

**PC Reso 20-29 Packet
Memo from Joe Metzger to Planning
Commission regarding language insertion
in PC Reso 20-18**

HANDOUTS

HANDOUT :
PG. 606 of 07/20/2020 packet.



MATANUSKA-SUSITNA BOROUGH

Planning and Land Use Department

Development Services Division

350 East Dahlia Avenue • Palmer, AK 99645

Phone (907) 861-7822 • Fax (907) 861-8158

www.matsugov.us

MEMORANDUM

DATE: July 6, 2020

TO: Planning Commission

FROM: Joe Metzger, Planner II

SUBJECT: Insertion of language into whereas statement on page 307 of packet

Staff respectfully asks the Planning Commission to change and adopt the following whereas statement found on page 307 of the packet.

Current Whereas Statement on page 307:

- *WHEREAS, a 12,197 square foot lot with only 1,677 square feet (7.27% of the entire lot) of buildable area is a small building footprint and will not be injurious to adjacent property owners or harmful to the public welfare; and*

Staff recommends insertion of the following language:

- *"allowing the existing structure to remain in place"*

Revised Whereas Clause to read as follows:

- *WHEREAS, a 12,197 square foot lot with only 1,677 square feet (7.27% of the entire lot) of buildable area is a small building footprint and allowing the existing structure to remain in place will not be injurious to adjacent property owners or harmful to the public welfare; and*

During the process of putting the packet together, staff omitted "allowing the existing structure to remain in place" from the staff report and corresponding PC resolution. The insertion of the aforementioned language makes the whereas statement more coherent and clear.

Draft Resolution PC 20-29

HANDOUTS

By:
Unfinished Business:
Action:

Eileen Probasco
July 20, 2020

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. PC 20-29**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION ADOPTING FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORTING THE DENIAL OF PC RESOLUTION 20-18 CONCERNING A REQUEST FOR A VARIANCE FROM MSB 17.55 TO ALLOW AN EXISTING SINGLE FAMILY RESIDENCE TO ENCROACH INTO THE REQUIRED 75 FOOT WATERBODY SETBACK AT 5782 S. BIG LAKE ROAD (TAX ID# 6142000L006); WITHIN TOWNSHIP 17 NORTH, RANGE 3 WEST, SECTION 29, SEWARD MERIDIAN.

WHEREAS, the subject lot is .45 acres in size, with .28 acres that are taxable; and

WHEREAS, according to the application material, the existing 3,000 square foot single family, one-story residence and garage was built in 2019 (attachment A, 2019 Aerial Imagery); and

WHEREAS, MSB 17.00.020 Setbacks from Shorelines, established the minimum setback of 75 feet from any waterbody or watercourse, and has been in effect since 1988; and

WHEREAS, on July 6, 2020 the Planning Commission held a public hearing and reviewed an application for the setback variance request listed above with respect to MSB 17.55 Setbacks and Screening Easements, and 17.65 Variances; and

WHEREAS, MSB 17.65.030 Cases where variances are illegal contains three instances in which a variance may NOT to be granted which are:

- (1) special conditions that require the variance are caused by the person seeking the variance;
- (2) the variance will permit a land use in a district in which that use is prohibited;
- (3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

WHEREAS, the application and facts in the packet state that the applicants tried to keep in standard with the surrounding homes, however, they have the smallest lot between lots one and nine on that stretch of road (attachment B Lot Comparison); and

WHEREAS, according to the application material, the applicants were aware of the 75 foot waterbody setback and 25 foot right-of-way setback.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby adopts the findings of fact in this resolution, and makes the following conclusions of law supporting denial of Planning Commission Resolution 20-18:

1. **MSB 17.65.020 Requirements for granting a variance (5) the deviation from the requirement of this title that is permitted by the variance will be no more than is necessary to permit a reasonable use of the property.**

While the lot is a nonconforming lot and the building area sketch shows a small building envelope, it lacks major topography issues that make other lots more challenging to build upon. The applicant could have

built a home with a lesser footprint that would have still allowed them a single family home and garage, and reduced the waterbody encroachment.

- 2. MSB 17.65.030 Cases where a Variance is illegal. (A) A variance from this title may not be granted if: (1) special conditions that require the variance are caused by the person seeking the variance;**

See finding #1 above. While the lot is small, it lacks significant topography issues that make other lots more challenging to build upon (see attachment C). The commission finds that the special conditions that require the variance were partially the fault of the applicant, due to the fact that they knew the lot had setback challenges but chose to build the house without contacting the borough.

- 3. MSB 17.65.030 (A) (3) the variance is sought solely to relieve pecuniary hardship or convenience**

The applicant alleges that the condition is not applicable since the homeowners are under no financial hardships nor did they build the home as contractors to re-sell. Had the applicants contacted the borough prior to construction, they may have received better information on the implications of constructing the home they were proposing, and chosen a design that would not

have encroached so much into the waterbody setback. The commission finds that the applicant knew they were taking a risk in building the house they chose prior to contacting the borough, and to resolve the setback violation after the fact could indeed have a pecuniary impact, such as having to remodel the home to lessen the violation or not being able to obtain bank financing.

ADOPTED by the Matanuska-Susitna Borough Planning Commission
this ___ day of _____, 2020.

COLLEEN VAGUE, Chair

ATTEST

KAROL RIESE, Planning Clerk

(SEAL)

YES: 0

NO: 0

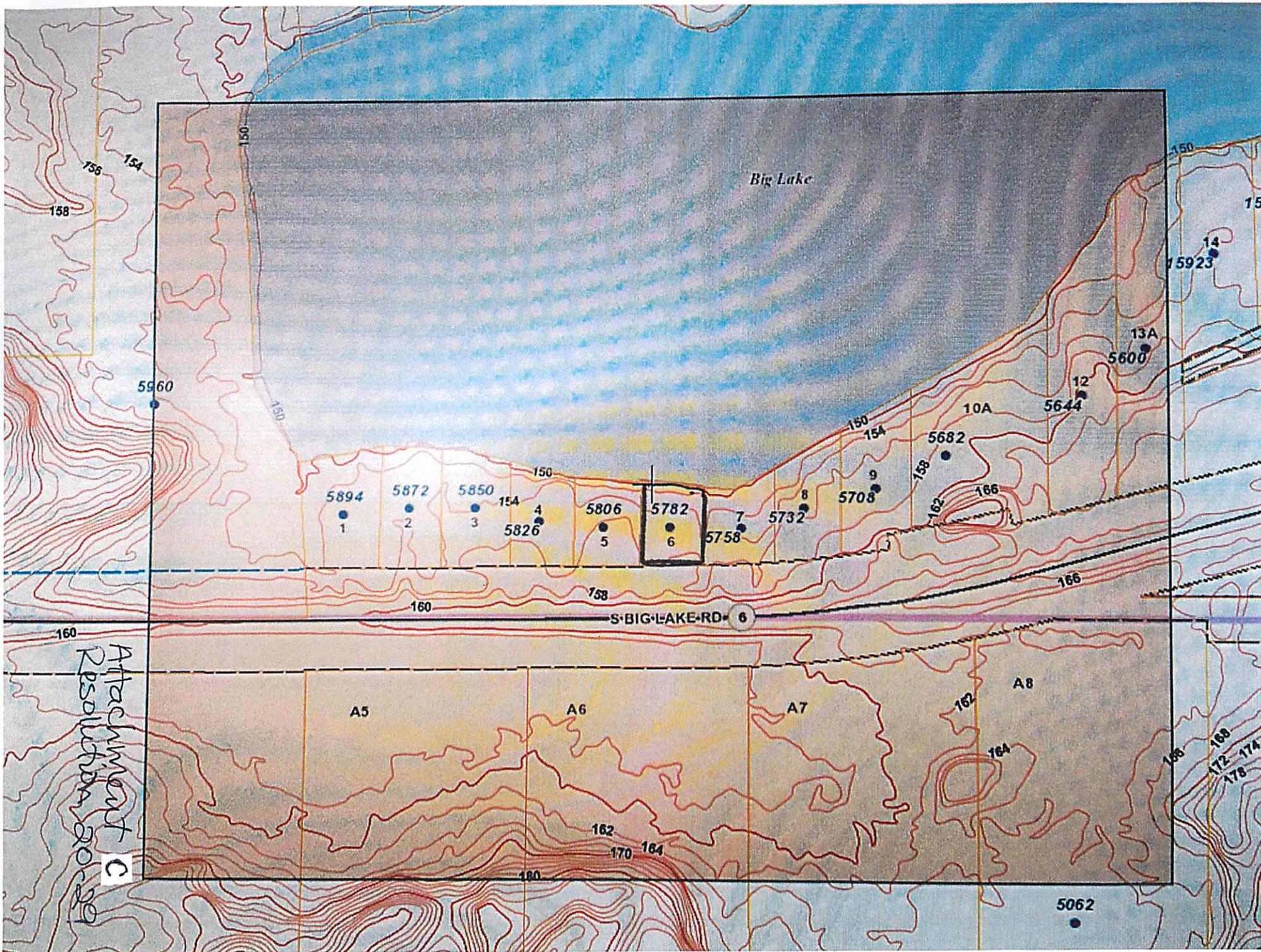


Attachment A
2019 Aerial
Imagery
Reso. 202-29

Lot Comparison – Ellsworth Variance Request

Lot #	Net acres	Owner	Home originally built	Setback Encroachment	Notes	Variance needed/granted
1	.42	Macksey	1986	No	No remodel	N
2	.41	Crockett	1965	Yes	2008 Remodeled on existing fdn. No change in footprint	N
3	.39	Washington	1971	Yes	1976 New foundation and roof No change in footprint	N
4	.33	Bourdon	1975	Yes	1985 Built new 32X24 detached garage 2015 Tore down existing home and re built new 46X39 2-story home, outside of existing footprint.	Y/N
5	.29	Ellsworth	1974	Yes	1984 Remodeled home on existing 26X35 foundation. added 24X30 720 Sq. Ft. detached garage, date unknown	?/N
6	.28	Ellsworth	1965	Yes	Original home demolished sometime after 1991 2019 New 50X60 Square Foot home and garage built	Y/N
7	.28	Ellsworth	Vacant			
8	.38	Ellsworth	1960	Yes	2006 New fdn. and roof 2010 decks added No change in footprint	N/N
9	.46	Lindstrom	1980	Yes	1986 New siding, roof and decks No change in footprint	SLSE

Attachment B
Resolution 20-29



This Page Intentionally Left Blank

By: Joe Metzger
 Introduced: June 15, 2020
 Public Hearing: July 6, 2020
 Action:

**MATANUSKA-SUSITNA BOROUGH
 PLANNING COMMISSION RESOLUTION NO. 20-18**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION APPROVING A VARIANCE TO MSB 17.55 TO ALLOW AN EXISTING SINGLE-FAMILY RESIDENCE WITH ATTACHED GARAGE TO REMAIN IN PLACE AT 5782 S. BIG LAKE ROAD (TAX ID# 6142000L006); WITHIN TOWNSHIP 17 NORTH, RANGE 3 WEST, SECTION 29, SEWARD MERIDIAN.

