

AGENDA ITEM E. NEW BUSINESS

**ITEM 4 - Ninilchik Airport Heights 2021 Replat**

<b>KPB File No.</b>	2021-103
<b>Plat Committee Meeting:</b>	August 9, 2021
<b>Applicant / Owner:</b>	Terrastar Properties LLC of Wellington, Nevada
<b>Surveyor:</b>	Stephen C. Smith / Geovera, LLC
<b>General Location:</b>	Ninilchik

  

<b>Parent Parcel No.:</b>	185-321-09
<b>Legal Description:</b>	Government Lots 1, 2, 3 and 4 of the E1/2 W1/2, all lying south of Oil Well Road, Section 7 Township 2 South, Range 13 West, SM and Excepting Therefrom Ninilchik Airport Heights Carter Tract B, Deed of Record Boundary Survey, Plat 84-32RS, Ninilchik Airport Heights M. Keeler 1981 Subdivision of Tract "A", Plat 82-3, Ninilchik Airport Heights 2005 Addition, Plat 2005-20 and Ninilchik Airport Heights 2005 Addition NO 2, Plat 2006-11 HRD.
<b>Assessing Use:</b>	Residential
<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 155.25 acre parcel into a 20.14 acre tract that contains the Ninilchik Airstrip and a 132 acre tract.

**Legal Access (existing and proposed):** The subdivision is located between miles 3 and 4 of State maintained Oil Well Road. The subdivision has legal access from Smart Street, Tailwind Road and Cessna Street.

Smart Street is located on the west boundary. Smart Street is an improved roadway within a 66 foot wide right of way that is a combination of a dedication and a section line easement. The State of Alaska maintaining Smart Street.

Tailwind Road is located on the east boundary and on the north side of Tract B. Tailwind Road is an improved roadway within a 60 foot wide right of way dedication. The portion that crosses the east end of Tract A is within a public access easement. The Kenai Peninsula Borough maintains Tailwind Road.

Cessna Street is located on the west boundary. Cessna Street is a 83 foot wide right of way that is a combination of right of way dedications and section line easements. Cessna Street is not improved.

There does appear to be some discrepancies regarding the section line easements within and abutting the subdivision. The certificate to plat states that the plat is affected by 33 foot section line easements. Based on the date of entry staff has determined there are no section line easements within the subdivision. However, Ninilchik Airport Heights 2005 Addition No. 2, Plat HM 2006-11, depicted 33 foot section line easements along the west and south boundary. That depiction granted 33 foot public access easements with the same properties as section line easements. The surveyor or owner can work with the state to determine if actual section line easements affect this property. If it is determined the subdivision is subject to section line easements, the current notes and depictions are correct. If it is determined there are no section line easements, but instead there are platted public access easements, the labels should be revised to state "33 foot public access easements granted by Plat HM 2005-30".

The subdivision is divided into two blocks. Oilwell Road, Tailwind Road, Cessna Street, Smart Street, and section line easements define the northern block. The northern block is closed but is larger than allowable lengths. The southern block is defined by Tailwind Road and section line easements. The block is not closed and is larger than allowable lengths. An exception for block length requirements has been requested.

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

**Site Investigation:** Tract A contains the Ninilchik Airstrip and is relatively flat with no known low wet areas.

Tract B is a large acreage tract that is not developed. Tract B is affected by an anadromous stream named Silver Salmon Creek. Along the creek are wetlands and some steep areas. These areas are depicted on the plat. Due to the wetlands, **Staff recommends** a note be placed on the final plat indicating any person developing the property is responsible for obtaining all required local, state, and federal permits, including a U.S. Army Corps of Engineers wetland determination if applicable.

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

**Staff Analysis** The proposed plat will divide an unsubdivided remainder into two large tracts. The purpose of the subdivision is to legally separate the runway lease portion from the remainder of the unsubdivided property. No additional right of way dedications are proposed and exceptions have been requested.

The subdivision is an unsubdivided remainder of several government lots. Through the years, several lots and right of way dedications have been created from the original lots. The property involved in this platting action is the unsubdivided remainder which was allowed under old code.

Due to the size of the lots a soils report will not be required and an engineer will not sign the final plat.

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 beneficial interest holders affect the property.

The property is not within an advisory planning commission.

**Utility Easements** Plat note 6 addresses several easements granted to Homer Electric Association with no definite locations. This plat is proposing to grant utility easements along dedicated right of ways. Due to the scale, it will be difficult to depict the utility easements. A detail could be added to show the easements being granted.

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 or work with the utility providers to obtain approval.

