

AGENDA ITEM E. NEW BUSINESS

ITEM 10 - Mac McGahan Subdivision 2020 Replat

KPB File No.	2021-096
Plat Committee Meeting:	August 9, 2021
Applicant / Owner:	Estate of Dolores Mae McGahan, Nikiski, AK Estate of Merrill Mazie McGahan, Nikiski, AK Merrill M. McGahan, Nikiski, AK Carmen M. McGahan, Nikiski, AK Dolores M. Rappe, Nikiski, AK
Surveyor:	John Segesser / Segesser Surveys
General Location:	Nikiski, Kenai Spur Highway and Nikishka Beach Road.

Parent Parcel No.:	012-080-30, 012-080-33, 012-080-41, 012-080-42, 012-080-47
Legal Description:	Lot 8 of Mac McGahan Subdivision, Lots 6A and 7A of Mac McGahan Subdivision No. 1, Lot 5A of Mac McGahan Subdivision 1983 Addition, and Tract A of Mac McGahan Subdivision 2010 Addition
Assessing Use:	Residential / General Commercial
Zoning:	Unrestricted
Water / Wastewater	On Site (Application did not state)

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will reconfigure four lots and one tract into one lot and one tract. Tract A will be reduced from 3.5 acres to 2.808 acres and the combined lots will be 2.306 acres.

Legal Access (existing and proposed): The lot will have access via the Kenai Spur Highway near mile 27. Tract A1 will have legal access by Nikishka Beach Road. Both right of ways are constructed and maintained by the State of Alaska.

The block is defined by Land Marine Drive, Kenai Spur Highway, Nikishka Beach Road, and section line easements. Land Marine Drive is not a dedicated right of way and passes through private property. The block length along the Kenai Spur Highway and along Land Marine Drive exceed the code requirements. The distance from Nikishka Beach Road to Land Marine Drive is approximately 1,500 feet. The building located within this subdivision contains multiple units with businesses. The lots to the southeast all contain structures. Parking areas exist along the front of the lots. Some of the lots to the west and north contain businesses with large storage and work yards. Due to the location of structures, obtaining a full dedication that would improve the block will be difficult. **Staff recommends** the plat committee concur that an exception to KPB 20.30.170- Block length is not required due to existing development constraints and any dedication would not improve or bring the block into compliance.

KPB Roads Dept. comments	Within jurisdiction, no comments
SOA DOT comments	The ROW for Kenai Spur Highway is as shown on From Wildwood North (S-0490(2)) sheet 24 of 29, and appears to be shown correctly.

Site Investigation: The area appears to not contain any low wet areas and is not within a flood plain area. The property is relatively flat with no steep slopes.

Floodplain Hazard Review	Not within flood hazard area
Anadromous Waters Habitat Protection District Review	Is not within HPD
State Parks Review	No comments

SOA Fish and Game	No objections as will not affect public access to public lands and all other easements are accurately depicted.
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Staff Analysis The property within the proposed subdivision was part of the M.M. McGahan homestead in the Nikiski area. Eight lots were split from the property in 1967. Lot 8 is still in the original configuration. Lots 6A and 7A were revised in 1973. Lot 5A was revised in 1983. Tract A was created from a portion of the government lot when a resubdivision was done for Lot 4A in 2011.

The lots involved with this subdivision contain a large building identified as the Nikishka Mall with numerous businesses residing in the buildings. The building crosses several lots. This platting action will remove the lot lines that affect the building within Lots 5A, 6A, 7A and 8. The lot line adjustment with Tract A will provide additional area behind the building for storage.

The building was built in 1977 per KPB Assessing records. The building predated any building setbacks or utility easements being granted adjacent to right of way dedications. A portion of the building extends to the southern property line near the Kenai Spur Highway. This plat shall grant the utility easements required by code and the building setback. A note shall be added that the existing building predates the building setback requirement but any new buildings or improvements must comply. **Staff recommends** that the building setback be removed where the existing building is located within the 20 foot building setback.

A Nikishka Mall Properties Condominium as-built and floor plan was recorded in 2010, KN 2010-20. A few weeks after recording the as-built a Nikishka Mall Properties Declaration of Restrictions was filed, serial number 2010-004682-0. This is considered a common interest community. Common interest communities are allowed under state statute and are a way to transfer interest in a portion of property without subdividing the parent parcel. KPB code does not address common interest communities and common interest communities are not subject to KPB subdivision requirements. Condominium plans and plats are not required to be reviewed by the Planning Department. The KPB Assessing Department does assess each condominium unit separately. As this subdivision will change the parcel boundaries and will not coincide with the unit boundaries of the common interest community, **Staff recommends** that the common interest community be dissolved before the recording of the final plat. A copy of the documents to be recorded, submitted to the planning department will suffice.

Per the requirements of KPB 20.40.020(A)(1)(c), a soils analysis report will not be required for Tract A1 or Lot 5B. This section of code states that a soils analysis report is not required when moving one or more lot lines without increasing the number of developable lots, while maintaining a minimum of 20,000 square feet of contiguous area, as described in KPB 20.40.040(A)(4)(a), for each lot affected by the lot line movement.

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 The plat depicts and notes the 20 foot utility easement along Tract A1 and now within Lot 5B. These easements were granted by KN 2011-55.

Mac McGahan Subdivision, Plat KN 1468, granted a 10 foot utility easement along the backside of all lots within the subdivision. The depiction was carried over on the replats. **Staff recommends** the 10 foot utility easement along the former lot lines be depicted and labeled as being granted by KN 1468.