WHEREAS, an application has been received for a Variance to MSB 17.55, requesting to allow an existing single-family residence and attached garage to remain in place at 5782 S. Big Lake Road (Tax ID# 6142000L006); within Township 17 North, Range 3 West, Section 29, Seward Meridian; and

WHEREAS, in order to grant a variance, the Planning Commission must find that each requirement of 17.65.020 (A) have been met; and

WHEREAS, the subject lot is .45 acres in total size, with .28 acres that are taxable; and

WHEREAS, the subject parcel has approximately 12,197 square feet of taxable acreage; and

WHEREAS, according to a useable area analysis conducted by Borough Staff, the subject parcel has approximately 1,677 square feet of buildable space that conforms to the setback standards established in MSB 17.55; and

WHEREAS, the subject lot is part of the Hibbard Addition subdivision and was originally platted in 1955; and

WHEREAS, the application material indicates that the existing single-family residence and attached garage was constructed in 2019; and

WHEREAS, the subject parcel abuts Big Lake to the north and S. Big Lake Road to the south; and

WHEREAS, according to an as-built survey prepared by Robert J. Farmer, PLS, and dated April 21, 2020, at its closest point the residential structure with attached garage is situated approximately 30 feet from the shorelands of Big Lake and 25 feet from the S. Big Lake Road right-of-way; and

WHEREAS, according to the application material, prior to the construction of the current structure, the property owners removed a dilapidated and unsafe cabin approximately 480 square foot in size; and

WHEREAS, according to the application material, the shoreline setback, right-of-way setback, side lot line setback, and the utility setback severely limit the buildable area of the lot; and

WHEREAS, a 12,197 square foot lot with only 1,677 square feet (7.27% of the entire lot) of buildable area is a small building footprint; and

WHEREAS, the buildable area is approximately 75' long and is approximately 25' at the widest location, and approximately 19' at the narrowest; and

~~WHEREAS, a small parcel that is only .28 taxable acres and is situated between a waterbody setback and a right of way setback is an unusual condition; and~~

WHEREAS, the existing single-family residence with attached garage is approximately 3000 square feet and is approximately 50'x 60' in size; and

WHEREAS, the existing 3,000 square foot structure contains approximately 2,160 square feet of living space and 840 square feet of garage; and

WHEREAS, the Hibbard Addition subdivision is mostly developed with single family residential homes that range in size from 840 square feet to over 5,000 square feet in size; and

WHEREAS, some of the lots in the Hibbard Addition subdivision have been developed with attached or detached garages, while other lots in the subdivision do not contain garages; and

~~WHEREAS, a 12,197 square foot lot with only 1,677 square feet (7.27% of the entire lot) of buildable area is a small building footprint and could deprive the applicant of rights commonly enjoyed by other properties in the area; and~~

WHEREAS, there was no objection to the variance request from members of the public or any government agencies; and

WHEREAS, setbacks promote a variety of public purposes such as provisions for light and air, fire protection, traffic safety, prevention of overcrowding, rest and recreation, solving drainage problems, protecting the appearance and character of a neighborhood, and conserving property values; and

~~WHEREAS, a 12,197 square foot lot with only 1,677 square feet (7.27% of the entire lot) of buildable area is a small building footprint and will not be injurious to adjacent property owners or harmful to the public welfare; and~~

~~WHEREAS, MSB Chapter 17.65 - Variances, was written to grant relief to property owners whose lots are impacted by existing land use regulations thereby making the lot undevelopable; and~~

WHEREAS, the Hibbard Addition subdivision was created prior to Statehood, the MSB, the recorded easements and setback requirements were in place when the applicant purchased the lot; establishment of setback requirements; and

WHEREAS, the applicant purchased the property in 1991; and

WHEREAS, there is a 15' easement (15' of the center line of the system) that transects the south central portion of the subject property; and

~~WHEREAS, there is a 10' drainage easement on the east lot line that was created in 1961; and~~

WHEREAS, the subject parcel is not in a special land use district; and

the recorded easements and setback requirements were in place when the applicant purchased the lot; and

WHEREAS, residential structures and garages are allowed on this property; and

WHEREAS, the applicant seeking the variance caused the need for a variance (MSB 17.65.030(A)(1))

WHEREAS, the Planning Commission has reviewed this application with respect to standards set forth in MSB 17.65; and

WHEREAS, the Planning Commission conducted a public hearing on July 6, 2020 on this matter.

denies

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby approves the setback variance to allow an existing single-family residence with an attached garage to remain in place and as is at 5782 S. Big Lake Road (Tax ID# 6142000L006).

ADOPTED by the Matanuska-Susitna Borough Planning Commission this ___ day of ___, 2020.

COLLEEN VAGUE, Chair

ATTEST

Karol Riese, Planning Clerk

(SEAL)

YES:

NO:

This Page Intentionally Left Blank

Karol Riese

From: Karol Riese
Sent: Wednesday, July 8, 2020 12:19 PM
To: Joseph Metzger
Subject: FW: Commissioner Glashan Resolution 20-29 Comments

From: Colleen Vague <cjvague@gmail.com>
Sent: Tuesday, July 7, 2020 11:08 PM
To: Karol Riese <Karol.Riese@matsugov.us>
Subject: Re: Commissioner Glashan Resolution 20-29 Comments

[EXTERNAL EMAIL - CAUTION: Do not open unexpected attachments or links.]

Hi Karol,

I like Stafford's resolutions and would like to make the following suggestions :
Page 3 of 5; WHEREAS(s) 5 & 6 - remove both of them. They aren't relevant and had no impact on the denial, the neighbor's homes and garages have nothing to do with the variances on this property.

Page 3 of 5; Keep WHEREAS 7 with a rewrite: the applicant lot includes 1,677 square feet (7.27% of the entire lot) of buildable space, and;

Just some thoughts to run by the others, thanks.

Colleen
Sent from my iPhone

On Jul 7, 2020, at 2:47 PM, Karol Riese <Karol.Riese@matsugov.us> wrote:

[sent to all Planning Commissioners]

Good Afternoon,

Attached is Commissioner Glashan's findings and fact and conclusion for Resolution # PC20-29. Just a reminder, please do not have any ex-parte communications regarding this matter.

Also, the packet deadline is Wednesday, July 9th, at 5:00 pm. I will need all findings of facts and conclusions by that time to prepare the packet by Friday.

Should you have any questions, please do not hesitate to contact me.

Thank you,

Karol L. Riese
Department Administrative Specialist
Planning and Land Use Department

Matanuska-Susitna Borough
907-861-8556 Office
907-795-8489 Office Cell

<Pages from Packet-07-06-2020 (002).pdf>

Karol Riese

From: Mary Anderson <msbpcd1@gmail.com>
Sent: Tuesday, July 7, 2020 3:14 PM
To: Karol Riese
Subject: Commissioner Anderson Resolution 20-29 draft notes
Attachments: Draft notes for PC Reso 20-29 Denial of Reso 20-18.pdf

[EXTERNAL EMAIL - CAUTION: Do not open unexpected attachments or links.]

Hi Karol:

Attached is my draft findings of fact for Reso 20-29.

Mary Anderson

This Page Intentionally Left Blank

By: Joe Metzger
Introduced: June 15, 2020
Public Hearing: July 6, 2020
Action: Approved

Matanuska-Susitna Borough
Planning Commission Resolution No. 20-29

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION ADOPTING FINDINGS OF FACT AND CONCLUSION OF LAW TO SUPPORT DENIAL OF RESOLUTION 20-18; WITHIN TOWNSHIP 17 NORTH, RANGE 3 WEST, SECTION 29, SEWARD MERIDIAN.

WHEREAS, Resolution 20-18 was for approval of a setback variance from the setback requirement of MSB 17.55.020(A) to allow an existing single-family residence and attached garage to remain at its current located approximately 30 feet from the high water mark of Big Lake on Lot 6, of Hibbard Addition Subdivision; 5782 S. Big Lake Road; within Township 17 North, Range 3 West, Section 29, Seward Meridian; and

WHEREAS, the Planning Commission conducted a public hearing on July 6, 2020, on this matter; and

NOW, THEREFORE, BE IT RESOLVED that the Matanuska-Susitna Borough Planning Commission denied the setback variance based on the findings of fact and conclusions of Law as follows:

1. The subject lot is .45 acres in size, with .28 acres that are taxable
2. The subject parcel has approximately 12,197 square feet of taxable acreage
3. According to the application material, the existing 2,160 square foot single family residence and attached 840 square foot garage was constructed in 2019.
4. Code Compliance opened a case file on [date] directly related to the construction of said single family residence in violation of the shoreline setback???? [This was brought out during our discussions but no further details were given]
5. According to an as-built survey prepared by Robert J. Farmer, PLS, and dated April 21, 2020, at its closest point the residential structure with attached garage is situated approximately 30 feet from the shorelands of Big Lake and 25 feet from the S. Big Lake Road right-of-way.
6. According to the application material, the applicant purchased the subject parcel in 1991 with the easements and rights-of-way already in place.
7. MSB Chapter 17.55.020 Setbacks for Shorelines, establishing the minimum setback of 75 feet from any water body or watercourse, has been in effect since 1988.
8. According to the application material, prior to the construction of the current structure, there was a cabin on the subject property, approximately 480 square feet in size, believed to have been built in 1975. Due to the age of the structure and deteriorating condition of the foundation, the applicant deemed the cabin unsafe and removed the structure prior to constructing a new home.
9. According to the application material, the applicants were aware of the 75 foot lake setback and 25 foot right-of-way setback.
10. According to the application material, the applicants chose to build the new/existing single family residence within the 75 foot shoreline setback. ["faced with building their family home in the lake set back or the ROW set back as no other options were reasonable. They chose to adhere to the 25' ROW set back and build a home similar in size, shape, style and position on the lot to conform to the standards set in their neighborhood"].
11. MSB Chapter 17.65 – Variances, was written to grant relief to property owners whose lots are impacted by existing land use regulations thereby making the lot undevelopable.
12. According to a useable area analysis conducted by Borough Staff, the subject parcel has approximately 1,677 square feet of buildable space (75 feet long x 25 feet at widest, and 19 feet at narrowest) that conforms to the setback standards established in MSB 17.55

13. Borough staff acknowledges that there are structures that could have been built on the property that would be compliant with the setback requirements.
14. The person seeking the variance constructed the existing 2,160 square foot single family residence and attached 840 square foot garage approximately 30 feet from the shorelands of Big Lake creating a violation of a shoreline setback to a water body.
15. The person seeking the variance constructed the single family residence within the 75-foot minimum setback requirement, causing the need for the this variance.
16. MSB Chapter 17.65.030 (A)(1) makes it illegal to grant a variance if the person seeking the variance caused the special condition that required a variance.

This Page Intentionally Left Blank

Karol Riese

From: Patricia Chesbro <patchesbroforsenate@gmail.com>
Sent: Wednesday, July 8, 2020 12:40 PM
To: Karol Riese
Subject: Re: Draft notes for PC Reso 20-29 Denial of Reso 20-18.pdf

[EXTERNAL EMAIL - CAUTION: Do not open unexpected attachments or links.]

This looks very clear to me. I like it.

P

On Tue, Jul 7, 2020 at 4:02 PM Karol Riese <Karol.Riese@matsugov.us> wrote:

[sent to all Planning Commissioners]

Good Afternoon,

Attached is Commissioner Anderson's draft Resolution PC 20-29. Please send your comments and suggestions to me to incorporate a final PC20-29 Resolution.

