

AGENDA ITEM E. NEW BUSINESS

ITEM - BOSTWICK SUBDIVISION

<b>KPB File No.</b>	2021-068
<b>Plat Committee Meeting:</b>	JUNE 14, 2021
<b>Applicant / Owner:</b>	Michael H. Bostwick
<b>Surveyor:</b>	John Segesser / Segesser Surveys, Inc
<b>General Location:</b>	Ninilchik area

  

<b>Parent Parcel No.:</b>	157-130-06
<b>Legal Description:</b>	E1/2 E1/2 NE1/4 Sec. 31, T1S, R13W, SM
<b>Assessing Use:</b>	Residential mobile home
<b>Zoning:</b>	Rural Unrestricted
<b>Water / Wastewater</b>	On Site

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STAFF REPORT

**Specific Request / Scope of Subdivision:** The proposed plat will subdivide a 40 acre parcel into two tracts using the Ninilchick River as the natural dividing line. Each parcel will be nearly 20 acres in size. This plat was reviewed and approved by the KPB plat committee on October 23, 2017. The plat was approved subject to platting requirements being met, specifically KPB 20.30.050 Legal Access. A final plat was submitted, but a legal access plan was not. The plat approval expired. After the expiration of the approval, the preliminary plat is being brought back for approval again.

**Legal Access (existing and proposed):** Legal access to the subdivision is via section line easements. The section line easement crosses the Ninilchik River and is affected by steep terrain. Access via section line easement may not be feasible or economical.

Physical access to the north portion of the subdivision is from Brody Road and section line easements. An ADL easement connects between the dedication of Brody Road and the section line easement. It does not appear that the constructed road is within the easement.

Physical access to the south portion of the subdivision is from Michael and Zoyas Road. Michael and Zoyas road is a local road that appears to have been in existence since the 1950's. Portions of the road are within a dedicated right of way and portions of the road cross over lands owned by Ninilchik Native Association, Inc. (NNAI), and Cook Inlet Region Inc. (CIRI).

This platting action will be providing a 30 foot right of way dedication on the south boundary and along the east boundary for the south 850 feet. The lands to the east and south, if subdivided, will be required to provide a matching 30 foot right of way dedication.

Per KPB 20.30.050 Legal Access, the applicant shall provide an access plan to the planning department verifying the existence of legal access to the subdivision boundary. A plan was not submitted with this application. **Staff recommends** an access plan for practical, constructible access to Tract A and Tract B be provided per KPB 20.30.050.

During the last plat review, CIRI submitted a letter with concerns regarding legal access to this subdivision. Their letter stated,

*"Initial review of both CIRI's records and public records support the position that the constructed roads known as Brody Road and Michael and Zoya's Road are not public rights-of-way. They are in fact private roads, crossing private CIRI property. While KPB 20.30.050(B) offers waivers to the provisions of KPB 20.30.050(A), which the applicant may be erroneously relying upon, as the property owner of the roads CIRI is hereby informing the*

Borough that CIRI has not dedicated, and is not considering dedicating, either of these roads as public rights-of-way.

*CIRI does not offer opposition to, or support for, the subdivision under consideration. CIRI must however, make the Borough aware that these constructed roads are private where they cross CIRI's private property. CIRI does not support any action by the Borough to establish these or any other roads as de-facto public rights-of-way absent legal easements or other devices agreed to by CIRI."*

The plat does not comply with KPB 20.30.170 Block Length.

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

**Site Investigation:** The Ninilchik River that crosses through middle of the property affects the subdivision. A Anadromous Waters Habitat Protection District affects the area adjoining the Ninilchik river. The low area around the river is classified as a Riverine ecosystem per the Kenai Watershed Forum.

**Staff recommends** the anadromous waters habitat protection note be added to the plat per KPB 20.30.290.

**ANADROMOUS WATERS HABITAT PROTECTION DISTRICT NOTE:**

Portions of this subdivision are within the Kenai Peninsula Borough Anadromous Waters Habitat Protection District. See KPB Chapter 21.18, as may be amended, for restrictions that affect development in this subdivision. Width of the habitat protection district shall be in accordance with KPB 21.18.040.