Plat KN 2011-55 also granted 10 foot utility easements along right of way within Tract A1. **Staff recommends** this easement be depicted and note that it was granted by KN 2011-55.

Plat note 9 is granting a 10 foot utility easement along the front of the lots and a 20 foot utility easement within 5 feet of side lot lines. **Staff recommends** the plat note state that no easement are being granted where affected by permanent structures. **Staff recommends** the easements need be depicted on the face of the plat.

An additional easement is on file and noted within plat note 7, no definite location was disclosed to allow depiction. **Staff recommends** plat note 7 be revised to state that the location of the easement is not defined.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** depict and label all utility easements and to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

HEA	No comment
ENSTAR	There is an existing natural gas main line and service lines. The main line appears to cross proposed Tract A1 longitudinally. Additionally, the existing service lines appear to cross proposed Tract A1 to serve lots 1, 2, 3, 4A-1, and 5B. ENSTAR objects to this plat unless one of the following scenarios is met: 1. Add a note which says, "There is a ten foot (10 FT) wide natural gas easement centered on the existing main and service lines." and draw in the approximate location of natural gas main and service lines on the map and add, "Approximate location of natural gas main and service lines centerline of ten foot (10 FT) wide natural gas easement". 2. Owner signs an ENSTAR Natural Gas Easement document for a ten foot (10 FT) wide natural gas easement, centered on the main and service line at this location.
ACS	No objections
GCI	No comment

KPB department / agency review:

Addressing – Derek Haws	Affected Addresses: 51781 Kenai Spur Highway and 51735 Kenai Spur Highway (both will remain with Lot 5B) Existing street names listed are correct
Code Compliance – Eric Ogren	No comment
Planner – Bryan Taylor	There are no Local Option Zoning District or material site issues with this proposed plat.
Assessing – Adeena Wilcox	No comment
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

The symbols on the plat do not match in size the symbols in the legend. **Staff recommends** to correct the sizing prior to submitting the final.

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: Add the recording district (KN) in front of the plat numbers. In the owner information split Merrill M. McGahan and Carmen M. McGahan as KPB Assessing has a different address for Carmen. If you verify the addresses and what is shown is correct, Carmen McGahan should contact the KPB Assessing department to correct the mailing address. Merrill should contain two r's.

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: List the full width for Kenai Spur Highway and Nikishka Beach Road. Show the full width of the right of ways.

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: In section 18 there is a "This Plat" label that needs to be removed.

KPB 20.40 -- Wastewater Disposal

20.40.010 Wastewater disposal.

Platting Staff Comments: Following KPB 20.40.020(A)(1)(c), a soils analysis report is not required for Tract A1. Per KPB 20.40.020(A)(2), a soils analysis report is not required for Lot 5B.

Staff recommendation: 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.

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:

Update/correct the following plat notes.

- Note 3 – Remove "private" from the note.
- Note 5 – Update the section of code to 20.60.170.
- Note 6 – Add "Misc" in front of the book. Add "no definite location given".
- Note 7 – Change "An" to "A", correct spelling of "portion", and add "Misc" in front of the book. Add "no definite location given".
- Note 8 – Change "An" to "A" and correct the spelling of "portion".
- Note 9 – "Front 10 feet adjoining dedicated rights of way and 20 feet within 5 feet of side lot lines, excluding any areas affected by permanent structures, shall be designated as utility easements. No permanent..."

Place the following notes on the plat.

- Add a plat note for any exceptions granted.
- Carry over from parent plats "The line between lots 5B and 4A-1 is coincident with the building line for the building shown on Lot 4A-1."

- Improvements on Lot 5B predate the 20 foot building setback and 10 foot utility easement created this plat and are not subject to the 20 foot building setback and 10 foot utility easement. Any replacements, or improvements, to the building must comply with the 20 foot building setback and 10 foot utility easement as shown on this plat.

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: *The certificate of ownership should be written on behalf of the estate and a second one added for individuals to sign. Make sure that "Merrill" is spelled correctly. Some areas it has one r when it should be two. Update Carmen McGahan's address accordingly. The signature lines for the estates should include "Mazie M. McGahan, aka Merrill Mazie MaGahan, Personal Representative". Update the address for the estate of Merrill McGahan. Comply with 20.60.190.*

EXCEPTIONS REQUESTED:

KPB 20.30.190 – Lots-Dimensions (3:1 depth to width for Tract A1)

Staff Discussion: The width of Tract A1 is being reduced within the western portion of the subdivision. The moving of the lot line to the north will provide some additional area behind the building located on Lot 5B. The tract appears to be used to provide access to the back of existing buildings.

If the exception is denied the plat will not be able to be redesigned with a right of way along the long portion of tract A-1. This will allow the frontage to be calculated on the long side of Tract A1.

Findings:

1. KPB Code requires the lots average depth not be greater than three times the average width.
2. The parent subdivision received an exception for the parent tract on April 26, 2010.
3. The depth to width ratio for Tract A1 is 6.0:1.
4. The parent lots range in size from 0.27 acres to 0.54 acres.
5. The replat improves the lot size so all lots comply within minimum size requirements.
6. All wastewater disposal systems must comply with current ADEC regulations.
7. Tract A1 will be 2.8 acres in size.
8. The tract to the north and west are large and can be further subdivided.
9. A building exists on proposed Lot 5B.
10. The lot design options are limited due to the existing improvements.

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 5, 7, 8, 9, 10 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 5, 7, 8, 9, 10 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 5, 7, 8, 9, 10 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