Thank you,

Karol L. Riese

Department Administrative Specialist

Planning Commission Clerk

Planning and Land Use Department

Matanuska-Susitna Borough

907-861-8556 Office

907-795-8489 Office Cell

This Page Intentionally Left Blank

Karol Riese

From: Stafford Glashan <SJG@shanwil.com>
Sent: Tuesday, July 7, 2020 4:13 PM
To: Karol Riese
Subject: RE: Draft notes for PC Reso 20-29 Denial of Reso 20-18.pdf

[EXTERNAL EMAIL - CAUTION: Do not open unexpected attachments or links.]

I like it but miss all the WEHERAS'...

From: Karol Riese <Karol.Riese@matsugov.us>
Sent: Tuesday, July 7, 2020 4:02 PM
To: Eileen Probasco <Eileen.Probasco@matsugov.us>; Alex Strawn <Alex.Strawn@matsugov.us>; Joseph Metzger <Joseph.Metzger@matsugov.us>; Mark Whisenhunt <Mark.Whisenhunt@matsugov.us>
Subject: Draft notes for PC Reso 20-29 Denial of Reso 20-18.pdf

[sent to all Planning Commissioners]

Good Afternoon,

Attached is Commissioner Anderson's draft Resolution PC 20-29. Please send your comments and suggestions to me to incorporate a final PC20-29 Resolution.

Thank you,

Karol L. Riese
Department Administrative Specialist
Planning Commission Clerk
Planning and Land Use Department
Matanuska-Susitna Borough
907-861-8556 Office
907-795-8489 Office Cell

This Page Intentionally Left Blank

Correspondence Received
July 13, 2020

HANDOUTS

RECEIVED
7/13/2020

FOR PLANNING COMMISSION
"CORRESPONDENCE"

3900 N. SIERRA ST. WASSILA, AK

MR. HAPPY FARMS

MARISCANA GROW OPERATION

BACK OF BUILDING

DICAS PROPERTY

SURVEY LINE

SCHOOL PROPERTY

TO SCHOOL

AN AS-BUILT SURVEY SHOULD BE FURNISHED TO THE BOROUGH TO GET ACCURATE DISTANCE CLEARANCE FROM ALL LOT LINES TO THE GROW OPERATION FOR MR. HAPPY FARMS.

Ron And Linda Kuzina

From: "Ken Gabel" <Ken.Gabel@matsugov.us>
Date: Monday, November 5, 2018 10:50 AM
To: <yenlo@mtaonline.net>
Subject: 3900 Sierra

Lynda,

My inspection and conversation with the owner revealed a second structure on the lot consisting on an apartment or small house containing 748 square feet. The structure appears to be about 50% complete at this time.

Regards,
Ken Gabel, Appraiser
Mat-Su Borough

861-8516

11/5/2018

SCHOOL GARDENS

500°13'43"E

179.80'

63'

65'



MATURE

GRASS FACILITY

APPROX. LOCATED

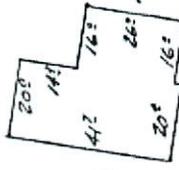
L-5

N 77°03'06"E
394.26'

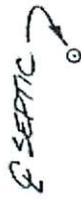
LOT-6, BLOCK-1



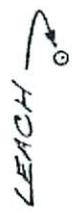
WELL



CONCRETE FOUNDATION



SEPTIC



LEACH

410.37'

N 89°52'36"E

10' UTILITY EASEMENT

KINGS LAKE SUBD.

FOR DEC USE
AND FOR REFERENCE
PURPOSES ONLY

SIERRA ST
N 00°48'31"W

148.29'

122.27'
P: 320.00'

30'

Ron And Linda Kuzina

From: "Sam Hanson" <akhansons@hotmail.com>
Date: Monday, July 29, 2019 4:01 PM
To: "Ron & Linda Kuzina" <yenlo@mtaonline.net>
Subject: Fwd: Objection to Mr Happy Farms Application Renewal

Sent from my iPhone

Begin forwarded message:

From: "Marijuana Licensing (CED sponsored)" <marijuana.licensing@alaska.gov>
Date: July 29, 2019 at 3:59:18 PM AKDT
To: Macey Shapiro <macey.shapiro@gmail.com>, "Marijuana Licensing (CED sponsored)" <marijuana.licensing@alaska.gov>, "msmatt02@gmail.com" <msmatt02@gmail.com>
Cc: Sam Hanson <akhansons@hotmail.com>
Subject: RE: Objection to Mr Happy Farms Application Renewal

Good afternoon Ms. Shapiro,

The North Lakes Community Council's objection has been received and will be considered with the renewal of Mr. Happy Farms LLC, License #17692 at the September 11-13, 2019 Marijuana Control Board Meeting. The agenda for this meeting will be available on AMCO's website one week before the meeting. Consideration of an application is not scheduled for a specific time, but you will be able to use the agenda to get an idea of when the application will be under consideration if you would like to call in.

Sincerely,

**TJ Zielinski**

Occupational Licensing Examiner
 Alcohol & Marijuana Control Office
 550 West 7th Avenue, Suite 1600
 Anchorage, Alaska 99501

From: Macey Shapiro <macey.shapiro@gmail.com>
Sent: Monday, July 29, 2019 2:53 PM
To: Marijuana Licensing (CED sponsored) <marijuana.licensing@alaska.gov>; msmatt02@gmail.com
Cc: Sam Hanson <akhansons@hotmail.com>
Subject: Objection to Mr Happy Farms Application Renewal

*** Please see attached for signed copy of this correspondence****

Dear Ms. McConnell and Mr. Shelton,

7/29/2019

The members of the North Lakes Community Council object to the license renewal for Mr. Happy Farms LLC. Mr. Happy Farms LLC. is located 60 feet from the lot line of John D. Shaw Elementary School. The AMCO Regulations state: 3 AAC 306.010. License restrictions (a) "The board will not issue a marijuana establishment license if the licensed premises will be located within 500 feet of a school ground."

This license does not comply with state code, which includes a 500-foot setback from our school. Alaska Statutes' definition of "school grounds" includes the "real property boundary line".

31st Legislature (2019-2020) Alaska Admin Code

3AAC 306 | Article 1 | Licensing; Fees

3AAC 306.010. License restrictions (a) The board will not issue a marijuana establishment license if the licensed premises will be located within 500 feet of a school ground, a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility.

Alaska Statutes 2018 | Article 4. Definitions. | Sec. 11.71.900. Definitions.

AS 11.71.900 (30) school grounds means a building, structure, athletic playing field, playground, parking area, or land contained within *the real property boundary line* of a public or private preschool, elementary, or secondary school;

On these grounds, NLCC suggests that this license should be revoked or a promise to move and new location established prior to approval..

Sincerely,

Macey "Butch" Shapiro
President
North Lakes Community Council
Macey "Butch" Shapiro

NORTH LAKES COMMUNITY COUNCIL
RESOLUTION

A NORTH LAKES COMMUNITY COUNCIL (NLCC) RESOLUTION REQUESTING THE MATANUSKA SUSITNA BOROUGH (MSB) ASSEMBLY ADD THE REQUIREMENT OF A 500 FEET SETBACK FROM MSB SCHOOL GROUNDS FOR ALL LIMITED MARIJUANA CULTIVATION FACILITY LICENSES.

WHEREAS, there are 49 schools in the MSB and the NLCC has 11 schools within our council area, and;

WHEREAS, we are concerned for the safety of the students in those schools, and;

WHEREAS, the Federal "Drug Free Zone" program asks for a 1,000 foot setback from United States school grounds for all marijuana licenses, and;

WHEREAS, MSB Code (as does the Municipality of Anchorage and Fairbanks North Star Borough) uses a straight line of measurement for the setback from a school ground— measuring it from the facility to the outer boundary of the school lot line, and;

WHEREAS, the MSB Code requirements enforce a 1,000 foot setback requirement for: Standard Marijuana Cultivation Facilities, Retail Marijuana Stores, Marijuana Testing Facilities, and Marijuana Product Manufacturing Facilities but not for Limited Marijuana Cultivation Facilities, and;

WHEREAS, MSB only requires a Limited Marijuana Cultivation Facility to pay facility property taxes and business license fees, and;

WHEREAS, MSB defers to the Alaska Marijuana Control Office (AMCO) Board to uphold the Limited Marijuana Cultivation Facility license 500 foot setback requirement from all MSB schools, and;

WHEREAS, AMCO Board upholds the 500 foot setback from all State of Alaska schools by applying "the shortest pedestrian route" and not a straight line from the facility to the outer boundary of the school lot line as a measurement for that distance, and;

WHEREAS, Mr. Happy Farms LLC, a Limited Marijuana Cultivation Facility, was approved at 60 feet from the John D. Shaw Elementary lot line September 2019 by the AMCO Board using "the shortest pedestrian route", and;

WHEREAS, MSB Planning Department currently receives all Limited Marijuana Cultivation Facility license applications and knows where all 49 MSB schools are located making the addition of a 500 foot school setback requirement as measured from the facility to the outer boundary of the school lot line easily incorporated and upheld, and;

WHEREAS, MSB Assembly can provide protection of all MSB schools and youth by adding this setback requirement, which mirrors AMCO setback regulations for Limited Marijuana Cultivation Facilities, and further insures that regulations are enforced at the MSB level as they are for all other marijuana licenses.

NOW, THEREFORE, BE IT RESOLVED, THAT NLCC REQUESTS THAT MSB ADD THE 500 FOOT SETBACK FROM SCHOOLS TO THE MSB CODE FOR LIMITED MARIJUANA CULTIVATION FACILITY LICENSES, FOR THE PROTECTION OF OUR SCHOOLS AND OUR YOUTH.

As approved this ___ Day of _____ 2020.

ATTEST:

Michele Shapiro, NLCC President

Erin Leaders, NLCC Secretary

James,

Below, we have outlined a number of state and borough violations by Mr. Happy Farms LLC, License # 17692, a marijuana cultivation facility located at 3900 N. Sierra St., Wasilla, Alaska 99654.

SCHOOL PROXIMITY

AAC 306 REGULATIONS FOR THE MARIJUANA CONTROL BOARD

AMCO's 3 AAC 306 REGULATIONS FOR THE MARIJUANA CONTROL BOARD, under Section 3 AAC 306.010. License Restrictions CLEARLY state that the LEGAL setback of a licensed cultivation facility MUST be a minimum of 500 feet from the LOT LINE of a school ground (or as stated below, the "outer boundaries of...the school ground").

Below, we have highlighted the sections of AMCO's 306.010. License Restrictions that have been violated by MR. Happy Farms LLC. Each will be discussed in detail.

"3 AAC 306.010. License restrictions

(a) The board will not issue a marijuana establishment license if the licensed premises will be located within 500 feet of a school ground, a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility. The distance specified in this subsection must be measured by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer boundaries of the school ground, the outer boundaries of the recreation or youth center, the main public entrance of the building in which religious services are regularly conducted, or the main public entrance of the correctional facility. This section does not prohibit the renewal of an existing marijuana establishment license, a license conversion under 3 AAC 306.047, or the transfer of an existing marijuana establishment license to another person if the licensed premises were in use before the school ground, recreation or youth center, the building in which religious services are regularly conducted, or a correctional facility began use of a site within 500 feet. If an existing marijuana establishment license for premises located within 500 feet of a school ground, a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility is revoked or expires, the board will not issue another marijuana establishment license for the same premises unless the school ground, the recreation or youth center, the building in which religious services are regularly conducted, or the correctional facility no longer occupies the site within 500 feet. UPDATED: 09/18/2019

1. Mr. Happy Farms LLC, located at 3900 N. Sierra St., Wasilla, Alaska, **clearly violates Section 3 AAC 306.010. License Restrictions**, under AMCO's regulations. Not only is this facility **NOT** 500 feet from the "outer boundaries of the school ground," it is a mere 60 feet from the "outer boundaries of the school ground."

