

AGENDA ITEM E. NEW BUSINESS

ITEM 7 – COLLINS – TUSTUMENA SUBDIVISION

KPB File No.	2021-116
Plat Committee Meeting:	September 13, 2021
Applicant / Owner:	David and Sherry Collins of Kasilof, Alaska
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Cohoe

Parent Parcel No.:	137-321-28
Legal Description:	NE1/4 NE1/4 of Section 7, Township 2 North, Range 11 West, SM
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On-Site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will subdivide a 40 acres aliquot parcel into three tracts and dedicate multiple right of ways.

Location and Legal Access (existing and proposed): The subdivision is located along Tustumena Lake Road, a 100 foot wide state maintained right of way. Tustumena Lake Road is located off Johnson Lake Road near mile 110 of the Sterling Highway. Tustumena Lake Road continues south and ends at the Kasilof River at the Tustumena Lake Access boat launch. There are multiple legal access points from various right of ways that connect to Tustumena Lake Road, Johnson Lake Road, and Crooked Creed Road.

The state patent in 1984 stated the property was subject to Tustumena Lake Road. This was reserved as a 100 foot wide road, 50 feet each side of centerline. This plat will be dedicating Tustumena Lake Road within the parcel's boundary.

Tustumena Lake Road affects the the northern and eastern boundary of the subdivision. Along the eastern portion of the subdivision, a 50 foot wide dedication for Tustumena Lake Road is proposed. That dedication coincides with a 50 foot section line easement. Along the northern boundary, a 50 foot section line easement is present. It is depicted on the plat. Tustumena Lake Road is to the north of the section line easement and outside the boundary of the subdivision. No dedication is proposed along the north.

A new 30 foot wide right of way dedication is proposed along the western boundary. The name proposed is Coyote Street. The KPB Addressing Officer has denied that road name. A new name that is approved by the Addressing Officer will be required. Along the southern boundary of the subdivision, a proposed 30 foot dedication is proposed. The street name of Eastwind Avenue has been approved.

Within the northeast corner of the subdivision are two KPB right of way dedications that are the continuation of existing right of ways Lichen Street and Fisler Avenue. A 50 foot wide section line easement underlies both right of way dedications. The dedications of Lichen Street and Fisler Avenue will create a small remnant triangle parcel.

The proposed right of way dedications will create a compliant and closed block around Tract C and Tract B. The block length around Tract A is less than 300 feet and does not comply with KPB block length. ***Staff recommends that the plat committee concur that an exception request for the block length around Tract A is not required as all the right of ways currently exist and cannot be altered with this platting action.***

KPB Roads Dept. comments	Within jurisdiction, no comments
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SOA DOT comments	The ROW for Tustumena Lake Road appears to be 100' as shown on KPB Plat 28-26 and appears to be shown correctly. I would request some additional curve data for the ROW be listed on the plat.
SOA Fish and Game comments	No objections. Public access to public lands and waters will not be affected.

Site Investigation: The plat depicts areas with slopes greater than 25 percent with shading. Some portions of the proposed Tustumena Lake Road dedication along the east contain steep slopes. The ROW dedication and section line easements provide 100 foot wide right of ways. As this right of way is already constructed, maintained by the State, and the review by the State did not request additional right of way, staff is not recommending any additional easements.

Along the proposed dedication of Eastwind Avenue there contains areas with steep slopes. Per KPB Code 20.30.090, the slopes should not exceed 6 percent on arterial streets, 10 percent on other streets, or 4 percent within 130 feet of any centerline intersection. **Staff recommends** *submittal of centerline profiles and cross-sections to determine if additional easements may be required and if so, provide the additional right of way or road maintenance and back slope easements on the final plat.*

The southwest portion of the subdivision is affected by low wet areas. These are depicted on the plat. The presence of the wetlands within the proposed dedications may cause additional cost or planning in the construction of the right of ways.

The preliminary plat depicts the location of an airstrip that will be within Tract C. The borough does not have any regulations for airstrips. The depiction of the airstrip is not required on the final. If the airstrip is depicted it should be noted if it is an approximate location. In additional the airstrip is not allowed with KPB right of ways. The depiction cannot be shown within the dedication. **Staff recommends** *if the depiction of the airstrip remains on the final plat to update the depiction of the airstrip to not be within the Eastwind Avenue right of way.*

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

Staff Analysis The proposed subdivision will create three tracts from a 40 acre aliquot parcel. The parent parcel is subject to Tustumena Lake Road per the state patent.