**Utility provider review:**

HEA	No comments
ENSTAR	No comments
ACS	No objections
GCI	No comments

**KPB department / agency review:**

Addressing – Derek Haws	Affected Addresses: 63885 Tailwind Road (will be deleted) Existing street names are correct. Within the Vicinity Map update to Oil Well Road.
Code Compliance – Eric Ogren	No comments

Planner – Bryan Taylor	There are not any Local Option Zoning District issues with this proposed plat. A counter permit for a material site for this parcel expired in 2015. A recent site visit showed no recent extraction activity.
Assessing – Matt Bruns	No comment

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

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**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:** *The legal description should match the Certificate to Plat. The excluded plats should include the recording number.*
- 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:**
- *The cul-de-sac north of Tract A should be labeled and a width label added, Stinson Street 50'.*
  - *An additional label north of the subdivision for the west dedication of Smart Street should be added for clarification.*
  - *Verify all section line easement widths.*
  - *Correct section line easement depictions and labels based on information found.*
- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;
- Staff recommendation:** *Correct Oil Well Road label by separating Oil Well into two words.*
- 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:** *The ownership listed on the unsubdivided lots may be removed from final plat.*

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**KPB 20.30 Design Requirements**

**Platting staff comments:** *Staff reviewed the plat and all the items required by 20.30 were met, unless otherwise noted below:*

- 20.30.090. Streets-Maximum grades allowed. The subdivider shall demonstrate that streets can be readily constructed in accordance with current borough road standards and that the grades on any such roads shall not exceed 6 percent on arterial streets and 10 percent on other streets, or 4 percent within 130 feet

of any centerline intersections. Submittal of centerline profiles and cross-sections may be required to demonstrate that compliant construction in the right-of-way is feasible.

**Staff recommendation:** *If right of way dedications are required along the southwest portion additional easements may be required.*

20.30.130. Streets-Curve requirements.

A. Where a deflection angle of more than 10 degrees in the alignment of a right-of-way occurs, a curve of minimum radius is required. On streets 100 feet or more in width, the centerline radius of curvature shall be not less than 300 feet; on other streets not less than 200 feet. If it is not possible to design a curve to be radial or tangential, that curve shall be clearly labeled non-radial or non-tangential.

B. A minimum 100-foot tangent is required between curves.

**Staff recommendation:** *Concur that an exception is not needed for line segment L1 as it is less than the 100 foot tangent length requirement but Tailwind Road is an existing right of way dedication and additional right of way is not required at this time.*

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 the setback along any required dedications. If no additional dedications are required, Tract A should depict the setback along Smart Street and dedicated portions of Tailwind Road.*

20.30.290. Anadromous Waters Habitat Protection District. If any portion of a subdivision or replat is located within an anadromous waters habitat protection district, the plat shall contain the following note:

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.

**Platting Staff Comments:** *Silver Salmon Creek is within the Anadromous Waters Catalog. 244-20-10100-2019.*

**Staff recommendation:** *comply with 20.30.290.*

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**KPB 20.40 -- Wastewater Disposal**

20.40.010 Wastewater disposal.

**Platting Staff Comments:** *The current wastewater disposal note needs to be revised to remove "or nominal 5 acres". No soils analysis report is required and an engineer will not need to sign the plat.*

**Staff recommendation:** 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.

20.60.040. Dedication of public use lands. Any land shown on a plat as a street, public park or other public area must be dedicated on the final plat to a tax exempt governmental entity. If the governmental entity is not the Kenai Peninsula Borough, the governmental entity shall be required to execute an acceptance of the dedication on the plat.

**Staff recommendation:** If right of way dedications are required, then a certificate of acceptance will be required.

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.

B. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required, Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

**Staff recommendation:**

- Reword note 3 “The front 10 feet adjoining dedicated right of ways and 20 feet within 5 feet of side lot lines is a utility easement. No permanent...”
- Plat note 5 can remain if dedications are required. If there are no new dedications, the note may be removed.
- Add the Anadromous Waters Habitat Protection District Note.
- Add a note “Any person developing the property is responsible for obtaining all required local, state, and federal permits, including a U.S. Army Corps of Engineers wetland determination if applicable.”

20.60.190. Certificates, statements, and signatures required.

**Staff recommendation:** Revise the certificate of ownership to read “...that we, on behalf of Terrastar Properties, LLC, hereby adopt this plan of subdivision and by our free...” Verify where signatures will be acquired and update notary as needed. If dedications are required, provide an acceptance to be signed by the KPB. Comply with 20.60.190.

20.60.200. Survey and monumentation.

**Staff recommendation:** Monuments shall be placed or found monuments shown to break the long lot lines into sections 1,320 feet or shorter between monuments. Due to terrain, witness markers may be required. Comply with 20.60.200

**EXCEPTIONS REQUESTED:**

**A. KPB 20.30.030 – Proposed Street Layout – Requirements**  
**KPB 20.30.170 – Block Length Requirements**

Surveyor's Discussion: The section line easement along the west boundary runs into the steep bluff near the southwest corner of the subdivision. That makes it unlikely that a borough standard road could be constructed that would connect to the south boundary. The section line easement along the south boundary runs through a large wetland and the existing creek, and due to the steepness of the bluffs adjoining the existing drainage, it would not seem likely that a borough standard road could or should be constructed within the easement.