In compliance with your own Section 3 AAC 306.010 License Restrictions of your written regulations, Mr. Happy Farms LLC's license MUST be revoked when it comes up for renewal in 2020:

“The distance specified in this subsection must be measured by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer boundaries of the school ground, the outer boundaries of the recreation or youth center, the main public entrance of the building in which religious services are regularly conducted, or the main public entrance of the correctional facility.”

To examine the portion of the above statement (from Page 1) that is specific to the legal SCHOOL GROUND distance, it is clearly stating the measurement of a distance from **POINT A: “the public entrance of the building in which the licensed premises would be located”** CLEARLY indicating the public entrance of Mr. Happy Farms LLC, located at 3900 N. Sierra St., Wasilla, Alaska 99654, as it does have a public entrance (it is a licensed business), to **POINT B: “the outer boundaries of the school ground”** i.e. the lot line Shaw Elementary School.

2. Furthermore, we want to be clear that Mr. Happy Farm LLC is **unable to reestablish** this marijuana cultivation facility ANYWHERE on the property located at 3900 N. Sierra St., Wasilla, Alaska 99654, as **there is no SINGLE point on the property that is a LEGAL distance from the “outer boundaries of the school.”** per your regulation stating that:

“If an existing marijuana establishment license for premises located within 500 feet of a school ground, a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility is revoked or expires, the board will not issue another marijuana establishment license for the same premises unless the school ground, the recreation or youth center, the building in which religious services are regularly conducted, or the correctional facility no longer occupies the site within 500 feet.”

3. So as to clear up any further loopholes you may be searching for in your 3 AAC 306.010. **License Restrictions**, Shaw Elementary School was well-established LONG before Mr. Happy Farms LLC was situated within an **illegal** distance from their premises—Shaw Elementary school opened in 2007; therefore, this fact negates the grandfathering in of Mr. Happy Farms LLC based on your regulation below:

“This section does not prohibit the renewal of an existing marijuana establishment license, a license conversion under 3 AAC 306.047, or the transfer of an existing marijuana establishment license to another person if the licensed premises were in use before the school ground, recreation or youth center, the building in which religious services are regularly conducted, or a correctional facility began use of a site within 500 feet.”

While we realize the legalization of cultivation facilities in the State of Alaska is a source of revenue for Alaska, there remains no question that the safety of our children MUST be placed FIRST and that in order for this newly-established form of revenue to stay afloat, ALL marijuana cultivation facilities MUST be held to a standard, and that standard comes in the form of legal, written laws which clearly define all aspects of how and where these marijuana cultivation facilities may conduct business.

School grounds are unique in that the state purchases large plots of land for schools to be situated; it is not only the school itself that is utilized on this plot of land, but rather, ALL of the school land that is used by students. It is a known FACT that Shaw Elementary School utilizes the woods that are adjacent to Mr. Happy Farms LLC, for a variety of educational purposes including, but not limited to Geocaching, physical education, and student research. In fact, the school bus stop for middle and high school students is located AT THE END of this marijuana cultivation facility's driveway.

Unfortunately for Mr. Happy Farms LLC, there was an oversight for this business when their license was originally granted, and that oversight, as clearly outlined in the above statements, is that it is NOT within a LEGAL distance from a school ground, and therefore, based on AMCO's Section 3 AAC 306.010, the license for Mr. Happy Farms LLC, must be revoked when it is up for renewal in 2020.

MAT-SU BOROUGH CODE

Matanuska-Susitna Borough Code 17.60.150 under *General Standards for Marijuana Related Facilities* states that such facilities MUST be "one thousand feet of school grounds."

Clearly, Mr. Happy Farms LLC, is not only in violation of AMCO's school proximity code, but in violation of the Mat-Su Borough Code, stating more stringently, that marijuana related facilities must be 1000 feet from school grounds.

SUBDIVISION COVENANTS

Shaw's Tri Lakes Addition #4 (Mr. Happy Farms LLC is situated in Addition #4) has **ACTIVE** covenants (successive, automatically renewed) which clearly outline the legal requirements which must be met for land use:

Part B: Protective Covenants

1. Land Use and Building Type: All lots shall be used for single family residences. Neither will there be permitted any conduct, enterprise or usage that may create a nuisance, be unlawful, or act detrimentally to the peace, dignity or value of the property described herein. It is further understood that the keeping of partially dismantled vehicles, junked cars, or unused equipment on the premises is prohibited unless such vehicles are being used for transportation.

Commercial businesses are **NOT** permitted in Shaw's Tri Lakes addition #4. Our covenants clearly outline that "All lots shall be used for single family residences."

DELINQUENT TAXES: Mr. Happy Farms LLC

AAC 306.080. Denial of license application (a) After review of the application, including the applicant's proposed operating plan and all relevant information, the board will deny an application for a new license if the board finds:

“that the applicant is delinquent in the payment of taxes due in whole or in part from operation of the licensed business;”

We are not sure if you are aware, but 3900 N. Sierra St., Wasilla, Alaska 99654, entered foreclosure and auction during the summer of 2019, due to delinquent taxes (www.zillow.com). At NO point should Mr. Happy Farms LLC be granted a renewal of their license, per your own regulation (AAC 306.080. Denial of license application).



Zillow Save Share More

\$319,925 3 bd 2.5 ba 2,425 sqft
3900 N Sierra St, Wasilla, AK 99654

Get more info

Overview Facts and features Foreclosure information Home >

Foreclosure Trustee or Attorney

Name: THE SAYER LAW GROUP PC
Address: 925 E 4TH ST, WATERLOO, IA 50703
Phone: (319) 234-2530

Legal

Foreclosure type: Non-Judicial
Recorded: Notice of Sale on 4/6/2019
Parcel number: 2568B01L006

LEASING OF LAND: Mr. Happy Farms LLC

3 AAC 306.015. License conditions

“A marijuana establishment must have a right to possession of its licensed premises at all times, and **may not lease its licensed premises** to another person for any reason.”

The building in which Mr. Happy Farms LLC is situated **IS** being leased to another individual (see attached documentation).

SAFETY IN OUR COMMUNITY:

It is known that marijuana is often a gateway drug to other types of drugs. In Mr. Happy Farms LLC's short introduction to this community, there has already been a stolen vehicle in his driveway, Alaska State Troopers navigating the woods behind his grow facility for said suspect, and numerous occasions whereby troopers have, for reasons unknown, been at his residence.

Traditional to drug operations, Mr. Happy Farms LLC owns two Pit Bull guard dogs, both of which are not chained up, and have charged neighbors on more than one occasion. This warranted me to spend \$1500.00 during the summer of 2018 to enclose a safe space in my backyard for my young Golden Retriever.

HOW DOES YOUR AGENCY WANT TO BE REPRESENTED?

All interactions with Mr. Happy Farms LLC and our neighborhood have been detrimental to the community that I have lived in and known for over 37 years. Mr. Happy Farms LLC does not represent the integrity of the Alcohol & Marijuana Control Office. Members of Mr. Happy Farms LLC have been explicitly vulgar and threatening on social media since the inception of their business, creating a community of fear, hate, and negativity that was completely inconceivable to this community prior to their business endeavor. Is this the type of business owner that you want representing such a new industry that is still in the midst of establishing a solid foundation in Alaska?

My concerns regarding olfactory emissions have been expressed to the Alcohol & Marijuana Control Office in Anchorage. As a result, an inspector was sent out to Mr. Happy Farms LLC, specifically to evaluate the smell in the air. Post-evaluation, nothing has changed: the smell persists and is severely impacting my life and livelihood at my residence, as well the aforementioned concerns above.

Mr. Happy Farms LLC has NO legal grounds to continue his business at 3900 N. Sierra St. It is only through his dishonesty with the Alcohol & Marijuana Control Office that his license was granted.

Again, I am asking that Mr. Happy Farms LLC's License #17692 be revoked, or at minimum, that he be forced to relocate his business to a **legal** location that is non-residential (or one in which covenants would allow) and within a **legal** proximity of school grounds. This should be an easy decision for any agency who is principled and who desires uphold the law and the integrity of their establishment."

As you know, aside from our daughter's odor violation complaints, we have sent NUMEROUS complaints ourselves. This is affecting our quality of life. Mr. Happy Farms LLC, is violating AMCO school proximity laws, Mat-Su Borough school proximity laws, delinquent tax laws, lease laws, odor violation laws, and our subdivision covenants. We are asking for this business license to be revoked when it is up for renewal this year, and would hope that AMCO would uphold the integrity of their agency and follow laws as they are meant to be followed. Put yourself in our shoes—imagine buying a home in a subdivision where one of your deciding factors for buying the home was the subdivision covenants, and those get completely disregarded, they clear land, and build a convenience store next to you. Now that AMCO has allowed this to illegally happen in our subdivision, there is NO protection for us that we will remain, as stated by our covenants, single family residences. This license needs to be revoked—it is not only the RIGHT decision for AMCO, it is the legal decision.

GROUND LEASE

THIS LEASE is made this 10th day of April, 2018, by and between Thomas & Taralyn Dicus, landowners ("Landlord"), and KLS Development LLC, an Alaska limited liability company ("Tenant").

1. Premises. Landlord, for and in consideration of the rents, covenants and conditions hereinafter specified to be paid, performed, and observed by Tenant, does hereby let, lease, and demise to Tenant the unimproved real estate located in the Palmer Recording District, Third Judicial District, State of Alaska, commonly known as 3900 N Sierra Street, Wasilla, Alaska 99654, and more particularly described as follows:

Shaw's Tri-Lks #4 Block 1, Lot 6 (partial – approximately 1200 sqft of the lot)
2. Appurtenances, Etc. Landlord leases and grants to Tenant all easements, parking and loading rights, right of ingress and egress during reasonable work hours, improvements, fixtures, and appurtenances now or hereafter belonging or appertaining to the leased premises.
3. Purpose. Landlord acknowledges that Tenant intends to sublease the leased property for a marijuana cultivation establishment and agrees to the use as such.
4. Term. Lease commencement date shall be the date that this Lease has been fully executed by the parties, but in no event later than May 1, 2018. Lease expiration date shall be May 31, 2028.
 - a) Holding Over. In the event that Tenant holds over at or after the end of the term, or any extended term, the tenancy shall be deemed a month-to-month tenancy commencing on the first day of the holding over period.
 - b) Early Termination. Tenant shall have the right to terminate this Lease by providing sixty (60) day written notice to Landlord.
5. Rental Amount. Beginning on the first of the month following the first product sale by Mr. Happy Farms LLC and continuing on the first day of each calendar month, Tenant shall pay Landlord monthly rent in an amount of \$1,000.00. Tenant shall also pay all charges for water, gas, sewer, electricity, power, or other public utility services for leased premises rendered during the term of this Lease, and any extended term, as such charges become due. Landlord shall pay the real property taxes for the leased premises.
 - a) Late Payment. If any rent or other sum due from Tenant is not received within ten (10) calendar days of the due date, Tenant shall pay to Landlord as a late charge an additional sum of five percent (5%) of such overdue payment.
 - b) Security Deposit. Landlord waives any requirement for Tenant to post a security deposit.
6. Compliance with Laws, Care of Premises. Tenant agrees that it shall keep the leased premises in good working order, condition, and repair appropriate for buildings of similar construction and class in the area.

