging Way right of way. Both right of ways are affected by steep ravines and gullies. Both right of ways are affected by a 33 foot section line easement which provides access for the public and utility providers. Staff recommends that the plat committee concur that the*

*dedication of right of way to extend Plunging Way and matching right of way for Birch Lane is not required at this time due to difficult terrain features and the existence of 33 foot section line easements.*

20.30.050. Legal access.

A. The applicant shall provide an access plan to the planning department verifying the existence of legal access to the subdivision boundary. The plan shall consist of the documents depicting the access, a map depicting the location of the access, and topographic information indicating that construction which meets the design requirements set forth in KPB Chapter 20.30 is practical and economical. In this title, legal access exists where an unrestricted, public right-of-way connects the subdivision to the state highway system, the state marine highway system or a regularly served public airport, and one of the following is met:

1. Ingress and egress will be provided over section line easements located within a surveyed section;
2. The applicant provides copies of borough-accepted recorded conveyances creating the public easement or right-of-way where the access is located;
3. That access is a State of Alaska maintained road or municipal maintained road;
4. The applicant provides documentation satisfactory to the borough demonstrating that public legal access is guaranteed through judicial decree; or
5. The right-of-way is an easement or fee interest at least 60 feet in width dedicated or irrevocably conveyed to the public and acceptable to the planning commission.

B. The following situations may qualify for a waiver of the legal access requirement:

1. Upon finding that no practical means of providing road access to a proposed subdivision exists and upon presentation of credible and convincing evidence by the applicant that permanent public access by air, water, or railroad is both practical and feasible, the planning commission may waive the legal access requirements of KPB 20.30.050(A). If access other than by road is approved, the mode of access shall be noted on the plat. .
2. Where only a 30-foot dedication exists over all or a portion of the legal access to a subdivision, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the other 30 feet will be dedicated in the future.
3. Where a road is in use for physical access but there is no right-of-way document for all or part of the access road, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the right-of-way will be dedicated in the future.

*Staff Comments: Legal, public, access to the subdivision exists via the section line easements and right of way dedications for Plunging Way and Birch Lane. Neither of these accesses are viable for physical access due to steep terrain and ravines.*

*A private access easement from Kestrel Circle provides private access to this subdivision. Steep slopes affect the private access easement. A driveway has been constructed within the private access easement which provides physical access to this subdivision. This private access easement is the only practical access to the subdivision.*

**Staff recommendation:** *Concur an exception is not required as legal access exists to the subdivision via the section line easement and right of way dedications of Plunging Way and Birch Lane, but these accesses are not practical or economical. Physical access to the subdivision will be by a private driveway easement within Canyon Trails Subdivision.*

20.30.100. Cul-de-sacs.

A. Streets designed to have one end permanently closed shall be no more than 1000 feet long. The closed end of the cul-de-sac shall have a suitable turnaround with a minimum radius of 50 feet to the property line. The turnaround shall be constructible to a 4 percent grade or less.

B. Hammerhead or T -type turnarounds may be allowed on a case-by-case basis. Adequate turning radii, width and depth must be provided for road maintenance and emergency vehicle access. Plans must be reviewed with a recommendation by emergency service providers and the KPB Road Service Area Board prior to submittal for planning commission review.

C. Temporary turnarounds and self-vacating turnarounds shall not be granted or reserved on plats.  
**Staff recommendation:** *Concur that the turn around depicted at the end of the private access easement is not on a dedicated right of way, therefore section 20.30.100 does not apply. Staff would suggest that the private access easement be granted in a way that clearly provides access for Tract A and Tract B and allows for an adequate turnaround area.*

20.30.120. Streets-Width requirements.

A. The minimum right-of-way width of streets shall be 60 feet.  
1. Half streets shall generally not be allowed except to provide the logical extension of a right-of-way where the remaining half street can reasonably be expected to be dedicated in the future.  
2. When a design change required as a condition of preliminary approval results in a half right-of-way that was not shown on the original preliminary plat, adjoiners to the new half right-of-way will be sent a copy of the plat committee minutes and a sketch showing the new half right-of-way and per KPB 2.40.080 can request a review of the plat committee decision by the full Planning Commission.

B. Additional right-of-way or easement width may be required to provide for the construction of side slopes or to otherwise accommodate right-of-way construction standards set forth in KPB Title 14.