The portion of the subdivision located south/west of Tustumena Lake Road will be two large acreage tracts. Tract B is proposed to be 4.7 acres and Tract C will be 30.4 acres. The plat depicts existing structures, driveway, and an airstrip. The driveway appears to be a shared driveway between the two houses. **Staff recommends** *if the depiction of the driveway and airstrip remain on the plat, a different line style be selected that is different from the new lot line style.*

If the driveway will continue to be a shared drive, staff strongly encourages a driveway easement be put in place when ownership changes to protect all parties.

Tract A is the remaining 'remnant lot' after right of way dedications occur. The proposed lot size is 11,057 square feet. It will be a triangle lot with right of way along all three sides. The lot is also subject to 50 foot section line easements along the north and east.

A soils report is required for Tract A unless the plat committee determines the lot falls under KPB 20.40.080. A soils report is not required for Tract B and C and the correct wastewater note is in place.

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 No platted utility easements exist on this parcel. There are two easements granted by document to Homer Electric Association. The documents disclose the location of the easements. **Staff recommends the location of the easements be depicted on the plat with a reference either to the document or to a plat note that explains the easements and lists the source.**

The plat is proposing to grant in accordance with KPB Code, 10 foot utility easements adjoining all dedicated right of ways. **Staff recommends the utility easements be depicted on the plat and plat note 1 be adjusted to reflect current code.**

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	
ENSTAR	No comments or objections.
ACS	No objections.
GCI	Approved as shown.

KPB department / agency review:

Addressing – Derek Haws	Affected addresses: 20969 Tustumena Lake Road (Address will be deleted and new addresses assigned). Existing street names listed are correct. Eastwind Avenue is approved. Coyote Street is denied. A new name should be chosen.
Code Compliance – Eric Ogren	Code compliance review not available
Planner – Bryan Taylor	There are not any Local Option Zoning District or material site issues with this proposed plat.
Assessing – Matt Bruns	No concerns from Assessing Department

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.

- 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: Not required but the Township label within Section 7 can be removed as it is included in Section 1.
- 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: Lot 4 and 5 of Highlander Hills was replatted. Update the labels to Lot 1B and 1C Highlander Hills Sub Fraser Replat.

KPB 20.40 -- Wastewater Disposal

20.40.010 Wastewater disposal.

Platting Staff Comments:

The preliminary plat contains two wastewater disposal notes. The first note is correct and applies to Tracts B and C. The note for Tract A is referring to 20.40.080 and states no wastewater will be generated on the lot. The surveyor believes this lot falls under this section of code due to the undevelopable size of the lot.

20.40.080. - Subdivisions with no wastewater disposal.

A. This section applies to subdivisions where no wastewater will be generated or disposed, and the land use cannot produce wastewater.

B. Before a final plat is filed for subdivision, the surveyor must complete the following plat note which shall be placed on the plat:

WASTEWATER DISPOSAL: Conditions might not be suitable for onsite wastewater treatment and disposal systems. No wastewater will be generated or disposed of on these lots as of the date of this plat. If circumstances change to allow lawful onsite wastewater treatment and disposal systems, those systems must meet the wastewater disposal requirements of KPB Chapter 20.40 and regulatory requirements of the Alaska Departmental of Environmental Conservation.

Staff Discussion: *A soils analysis report is required for Tract A unless it meets the requirements of 20.40.080 - Subdivision with no wastewater disposal.*

Tract A will qualify to be exempt from soils analysis if the Plat Committee determines Tract A meets the requirements of 20.40.080. Subdivisions with no wastewater disposal are not common and typically apply to burial plots, cemeteries, remnant parcels, or conservations parcels.

The aliquot parcel is subject to Tustumena Lake Road per the State Patent. This plat will dedicate the 100 foot right of way centered on the existing travel way of Tustumena Lake Road. The parcel is also subject to 50 foot section line easements along the north and east.

The plat is proposing to dedicate 50 foot right of ways atop those section line easements. The right of way dedication for Lichen Street can be reduced to 10 feet and Fisler Avenue can be reduced to 30 feet while still meeting the minimum right of way width requirements. This will increase Tract A to approximately 25,000 sq. ft.

Findings:

- 1. Tract A is proposed to be 11,057 square feet.*
- 2. Tract A is subject to a 50 foot section line easement on the north and east boundary.*
- 3. Right of ways will border the property on three sides.*
- 4. The dedication of the right of ways are in compliance with KPB Code.*
- 5. The design of the lot limits the useable area for improvements.*
- 6. The tract is subject to 20 foot building setbacks on right of ways.*
- 7. Per KPB Code, well casings, vent pipes are allowable within the setback.*
- 8. The wastewater disposal note states no wastewater disposal systems are allowed.*
- 9. All wastewater disposal systems must be approved by the State of Alaska DEC.*
- 10. The dedication of Lichen Street can be reduced to 10 feet and Fisler Avenue can be reduced to 30 feet while still meeting the 60 foot minimum right of way width requirement.*
- 11. Tract A can be increased in size to approximately 25,000 sq. ft. if the proposed right of ways are reduced.*

Staff recommends the Plat Committee make a motion to determine if Tract A meets the requirements of KPB 20.40.080 – Subdivisions with no wastewater disposal.