- a) All buildings, structures, and permanent improvements shall remain the property of Tenant until the termination of the Lease. At the expiration or termination of the term of the Lease, or any extended term thereof, Landlord may, at its option, become the owner of all buildings, structures, and improvements located on the premises without any obligation to pay therefor.
- b) Upon termination by expiration of time or otherwise of this Lease, or of any renewal thereof, or at any prior time, Tenant shall have the right to remove all trade fixtures and other movable items of personalty, provided that any damage caused to the leased premises by reason of such removal shall be paid by Tenant.
7. Quiet Enjoyment. Provided Tenant is not in default hereunder, Landlord covenants that Tenant shall have peaceful and quiet enjoyment of the leased premises without hindrance on the part of Landlord, and that Landlord will warrant and defend Tenant in the peaceful and quiet enjoyment of the demised premises.
8. Default. In the event of a default on the lease terms by the Tenant, the Landlord agrees that it will not take possession of or remove marijuana from the premises. If this becomes necessary, Landlord will contact the Alcohol & Marijuana Control Office.
9. Assignment or Subletting. Tenant shall not sublet the leased premises, or any part thereof, or assign this Lease, or any part thereof, without the prior written consent of Landlord to such subletting or assignment, which shall not be unreasonably withheld. Tenant shall further have the right to sublease all or any portion of space in the building to be constructed upon the premises.

IN WITNESS WHEREOF, the parties have hereunto executed this Lease Agreement the day and year first hereinabove written.

TENANT

KLS DEVELOPMENT LLC

By

LANDLORD

THOMAS J. DICUS

By

TARALYN DICUS

By

SHAW'S TRI-LAKES SUBDIVISION
ADDITION #4--RESTRICTIONS AND COVENANTS

PART A PREAMBLE

1. Purpose. The purpose of these covenants is to assure that property owners will be fully protected from poor quality surroundings and that they will be assured a pleasant, sanitary and safe site to erect their homes. These covenants will be in effect from the date recorded in the Palmer Recording District, Third Judicial District, State of Alaska. concerning the following real property:

SHAW'S TRI-LAKES SUBDIVISION, ADDITION #4,
recorded in the Palmer Recording District,
Plat No. 83-214.

2. Previously Recorded Restrictions. By express declaration of the subdivider, pursuant to paragraph 3 of the "Shaw's Tri-Lakes Subdivision Supplemental Restrictions and Covenants," all lots within this Addition #4 are subject to the prime restrictions known as "Shaw's Tri-Lakes Subdivision Restrictions" recorded in Book 88, Pages 865 through 867, and the supplement thereto "Shaw's Tri-Lakes Subdivision Supplemental Restrictions and Covenants" recorded at Book 90, Pages 224 and 225, both of the property records in the recorder's office for Palmer Recording District; and the aforesaid restrictions and covenants are hereby made a part hereof by reference as though fully set forth therein. All purchasers of lots within this Addition #4 are referred to the above referenced restrictions and covenants for information regarding land use and other pertinent restrictions and covenants.

However, Shaw's Tri-Lakes Subdivision Addition #2 - Restrictions and Covenants recorded at Book 269, Pages 995 through 996 do not apply to this Addition #4, and owners of lots within Addition #4 do not have covenanted access to the airfield or its operations within Addition #2.

In the event of a conflict between these restrictions and covenants for Addition #4 and the aforesaid prime restrictions and supplement thereto, these restrictions and covenants shall apply and control.

In addition to the above referenced restrictions and covenants, the subdivider further restricts and covenants as follows:

PART B. PROTECTIVE COVENANTS

1. Land Use and Building Type. All lots shall be used for single family residences. Neither will there be permitted any conduct, enterprise or useage that may create a nuisance, be unlawful or act detrimentally to the peace, dignity or value of the property described herein. It is further understood that the keeping of partially dismantled vehicles, junked cars, or unused equipment on the premises is prohibited unless such vehicles are being used for transportation.

2. Dwelling Quality and Size. It is the intention and purpose of this covenant to assure that all dwellings are of good quality, workmanship and materials. All buildings constructed or placed on these lots shall not be less than 720 square feet of total living area, shall not utilize tar paper, roofing paper, celotex, nuwood, or similar non-permanent material

13. Standing Timber Waste. To maintain the setting and aesthetic value of Shaw's Tri-Lakes Subdivision #4, no standing timber shall be cut except that which is necessary and reasonable for clearing for dwellings or other buildings, landscaping, garden area, to remove hazardous and dangerous trees, or for the clearing of access roadways on any lot.

14. Utilities. Electrical and telephone utilities shall be installed in accordance with the requirements of the utility companies.

PART C GENERAL PROVISIONS.

1. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive period of ten (10) years unless an instrument signed by the majority of the then record owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

2. Amendment. This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by not less than Fifty-one percent (51%) of the owners in Shaw's Tri-Lakes Subdivision. Any amendment must be recorded.

3. Enforcement. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain or to recover damages, and such actions may be brought by the owner or owners of record of any lot in the subdivision.

4. Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full effect.

5. Subordination. It is further provided that a breach of any of the conditions contained herein or any re-entry by reason of such breach, shall not defeat or render invalid the lien or any mortgage or deed of trust made in good faith and for value as to said premises or any part thereof; but said conditions shall be binding upon and effective against the owner of said premises whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

6. Homeowner's Association. Owners of lots within Addition #4 shall not be required to become members of any homeowner's association.

7. Architectural Control. No building, structure or improvement, except dog houses, greenhouses, garden-tool sheds, and signs, shall be erected, placed, constructed, altered, or made on a lot until construction plans and specifications and a plan showing the location of the building, structure, or improvement have been approved by the Architectural Control Committee as to the following: quality of materials; harmony of external design with landscape and existing buildings, structures, and improvements; structural strength; location with respect to topography and finish grade elevation and with respect to the location on any lot of existing water systems and sewer systems; and location with respect to the likely location on any lot of future water systems and sewer systems. Such approval may include a relaxation of set-back requirements pertaining to the location of a garage or a carport, but only in cases where such relief is indicated by the severity of the grade between a street and the

**PUBLIC HEARING
LEGISLATIVE**

Resolution No. PC 20-25

Driveway Standards (MSB 11.12)

HANDOUT

CODE ORDINANCE

Sponsored by:
Introduced:
Public Hearing:
Action:

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 20-16**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 11.12 DRIVEWAY STANDARDS IN ORDER TO ENSURE DRIVEWAYS WITHIN BOROUGH RIGHTS-OF-WAY MINIMIZE NEGATIVE IMPACT TO DRAINAGE, MAINTENANCE, AND SAFETY OF THE TRAVELING PUBLIC.

BE IT ENACTED:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Borough Code.

Section 2. Adoption of chapter. MSB 11.12 is hereby adopted to read as follows:

11.12.010 INTENT

11.12.020 DEFINITIONS

11.12.030 APPLICABILITY

11.12.040 APPLICATION PROCEDURES

11.12.050 GENERAL STANDARDS

11.12.060 LOW VOLUME DRIVEWAY STANDARDS

11.12.070 HIGH VOLUME DRIVEWAY STANDARDS

11.12.080 TRAFFIC IMPACT ANALYSIS

11.12.090 TRAFFIC IMPACT MITIGATION

11.12.100 WAIVER OF STANDARDS

11.12.110 NONCONFORMING DRIVEWAYS

11.12.120 VIOLATIONS, ENFORCEMENTS, AND PENALTIES

11.12.010 INTENT

(A) This chapter is intended to establish a permit process and standards for driveways within Borough rights-of-way. Minimum standards are provided for proper placement and design of driveways in order to ensure drainage, maintenance, movement and safety of the traveling public.

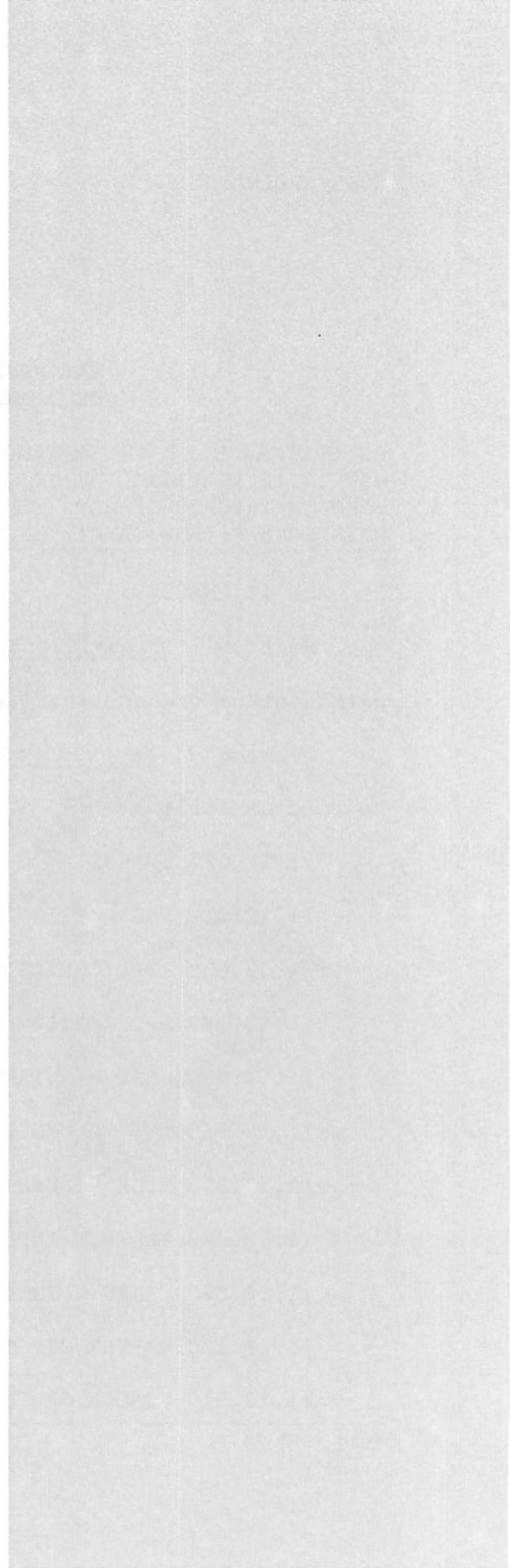
(B) All driveways are considered encroachments under MSB 11.10 and are subject to the requirements therein.

(C) Issuance of a permit under this chapter grants the permittee no right, title, or interest within Borough rights-of-way. The Borough reserves the right to deny, modify, or revoke any permit issued under this chapter.

11.12.020 DEFINITIONS

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"Corner clearance" means the distance between an intersection and driveway, not including tapers or curve returns.



"Curb cut" means a ramp built into a curb to allow the driveway to ramp down from the curb height to the pavement surface.

"Curve return" means the curve located at the end of a driveway connecting the driveway edge to the roadway edge.

"Design vehicle" means the largest type of vehicle that frequently accesses the roadway from a driveway.