Steep slopes are located to the north and south of the Ninilchik River drainage. Uplands are located to the north and south of the steep slopes.

The south upland area has been developed and appears to contain some residential improvements.

Floodplain Hazard Review	Not within flood hazard area.
Anadromous Waters Habitat Protection District Review	Is totally or partially within HPD.
State Parks Review	No comments.

**Staff Analysis** The parent parcel is an unsubdivided aliquot part of the section. This plat will use the Ninilchik River as the natural boundary between the two parcels. **Staff recommends** a plat note be added that reads, 'The thread of the Ninilchik River is the true bounds between Tract A and Tract B and the location of the river may change over time. The approximate thread (centerline), as shown, is for computations only. The true property corners being on the extension of the side lot lines and their intersection with the thread of the Ninilchik River.'

Both tracts will be larger than 200,000 sq. ft. and appear to have at least 20,000 sq. ft. of area available for septic installation. A soils analysis report will not be required.

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.

The property is not within an advisory planning commission.

**Utility Easements** This subdivision is affected by section line easements, which can be used for utility purposes. No other easement of record affect this property.

Utility easements adjoining the right of ways will be granted with this plat. **Staff recommends** that the surveyor verify if any buildings are located where the utility easement will be located. If so, provide a plat note stating that the utility easement is not granted where a building will be affected.

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

**Utility provider review:**

HEA	No comments.
ENSTAR	No comments or recommendations.
ACS	
GCI	

**KPB department / agency review:**

Addressing – Derek Haws	Affected Addresses: 15435 MICHAEL AND ZOYAS RD  Comments: 15435 MICHAEL AND ZOYAS RD will remain on Tract B.
Code Compliance – Eric Ogren	No comments.
Planner – Bryan Taylor	There are no local option zoning district issues or material site issues associated with this subdivision.
Assessing – Adeena Wilcox	No comments.
Advisory Planning Commission	N/A

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:** *Revise owners name to Michael H. Bostwick.*

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:** *Depict and label the dedicated right of way for Michael and Zoya's Road adjoining the southeast boundary of this subdivision.*

F. The location, width and name of existing and platted streets and public ways, railroad rights-of-way, easements, and travel ways existing and proposed, within the subdivision;

**Staff recommendation:** *Provide a street name for the portion of Michael and Zoya's Road that is being dedicated with this plat. Work with the KPB Addressing Officer to obtain an approved street name for the right of way dedication on the south boundary.*

- 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 proposed 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:** *Provide a status label for Tract A, Plat HM 2018-44 located to the east of this subdivision. Depict and label the section line easements that abut this subdivision boundary.*

- H. Approximate locations of low wet areas, areas subject to inundation, areas subject to flooding or storm water overflow, and the line of ordinary high water. This information may be provided on an additional sheet if showing these areas causes the preliminary plat to appear cluttered and/or difficult to read;

**Staff recommendation:** *Label the low wet areas or provide the symbol within the legend.*

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 recommendation:** *Comply with 20.30.050 by providing an access plan showing the legal access to both parcels.*

20.30.160. Streets-Name requirements. Streets shall be named to conform to KPB Chapter 14.10

**Staff recommendation:** *Work with the KPB addressing officer to obtain an approved street name for the east-west dedication.*

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.

C. When a subdivision is affected by a Local Option Zoning District (LOZD), an approved by the assembly, all building setbacks shall be graphically depicted and labeled on the lots. A local option zoning setback shall be noted on the plat in the following format:

Building setback – This subdivision is located within (name of LOZD) Local Option Zoning District as contained in KPB Chapters 21.44 and 21.46 and adopted by KPB Ordinance (number), recorded under (serial no. and recording district). Information regarding the zoning restrictions and copies of the ordinance are available from the KPB Planning Department.

**Staff recommendation:** *Depict and label the 20 foot building setback adjoining the right of ways. Verify if any buildings will be affected by the building setback and the accompanying utility easement and if so, provide a plat note stating that the building predates the building setback.*

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#### KPB 20.40 -- Wastewater Disposal

20.40.010 Wastewater disposal.

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

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#### 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.*

20.60.120. Accuracy of measurements. All linear measurements shall be shown to the nearest 1/10 foot, and angular measurements shall be at least to the nearest minute. All lot areas shall be shown to the nearest 10 square feet or to the nearest 1/1,000 of total acres. Meander lines, dry land areas and submerged land areas shall be shown in addition to total area when applicable. All boundary closures shall be to a minimum accuracy of 1:5,000. Boundary and lot closure computations must be submitted with the final plat.