Tract A is being extracted from the parent parcel to separate it legally from the unsubdivided remainder of the parent

plat. The portion of Tract B northwest of the drainage is likely to be further subdivided and developed at which time right-of-ways will be dedicated.

A dedication to connect the two portions of Tailwind Road would go across the runway lease so I am sure that is why it was just an easement.

Staff Discussion: There have been dedications along the western boundary of the subdivision. There are several areas to consider. Staff will make their recommendation but if the plat committee wishes, they may want to make a separate motion on each dedication if they do not agree with staff's recommendations.

The subdivision is divided into two blocks. Oilwell Road, Tailwind Road, Cessna Street, Smart Street, and section line easements define the northern block. The northern block is a closed block but is larger than allowable lengths. The southern block is defined by Tailwind Road and platted public access easements. The block is not closed and is larger than allowable lengths.

Smart Street lies north of Tract A. The Smart Street dedication is located atop a section line easement and the western portion has been dedicated. Plat HM 2005-20, dedicated a small portion of Smart Street north of Tract A. Smart Street is constructed and maintained by DOT.

Cessna Street is a 30 foot dedication along the west between Tract A and Tailwind Road. Abutting Cessna Street is a platted public access easement. The right of way does not appear to be constructed.

A public road easement exists within Tract A. It provides a legal connection of Tailwind Road right of way. The public road easement is constructed and maintained by the borough. The plat committee heard the subdivision plat that created the lots south of the airstrip on June 13, 2005. In the staff report from that meeting, it states the owner was working with the State of Alaska to clarify restrictions and allowable uses associated with the airport easement. They owner did not want to dedicate over the end of the easement until all issues were resolved with the State of Alaska. Staff also recommended that there be no dedications across the airstrip. No new information was presented regarding the airport easement or possible dedications.

The status of the section line easements will need to be verified. Past subdivision plats show 33 foot public access easements therefore public access easements exist with the same qualities as a section line easement.

If denied, this plat will be required to dedicated right of way on the west and south boundary as well as additional right of way dedications within Tract B to comply with the block length limit of 1,320 feet.

#### **Findings:**

1. Tract A is an existing runway.
2. Dedication to extend Smart Street / Cessna Street right of ways along Tract A would result in a right of way crossing a runway.
3. The public road easement is already constructed and maintained.
4. Smart Street is constructed and maintained by the State of Alaska.
5. Tailwind Road is constructed and maintained by the KPB.
6. Cessna Street does not appear to be constructed.
7. Section line easement (or pubic access easements) provide access to areas within Tract B.
8. Tract B abuts property owned by the Ninilchik Native Association and the Kenai Peninsula Borough.
9. Tract B contains steep terrain, wetlands, and anadromous stream.
10. Tract B will be 132 acres.
11. Tract B can be further subdivided in the future and dedications can occur to meet the design needs.
12. The northern block is approximately 1,920 feet by 2,950 feet by 3,350 feet.
13. Dedications to bring the northern block into compliance will require dedications through a runway.
14. The southern block is approximately 3,350 feet by 2,930 feet by 2,420 feet by 2,560 feet.
15. Dedication to bring the southern block into compliance will require multiple dedications.
16. All lots fronting Tract A have access to the airstrip easement.
17. Previous plats were not required to dedicate across airstrip easement.

18. No parcels are being denied access.

Staff reviewed the exception request and recommends granting approval. Staff is agreeable to the 60 foot wide road easement, located on the east end of the airstrip, being dedicated to public right of way with Tract A and Tract B on each side of the dedication. This can be worked out with the surveyor and land owner.

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 1-7, 10, 11, 13, 16, 18 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 1-7, 10, 11, 13, 16, 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 1-7, 10, 11, 13, 16, 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.

**B. KPB 20.30.190 – Lots-Dimensions** (3:1 for Tract A)

Surveyor's Discussion: Tract A is an existing runway that operates under an existing airport construction easement. Tract A is intended to separate the runway lease area from the remainder of the unsubdivided property (Tract B) so that the owner can dedicate equal interests to the adjoining landowners in the runway tract. Tract A will only be a parcel containing the runway lease area in the future.

Staff Discussion: KPB 20.30.190(A) states that the average depth shall be no greater than three times the average width.

If denied, Tract A will need to be subdivided into multiple lots to meet the 3:1 depth to width ratio. Also a right of way dedication would be required on the north or south side of the airstrip.

**Findings:**

1. Tract A is an existing runway.
2. The depth to width ratio is 8.2:1.
3. Access to the lot is by Smart Street and Tailwind Road.
4. Lots abut the tract along the north and south.
5. The intention for this tract is to continue use as runway.
6. The airstrip has been noted and depicted on plats prior to the development of the abutting properties.

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, 5, 6 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, 5, 6 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, 5, 6 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**