"Design year" means the year that is 10 years after the anticipated opening date of a development.

"Driveway" means a type of encroachment, as defined by MSB 11.10.010(A), that provides access to Borough rights-of-way or easements.

"Driveway width" means the distance across the driveway at the furthest point of curvature from the roadway, typically within the right-of-way, measured at right angles to the centerline of the driveway surface.

"Edge clearance" means the distance measured from the property corner to the near edge of the driveway surface at the right-of-way line, not including curve returns.

"Functional area" means the physical area of an intersection and the area extending both upstream and

downstream which includes perception-reaction distance, maneuver distance, and storage length.

"High volume driveway" means a driveway which accesses a parcel containing uses which generate more than 10 vehicles during the peak hour.

"Level of Service (LOS)" means a qualitative measure describing operational conditions within a traffic stream, based on service measures such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, and convenience. Six LOS, from A to F, are used to represent a range of operating conditions with LOS A representing the best operating conditions and F the worst.

"LOS A" means vehicles are almost completely unimpeded in their ability to maneuver within the traffic stream, passing demand is well below passing capacity, drivers are delayed no more than 30 percent of the time by slow moving vehicles.

"LOS B" means the ability to maneuver a vehicle is only slightly restricted; passing demand approximately equals passing capacity, and drivers are delayed up to 45 percent of the time; the level of physical and psychological comfort provided to drivers is still high.

"LOS C" means the ability to maneuver a vehicle is noticeably restricted and lane changes require more care and vigilance on the part of the driver; percent time delays are up to 60 percent; traffic will begin to back-up behind slow moving vehicles.

"LOS D" means the level at which speeds begin to decline with increasing traffic flow, density begins to increase somewhat more quickly, passing demand is very high while passing capacity approaches zero, and the driver experiences reduced physical and psychological comfort levels; the percentage of time motorists are delayed approaches 75 percent, even minor incidents can be expected to back-up traffic because the traffic stream has little space to absorb disruptions.

"LOS E" means the roadway is at capacity; the percentage of time delay is greater than 75 percent, passing is virtually impossible, as there are virtually no usable gaps in the traffic stream; vehicles are closely spaced, leaving little room to maneuver, physical and psychological comfort afforded to the driver is poor.

"LOS F" means that traffic is heavily congested with traffic demand exceeds traffic capacity, there is

a breakdown in vehicular flow, and vehicle delay is high.

"Lot" means the least fractional part of subdivided lands having limited fixed boundaries and having an assigned number, or other name through which it may be identified.

"Low volume driveway" means a driveway which accesses a parcel containing uses which generate less than or equal to 10 vehicles during the peak hour.

"Opening date" means the anticipated date at which the development will generate more than 100 vehicles during the peak hour. For developments that will generate more than 250 vehicles during the peak hour, the opening date means the anticipated date at which the development will generate more than 250 vehicles during the peak hour.

"Parcel" means a lot or contiguous group of lots in single ownership or under single control, usually considered a unit for purposes of development.

"Passenger vehicle" means a vehicle falling under classes 1 through 3 of the Federal Highway Administration vehicle classification definitions.

"Peak hour" means a one-hour period representing

the highest hourly volume of vehicle trips generated by the development.

"Qualified professional" means a professional civil engineer or other professional registered with the State of Alaska under A.S. 08.48 qualified to practice the type of work required by this chapter.

"Roadway" means the portion of a road that includes driving lanes and shoulders.

"Roadway Classification" means the type of roadway or right-of-way as determined by the Public Works Director, based on current constructed roadway standard, current functional classification of the road, and the intended functional classification in accordance with the most current MSB Long Range Transportation Plan and MSB Official Streets and Highways Plan. Types of roadway classification include local, collector, and arterial.

"Single-unit truck" means a vehicle falling under classes 4 through 7 of the Federal Highway Administration vehicle classification definitions.

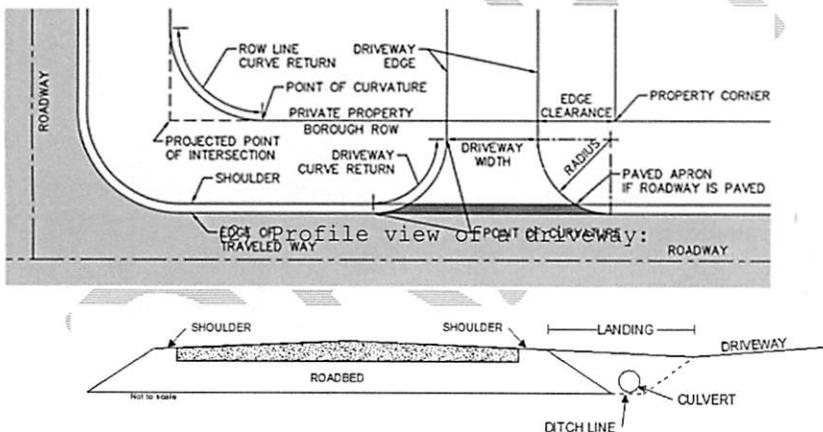
"Traffic Impact Analysis" means a specialized engineering study performed by a qualified professional civil engineer which determines the degree or extent to which proposed land use developments, and the traffic

they are expected to generate, will affect the adjacent or surrounding transportation system.

"Vehicle trip" means a single or one-direction vehicle movement exiting or entering a development.

(B) The following diagrams are a visual representation of terms used within this chapter:

(1) Plan view of a driveway:



(C) In instances where a word is not included in this section nor in the applicable section, reference will be made first to MSB 17.125, followed by the most recent publication of "The Illustrated Book of Development Definitions" then to "The Zoning Dictionary" by Lehman and Associates, then to "Webster's New Universal, Unabridged Dictionary."

11.12.030 APPLICABILITY

(A) The following require a driveway permit from the Borough:

- (1) Existing, unpermitted driveways;
- (2) Construction of new driveways;
- (3) Physical modifications to existing driveways; or
- (4) Change in land use requiring a different standard from that which the driveway permit was issued.

(B) A permit is not required for driveways constructed or reconstructed by Borough or state projects.

- (1) Any physical modification thereafter requires a permit under this chapter.

11.12.040 APPLICATION PROCEDURES

(A) An application for a driveway permit may be initiated by a property owner or the owners' authorized agent. An application for a driveway permit shall be filed on a form provided by the Borough.

- (1) The application for a driveway permit shall be accompanied by an appropriate filing fee as established by the assembly, payable to the Borough.

- (2) All driveway application shall include the

following items:

- (a) street being accessed;
- (b) driveway dimensions;
- (c) pathway or sidewalk dimensions, if applicable;
- (d) culvert type, diameter, and length, if applicable;
- (e) expected completion date;
- (f) driveway surface type;
- (g) proposed land use;
- (h) estimated peak hour and average daily traffic generated by the use;
- (i) Residential developments can assume a vehicle trip generation rate of 1 peak hour vehicle trip per dwelling unit,
- (ii) Other developments shall use the most recent edition of the Institute of Transportation Engineers Trip Generation Manual, and
- (iii) Local vehicle trip generation rates, accompanied by supporting data and calculations, determined by a professional civil engineer registered by the state of Alaska may be used as a substitute for the Institute of Transportation Engineers Trip

Generation Manual.

(3) In addition to items within paragraph (2) of this subsection, driveway applications for high volume driveway and low volume driveways required to be designed by a qualified professional shall include the following items:

(a) design vehicle;

(b) driveway sight triangles for driveways that access a parcel containing uses which generate more than 10 vehicles per hour (VPH) during the peak hour; and

(c) driveway plan and profile, containing sufficient information to demonstrate that all the applicable standards of this chapter are met, prepared and stamped by a qualified professional.

(4) In addition to items within paragraph (2) - (3) of this subsection, driveway applications for uses generating more than 50 vehicles during the peak hour shall submit a turn lane warrant analysis prepared by a professional civil engineer registered by the State of Alaska.

(5) In addition to items within paragraphs (2)-(4) of this subsection, driveway applications for

uses generating more than 100 vehicles during the peak hour shall submit a traffic impact analysis prepared and stamped by a professional civil engineer registered by the State of Alaska.

(B) Following review of the application, the Borough will grant approval to construct or deny the proposed driveway based on whether or not it meets the standards of this chapter.

(C) Upon approval to construct, the applicant may construct the driveway as approved and shall notify the Borough upon completion.

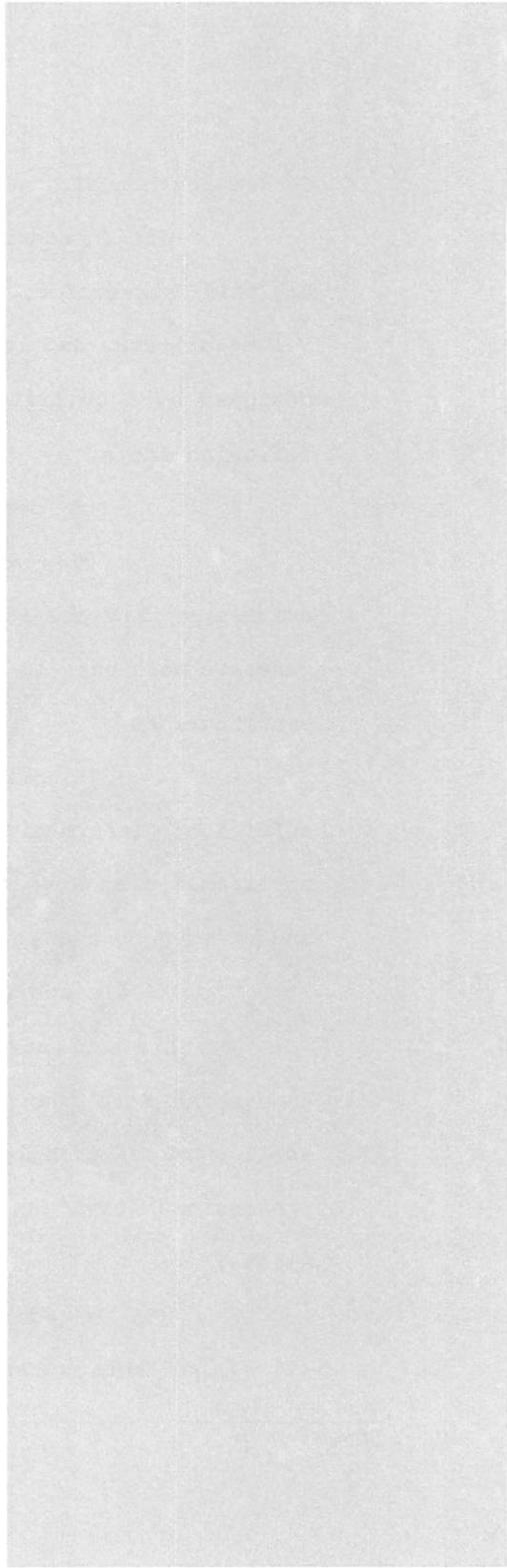
(D) Upon notification that construction of the driveway is complete, the Borough will issue final approval of the driveway if the Borough finds that it meets the requirements of this chapter.

11.12.050 GENERAL STANDARDS

(A) The standards within this subsection apply to all driveways regardless of land use.

(1) Driveways shall not cause adverse drainage onto the roadway.

(2) The landowner shall be responsible for maintenance of the driveway, including but not limited to culvert cleaning and thawing to ensure proper



drainage.