**Staff recommendation:** *Provide the upland, or usable area, for Tract A and Tract B. Provide boundary and lot closure computations with the paper final plat. KPB will verify closure complies with 20.60.120.*

20.60.180. Plat notes.

A. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.

**Staff recommendation:** *Place the following notes on the plat.*

- *Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program (KPB 14.06).*

20.60.200. Survey and monumentation.

**Staff recommendation:** *Remove any overstrikes from the survey marker symbols. Comply with 20.60.200*

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#### **EXCEPTIONS REQUESTED:**

- A. **KPB 20.30.030 Proposed Street Layout**  
**KPB 20.30.210 Lots – access to street**

Surveyor's Discussion:

Staff Discussion: These two section of code are being combined as both deal with the dedication of right of way along the east and north boundary.

It appears that a 66 foot section line easement affects the east boundary and a 83 foot section line easement affects the north boundary.

A road is constructed on the east boundary of this subdivision which provides physical access to this subdivision. The subject property has been issues a Michael and Zoya's Road address.

This platting action will provide a matching right of way dedication for Michael and Zoya's Road on the south portion of the east boundary. The right of way dedication will stop at the top of the steep terrain.

If denied, a right of way dedication will be required along the entire eastern and northern boundary. Per 20.60.050 Dedication and construction of anadromous water body crossings, additional right of way may be required so that a crossing of the Ninilchik River can be constructed that complies with KPB road design.

#### **Findings:**

1. It appears that a 66 foot section line easement affects the east boundary and a 83 foot section line easement affects the north boundary.
2. A road is constructed on the east boundary of this subdivision which provides physical access to this subdivision.
3. The subject property has been issues a Michael and Zoya's Road address.
4. This platting action will provide a matching right of way dedication for Michael and Zoya's Road on the south portion of the east boundary. The right of way dedication will stop at the top of the steep terrain.
5. Imagery dating back to 2000 depicts a constructed road on the eastern boundary of this proposed plat.
6. The plat is affected by the Ninilchik River, which is affected by an Anadromous Waters Habitat Protection District. Additional right of way may be required so that a road/bridge meeting KPB standards can be constructed in the future.
7. Steep slopes affect both Tarct A and Tract B. Additional right of way may be necessary so that a road meeting KPB standards can be constructed in the future.
8. No surrounding parcels will be denied access.
9. One parcel will be created on each side of the Ninilchik River.

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, 2, 4-9 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, 2, 4-9 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, 2, 4-9 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 Block Length**

**Surveyor's Discussion:**

**Staff Discussion:** The block length from north to south is 2,640 feet. The maximum allowed by KPB standards is 1,320 feet.

This plat is affected by the Ninilchik River and the Riverine ecosystem as identified by the Kenai Watershed Forum mapping.

Steep slopes are located on the north side and south side of the Ninilchik River.

The neighboring parcel to the west is access by way of a section line easement on the north side and by way of the right of way dedication from this plat on the south side.

The neighboring parcel to the east is access by way of a section line easement on the north side and by way of right of way dedications on the south side.

If denied, this plat will be required to provide a east-west right of way dedication so that the block does not exceed 1,320 feet in length.

**Findings:**

1. The block length from north to south is 2,640 feet.
2. The maximum allowed by KPB standards is 1,320 feet.
3. This plat is affected by the Ninilchik River and the Riverine ecosystem as identified by the Kenai Watershed Forum mapping.
4. Steep slopes are located on the north side and south side of the Ninilchik River.
5. The neighboring parcel to the west is access by way of a section line easement on the north side and by way of the right of way dedication from this plat on the south side.
6. The neighboring parcel to the east is access by way of a section line easement on the north side and by way of right of way dedications on the south side.
7. Both Tracts are 20 acres and could be further subdivided in the future.
8. No parcel is being denied legal access.

**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 4-8 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 4-8 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 4-8 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.

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**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**