Findings 2-4, 6, 7, 10, and 11 support Tract A being reviewed per 20.40.080.

If approved, Staff recommends that the right of way dedications be 10 feet for Lichen Street and 30 feet for Fisler Avenue so that both right of ways are a minimum of 60 feet in width.

KPB Code 20.30.200 – Lots-Minimum size, determines the minimum lot sizes acceptable based on the type of wastewater disposal system that will be used. If the Plat Committee determines Tract A complies with KPB 20.40.080, the small lot size will be acceptable as no wastewater will be on site.

If approved the plat note must be revised to match the note found in KPB Code 20.40.080.

Failure to prove to the Committee that 20.40.080 is met will result in the requirement of a soils analysis report and the signature of an engineer on the final plat.

The surveyor has noted that if the Plat Committee fails to determine this meets the requirements of KPB 20.40.080, he would like to request an exception for wastewater review, 20.40, and for lots-minimum size, KPB 20.30.200. Below are the exceptions requested if it is determined that this plat does not fall under KPB 20.40.080.

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: Acceptance certificates for the State of Alaska and Kenai Peninsula Borough are 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: Place the following notes on the plat.

- No access to state maintained rights-of-way permitted unless approved by the State of Alaska Department of Transportation.
- 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).
- Add a plat note for any exceptions granted.
- Provide a plat note for recorded easements granted to Homer Electric Association.
- 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.

Revise plat note 1, "The front 10 feet adjacent to right of ways and 20 feet within 5 feet of the side lot lines are granted by this plat as utility easements."

EXCEPTIONS REQUESTED:

KPB 20.30.200 – Lots-Minimum Size (Tract A) and
KPB 20.40.100 – Soils analysis and report (Tract A)

Surveyor's Discussion: I am requesting an exception to minimum lot size for Tract A due to how required ROW dedications results in the small lot size. With the small lot size no development is planned for the lot and no wastewater will be generated on the lot. I am requesting an exception to wastewater review for Tract A due to the undevelopable size.

Staff Discussion: Staff has combined the exceptions requested as they pertain to the same issue.

The parent parcel is subject to Tustumena Lake Road. This plat will be dedicating right of way atop the existing right of way. This is creating two portions of this subdivision, a large acreage area to be subdivided into two tract on the south/west side of Tustumena Lake Road, and a small triangle tract located north/east of Tustumena Lake Road.

The plat is proposing to dedicate right of way atop existing section line easements, provide continuation of existing right of ways, and provide dedications to improve block lengths. The existing right of ways create a substandard size lot for Tract A. When the building setbacks and utility easements are figured into the area, the area within the lot diminishes greatly.

Approval of the exceptions will require a plat note be added and for the wastewater disposal note for Tract A to be reworded.

Staff would like to note that if the exception is granted there are still some alternatives that could be allowable per KPB Code.

- Work with the State of Alaska to determine if either the northern or eastern section line easement could be vacated or the right of way associated to require one of the dedications in addition to Tustumena Lake Road.
- Per KPB Code, the right of way dedication is only required to be 30 feet wide. The dedication width could be reduced along the north and east. The property would still be subject to the 50 foot section line easements but the width of that would coincide with the 20 foot building setback thus allowing more usable square footage.
- Continue with the final plat as submitted and reviewed by the plat committee.
- Dedicate the entire Tract A as right of way.

Denial of the exceptions will require a soils analysis report for Tract A.

Findings:

1. Tract A is proposed to be 11,057 square feet.
2. Tract A is subject to a 50 foot section line easement on the north and east boundary.
3. Right of ways will border the property on three sides.
4. The dedication of the right of ways are in compliance with KPB Code.
5. The design of the lot limits the useable area for improvements.
6. The tract is subject to 20 foot building setbacks on right of ways.
7. Per KPB Code, well casings, vent pipes are allowable within the setback.
8. The wastewater disposal note states no wastewater disposal systems are allowed.
9. All wastewater disposal systems must be approved by the State of Alaska DEC.
10. The dedication of Lichen Street can be reduced to 10 feet and Fisler Avenue can be reduced to 30 feet while still meeting the 60 foot minimum right of way width requirement.
11. Tract A can be increased in size to approximately 25,000 sq. ft. if the proposed right of ways are reduced.

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 2-4, 6, 7, 10, 11 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 2-4, 6, 7, 10, 11 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 2-4, 6, 7, 10, 11 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