_(a) Snow removed from the driveway shall not:

(i) be placed in, or pushed across the roadway;

(ii) obstruct traffic signage or address numbers;

(iii) obstruct sight triangles; or

(iv) be placed in the right-of-way in a manner that interferes with drainage or normal maintenance activities.

(3) ~~The driveways shall be installed with a landing-landing shall have~~ a negative 2 percent slope away from the road to the extent feasible.

(a) Where a negative slope away from the roadway is not feasible due to topographical constraints, the driveway shall be constructed in a manner that prevents water from flowing onto the roadway.

(4) Length of the driveway landing, as measured from the outside edge of the road shoulder, shall be a minimum of 10 feet.

(a) When the design vehicle is single-

unit truck or larger, the borough may require a longer landing, up to 30 feet, to allow larger vehicles to come to a complete stop before entering the roadway.

(5) The first 10 feet of the driveway landing shall be installed perpendicular to the roadway to the extent feasible. A driveway may intersect the roadway at an angle no less than 60 degrees, upon approval by the Borough, if required by topographical or physical constraints.

(6) Any fill or cut slopes created within the right-of-way that are steeper than 2H:1V are not allowed unless designed by a professional civil engineer registered by the state of Alaska.

(7) Unless otherwise specified, driveways shall be installed with a minimum 16-gauge thickness, 12-inch diameter, corrugated metal pipe.

(a) If the Borough determines that a 12-inch culvert is likely insufficient to accommodate drainage, the Borough may require a larger culvert and may also require an engineering analysis to determine the size of the culvert needed to adequately handle flow from events that have a 10% chance of occurring in any given year.

(b) If the driveway crosses a stream reach which harbors fish, as determined by the Alaska Department of Fish and Game, then the culvert shall be installed in accordance with the fish passage culvert section of the MSB subdivision construction manual.

(c) The Borough may waive the requirement for a culvert if the Borough determines one is not needed to accommodate drainage.

(8) Culverts shall be installed as follows:

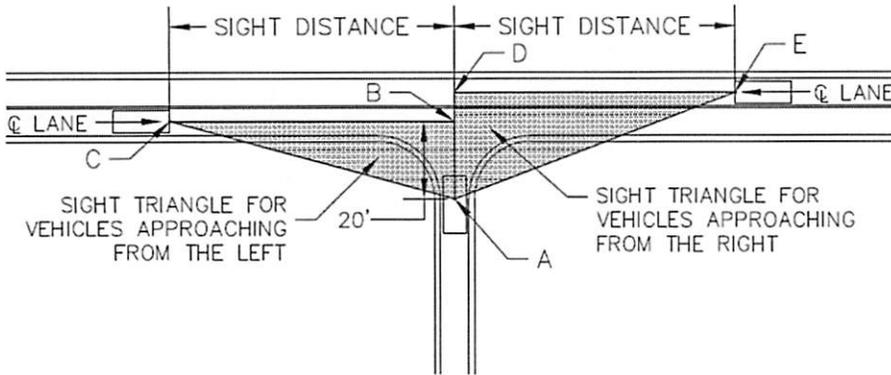
(a) at least one foot of culvert shall be visible at the toe of the foreslopes on each side of the driveway or with sloped end sections flush with the foreslopes;

(b) culverts shall be sloped to match the ditch gradient at a minimum of 0.5 percent in the direction of flow; and

(c) culverts shall be placed in the existing ditch line or the ditch line can be modified such that the culvert is set back up to 6 feet, as long as the ditch remains entirely within the right-of-way.

(9) Driveways shall be installed and maintained to provide the required sight distance triangles as follows:

(a) The entire area of the sight



triangles shown in the below figure shall be designed to provide a largely unobstructed view from point A at 3.5 feet above the roadway to all points 3.5 feet above the roadway along the lane centerlines from point B to point C and point D to point E:

(b) The standard sight distances listed in the following table are for vehicles turning onto a two-lane undivided street. For other conditions, the standard sight distance should be calculated using Section 9.5 of the 7th edition of *A Policy on Geometric Design of Highways and Streets* (American Association of State Highway Transportation Officials).

Standard Driveway Sight Distance (feet)		
Sight	Design	Speed limit (mph)

triangle	Vehicle	20	25	30	35	40	45	50	55
Left (B to C)	Passenger vehicle	225	280	335	390	445	500	555	610
	Single-unit truck	280	350	420	490	560	630	700	770
	Combination truck	340	425	510	595	680	765	850	930
Right (D to E)	Passenger vehicle	195	240	290	335	385	430	480	530
	Single-unit truck	250	315	375	440	500	565	625	690
	Combination truck	310	390	465	545	620	695	775	850

(c) Minimum sight distance in the following table shall only be used when standard sight distance cannot be obtained because of topographical or other physical constraints outside of the applicant's control:

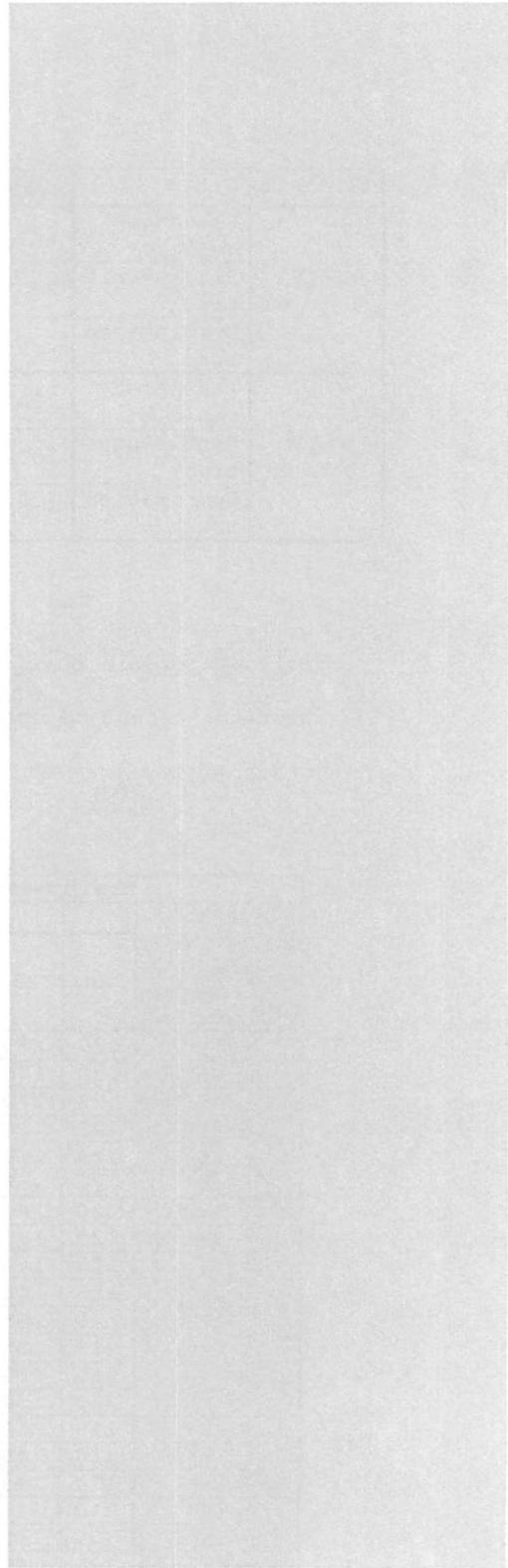
Minimum Sight Distance (feet)								
Average grade of sight distance triangle	Speed limit (mph)							
	20	25	30	35	40	45	50	55
-10%	130	180	235	295	365	440	525	610
-9%	130	175	230	290	355	430	510	595
-8%	125	170	225	285	350	420	495	580
-7%	125	170	220	280	340	410	485	570
-6%	120	165	215	275	335	400	475	555
-5%	120	165	215	270	330	395	465	545
-4%	120	160	210	265	325	385	455	530
-3%	120	160	205	260	315	380	450	520
-2%	115	160	205	255	310	375	440	510
-1%	115	155	200	250	305	370	435	505
0%	115	155	200	250	305	360	425	495
1%	115	155	195	245	300	355	420	485
2%	110	150	195	240	295	350	415	480
3%	110	150	190	240	290	345	405	470
4%	110	150	190	235	285	340	400	465
5%	110	145	190	235	285	340	395	460
6%	110	145	185	230	280	335	390	450
7%	110	145	185	230	275	330	385	445
8%	105	145	185	225	275	325	380	440
9%	105	140	180	225	270	320	375	435
10%	105	140	180	220	270	320	370	430

(d) If minimum sight distance in the previous table cannot be obtained because of topographical or other physical constraints outside of the applicant's control, alternate mitigation such as hidden driveway or advisory speed signs shall be installed in accordance with the *2016 Alaska Traffic Manual* (Alaska Department of Transportation & Public Facilities).

(10) The cost of redesign and construction of public infrastructure and utilities impacted by the driveway installation shall be the responsibility of the permittee.

(11) The minimum corner clearance for a driveway to a corner lot shall be 60 feet from the projected point of intersection or property corner, as measured from the driveway edge.

(a) In no case shall a driveway be located within the curve return of a constructed roadway



or right-of-way.

(12) Edge clearance shall be equal to or greater than the radius of the driveway curve return.

(a) Edge clearance for flag lots with flag poles less than or equal to 40 feet wide shall have a minimum edge clearance of 5 feet.

(b) Edge clearance does not apply to common use driveways serving two adjoining properties.

(13) adjacent driveway curve returns shall not overlap.

(14) Curb cuts shall be installed in accordance with the February 2019 *Alaska Standard Plan I-20.20* (Alaska Department of Transportation & Public Facilities).

(15) All pedestrian walkway crossings shall conform to *2006 Americans with Disabilities Act Standards for Transportation* (US Department of Transportation) and the *2016 Alaska Traffic Manual* (Alaska Department of Transportation & Public Facilities).

11.12.060 LOW VOLUME DRIVEWAY STANDARDS

(A) This section applies to driveways that access a parcel containing uses which generate less than or

equal to 10 vehicles during the peak hour.

(1) Driveway Dimensions.

(a) Driveway width shall be a minimum of 10 feet and a maximum of 25 feet.

(b) The radius of the driveway curve return shall be a minimum of 6 feet and a maximum of 20 feet.

(c) Driveways with dimensions that fall outside the standards of (a) - (b) of this paragraph shall be designed by a qualified professional and shall be designed to ensure:

(i) the driveway is the minimum width necessary to accommodate the proposed use;

(ii) snow storage equal to or greater than the driveway width at the edge of the roadway is available within the right-of-way, in the direction of anticipated snow removal, fronting the property to the extent feasible;

~~(ii) snow storage equal to or greater than the driveway width at the edge of the roadway is available within the right-of-way, in the direction of anticipated snow removal, fronting the property to the extent feasible;~~

(iii) vehicles turning into or out of the driveway do not encroach into the opposing lane on collector or higher classification roads; and

(iv) the driveway meets all other standards within this chapter.

(2) Driveways to corner lots or lots that border two or more roadways shall gain access from the right-of-way of lowest classification when rights-of-way of multiple classifications bound a lot.

(3) Driveways fronting on paved roadway surfaces shall have a minimum 2-foot paved apron the entire width of the portion of the driveway that intersects the roadway.