**Staff recommendation:** *Concur that the existing right of way dedications and section line easements provide a 66 foot wide public access and utility easement on the east and north boundaries and that additional dedication of right of ways is not necessary at this time.*

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:** *Comply with the City of Homer request to follow the Homer Non-Motorized Transportation and Trails plan and grant the trail easements as shown on the preliminary plat. Provide a Certificate of Acceptance for the City of Homer to accept the Trail easements being granted.*

20.30.270. Different standards in cities. Where cities have enacted by ordinance different subdivision design standards than those set forth in this chapter, the planning commission shall apply the city standards in lieu of those set forth in this chapter. Any appeal of a city design standard is subject to KPB 21.01.020(E).

**Staff recommendation:** *The City of Homer does not meet the specified requirements for the application and consideration of different standards.*

---

#### KPB 20.40 -- Wastewater Disposal

20.40.010 Wastewater disposal.

*Platting Staff Comments: Both parcels will have onsite wastewater disposal and both parcels are larger than 200,000 sq. ft. therefore a soils analysis report is not required.*

**Staff recommendation:** *Within the wastewater note remove the reference to the nominal 5 acres as this has been removed from KPB code. Comply with 20.40.*

---

#### KPB 20.60 – Final Plat

**Staff recommendation:** *final plat submittals must comply with 20.60. Additional information, revisions, and/or corrections are required as noted below.*

---

**EXCEPTIONS REQUESTED:**

**A. 20.30.090. Streets-Maximum grades allowed.**

Owner's Discussion:

Staff Discussion: The legal access to the subdivision is via the section line easements and right of way dedications on Birch Lane and Plunging Way as well as a pedestrian access from Dorothy Drive. All three access points cross very steep terrain and/or ravines. Access from these routes cannot be constructed to comply with the street grade requirements.

Physical access to the subdivision is via a private access easement through Canyon Trails Subdivision. The private access easement traverses steep terrain. The access road has been improved but cannot be constructed to comply with KPB standards for road grade or curve requirements. A private access easement is not under the jurisdiction of the City of Homer or KPB. Any maintenance or improvements within the private access easement is at the discretion of the grantees.

**Findings:**

1. The legal access to the subdivision is via the section line easements and right of way dedications on Birch Lane and Plunging Way as well as a pedestrian access from Dorothy Drive.
2. All three access points cross very steep terrain and/or ravines.
3. Access from these routes cannot be constructed to comply with the street grade requirements.
4. Physical access to the subdivision is via a private access easement through Canyon Trails Subdivision.
5. The private access easement traverses steep terrain.
6. The access road has been improved but cannot be constructed to comply with KPB standards for road grade or curve requirements.
7. A private access easement is not under the jurisdiction of the City of Homer or KPB.
8. Any maintenance or improvements within the private access easement is at the discretion of the grantees.

Staff reviewed the exception request and recommends granting approval.

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;  
**Findings 1-4, 6-8 appear to support this standard.**
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;  
**Findings 1-4, 6-8 appear to support this standard.**

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.  
**Findings 1-4, 6-8 appear to support this standard.**

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

**EXCEPTIONS REQUESTED:**

**B. KPB 20.30.170 Blocks – Length requirements**

**Surveyor's Discussion:**

**Staff Discussion:** This subdivision is located within a block that is larger than allowed by KPB standards. The block is defined by Birch Lane on the east and a section line easement on the north.

The entire subdivision is affected by steep terrain. Bear Creek Ravine is located on the west side of the subdivision.

The land to the south has been subdivided without providing a right of way dedication to this parcel of land.

If denied, this platting action will require a 60 foot wide right of way dedication from the section line on the north boundary to Tract A on the south boundary and would need to align with the private access easement.

**Findings:**

1. This subdivision is located within a block that is larger than allowed by KPB standards.
2. The block is defined by Birch Lane on the east and a section line easement on the north.
3. The entire subdivision is affected by steep terrain.
4. Bear Creek Ravine is located on the west side of the subdivision.
5. The land to the south has been subdivided without providing a right of way dedication to this parcel of land.
6. All parcels front on either a dedicated right of way or a section line easement.
7. This subdivision is creating two parcels with each one having a flat 'bench' area that can be developed.

**Staff reviewed the exception request and recommends granting approval.**

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;  
**Findings 3-7 appear to support this standard.**
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;  
**Findings 3-7 appear to support this standard.**

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.

**Findings 3-7 appear to support this standard.**

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

---

**RECOMMENDATION:**

**SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:**

- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE 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**