(4) Minimum distance between driveways on the same side of the street shall be in accordance with the following table:

Roadway Classification	Distance
Arterial roadways	75 feet
Collector roadways	50 feet
Local roadways	35 feet

(a) Driveway spacing shall be measured at the edge of the right-of-way, parallel to the centerline of the roadway, between the inside edges of two adjacent driveways.

(i) driveway spacing on cul-de-sacs or other turnarounds shall be measured along the edge of the right-of-way.

11.12.070 HIGH VOLUME DRIVEWAY STANDARDS

(A) This subsection applies to driveways that access a parcel containing uses which generate more than 10 vehicle trips during the peak hour.

(1) Driveways under this subsection shall be designed by a qualified professional.

(2) Minimum 18-inch diameter culverts with sloped end sections are required when the ditch depth is 24 inches or deeper.

(3) Driveway dimensions.

(a) Driveway width shall be a minimum of 24 feet wide, except as provided in subparagraph (ed) of this paragraph.

(b) Driveways greater than 35 feet in width shall be designed to ensure snow storage equal to or greater than the driveway width at the edge of the roadway is available within the right-of-way, in the direction of anticipated snow removal, fronting the property to the extent feasible.

Formatted: Indent: First line: 1.5"

Formatted: Indent: First line: 2"

(~~bc~~) The radius of the driveway curve return shall be a minimum of 20 feet, except as provided in subparagraphs ~~(ed)~~ of this paragraph.

(~~ed~~) Driveway curve returns or driveway width may be less in certain circumstances such as angled or one-way driveways. However, the edge clearance shall be a minimum of 20 feet.

(4) Driveways shall be designed such that vehicles turning into or out of the driveway do not encroach into the opposing lane.

(~~45~~) Access to arterials is discouraged when other options are available.

(~~56~~) Driveways fronting on paved roadway surfaces shall have a paved apron to the furthest point of curvature from the roadway.

(~~67~~) Signage and striping, if used, shall conform to the *2016 Alaska Traffic Manual* (Alaska Department of Transportation and Public Facilities) and shall be maintained by the landowner.

(~~78~~) High volume driveways shall be separated from intersections and other high volume driveways in

accordance with the following table:

Minimum High Volume Driveway Spacing (feet)											
Classification of road being accessed	Posted speed limit or 85 th percentile speed of road being accessed (mph)	Total vehicle trip generation of subject parcel (vph)									
		11-100			101-250			> 250			
		Total vehicle trip generation of subject parcel, nearby parcel, or classification of cross street			Total vehicle trip generation of subject parcel, nearby parcel, or classification of cross street			Total vehicle trip generation of subject parcel, nearby parcel, or classification of cross street			
		local road	11-100 vph or collector	101-250 vph or arterial	> 250 vph or arterial	local road	11-100 vph or collector	101-250 vph or arterial	> 250 vph or arterial	local road	11-100 vph or collector
Local	≤30	35	70	150	70	150	150	150	150	150	300
Collector	≤30	70	150	300	150	150	300	300	300	300	300
	>30	70	150	300	150	300	300	300	300	300	300
Arterial	≤40	150	300	300	300	300	600	600	600	600	600
	>40	150	300	600	300	600	600	600	600	600	600

(a) Driveway spacing shall be measured at the edge of the right-of-way, parallel to the centerline of the roadway, between the inside edges of two adjacent driveways or between the inside edges of a driveway and intersecting roadway.

(b) Driveway spacing applies to intersections and high volume driveways on the same side and opposite sides of the street.

(i) Driveway spacing does not apply to driveways or intersections on opposite sides of streets that have a non-traversable median.

(c) Driveway access within the functional area of an intersection should be avoided when possible.

(d) Developments which produce greater than 100 vehicle trips during the peak hour may access the first 600 feet of a local road measured from the intersection with a higher classification roadway, but may only be approved upon consideration of traffic impacts on residential properties.

(e) Driveways on opposite sides of the street shall:

(i) be aligned directly across from each other to the extent feasible with a lane offset no greater than six feet; or

(ii) meet the separation distances established by the table within MSB 11.12.070(A) (78).

(f) Driveway spacing may be reduced, as recommended by an engineer and approved by the Borough, to as low as one-half the distance specified in the minimum high volume spacing table in MSB 11.12.070(A) (78) for the following:

(i) right in/right out driveways;

(ii) when the cross street has a non-traversable median;

(iii) one-way driveways;

(iv) driveways accessing one way streets;

(v) Driveways where the requirements of subparagraph (e) are not feasible, if the opposing driveways do not have overlapping left turns.

(v) driveways where a traffic impact analysis demonstrates capacity needs;

(vi) when sufficient mitigating factors are provided; or

(vii) Driveways that are not able to meet separation distance from other existing driveways or intersections due to physical constraints.

(B) The following is required for driveways that access a parcel containing uses which generate more than 50 vehicle trips during the peak hour:

(1) STOP signs;

(2) painted STOP bars when accessing a paved roadway where the driveway crosses bike paths or sidewalks;

(3) relocation of pathways and sidewalks in front of STOP bars in accordance with ADOT&PF Central

Formatted: Not Highlight

Region Standard eDetail CR-T-1.20s;

(4) installation of right turn lanes if warranted by the 1985 *National Cooperative Highway Research Program Report 279*, Figure 4-23 (Transportation Research Board); and

(5) installation of left turn lanes if warranted by the 1967 *Highway Record 211* (Highway Research Board).

11.12.080 TRAFFIC IMPACT ANALYSIS

(A) Driveways that access a parcel containing uses that generate traffic in excess of 100 vehicle trips during the peak hour require a traffic impact analysis which examines critical movement level of service (LOS) at the driveway and nearby roads and intersections.

(1) A traffic impact analysis for uses that generate less than 100 vehicle trips per hour may be required if the Borough determines that the traffic generated will detract from the safety of the roadway.

(a) In determining whether the access will detract from safety of the roadway the Borough shall consider:

- (i) sight distance;
- (ii) accident history;

Formatted: Not Highlight

Formatted: Not Highlight

- (iii) bus stops;
- (iv) road width;
- (v) functional area; and
- (vi) other traffic and safety

related factors.

(b) A determination that the access will detract from safety of the roadway shall be issued in writing by the borough.

(2) The traffic impact analysis and driveway design shall be prepared by a professional civil engineer registered by the State of Alaska under AS 08.48.

(3) Level of service and operational analysis for a traffic impact analysis prepared under this section must be performed in accordance with the *Highway Capacity Manual, 6th Edition* (Transportation Research Board).

(4) The minimum acceptable LOS at intersections and on road segments both on the development's anticipated opening date and in the design year is:

(a) LOS C, if the LOS on the date of application is LOS C or better; or

(b) LOS D, if the LOS on the date of application is LOS D or poorer; however, if the LOS is poorer than LOS D, a lower minimum LOS is acceptable if the operation of the roadway does not deteriorate more than 10 percent in terms of delay time or other appropriate measures of effectiveness from the LOS before the development's anticipated opening date.

(5) A traffic impact analysis prepared under this section must address:

(a) intersections on roadways where traffic on any approach is expected to increase, as a result of the proposed development, by at least five percent of the approach's capacity;

(b) segments of roadways between intersections where total traffic is expected to increase, as a result of the proposed development, by at least five percent of the segments' capacity;

(c) roadways and intersections where the safety of the facilities will deteriorate as a result of the traffic generated by the development;

(d) each driveway that will allow egress from or ingress to a roadway for the proposed development;

(e) parking and circulation routes within the proposed development, to the extent necessary to ensure that traffic does not back up onto a roadway; ~~and~~

(f) pedestrian and bicycle facilities that are part of the roadway to which a permit applicant seeks access; ~~and-~~

(g) the anticipated opening date of the development.

(6) A traffic impact analysis prepared under this section must consider:

(a) projected traffic at the development's anticipated opening date, excluding the traffic generated by the development; and

(b) projected traffic at the development's anticipated opening date, including the traffic generated by the development.

(7) A traffic impact analysis prepared under this section for a development expected to generate 250 or more vehicle trips during the peak traffic hour of the adjacent roadway must, in addition to the projected traffic volumes before and after the completion of the proposed development, consider:

(a) the projected traffic in the design

year for the proposed development, excluding traffic generated by the development; and

(b) the projected traffic for the design year for the proposed development including the traffic generated by the development.

11.12.090 TRAFFIC IMPACT MITIGATION

(A) A traffic impact mitigation plan shall be submitted in association with the traffic impact analysis required under MSB 11.12.080.

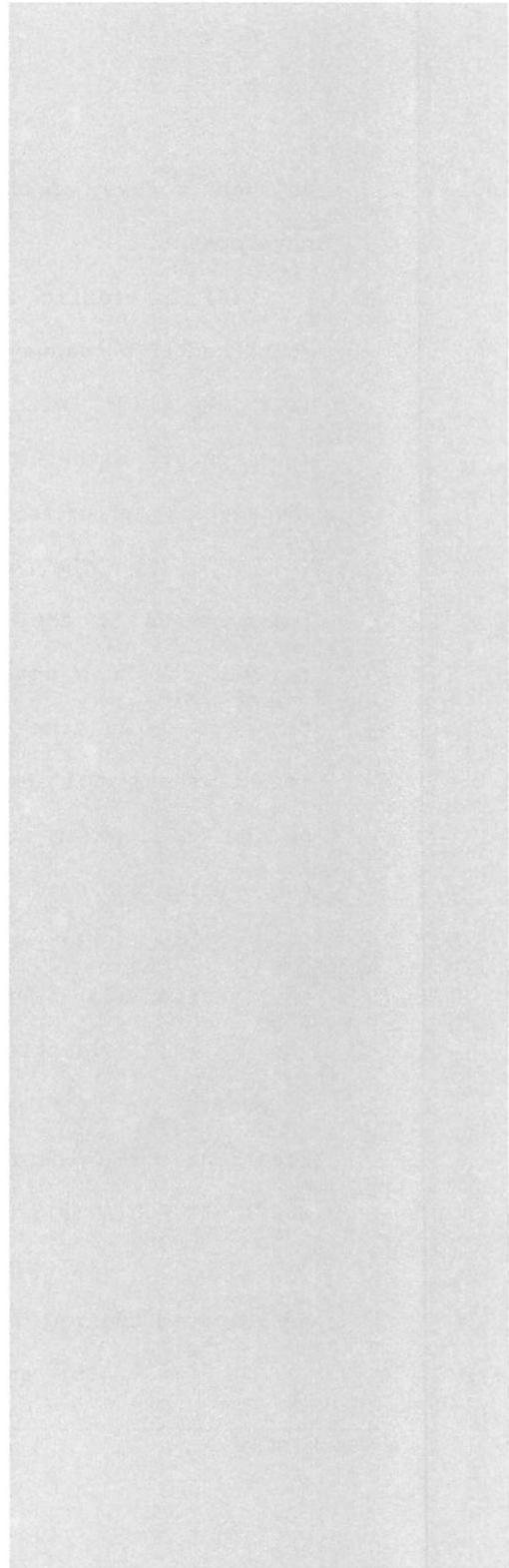
(B) The traffic impact mitigation plan shall identify improvements, to be made by the permittee, to a roadway or intersection in order to maintain an acceptable LOS if a roadway or intersection has an:

(1) acceptable LOS, under MSB 11.12.080(A)(3), without traffic generated by the development; and

(2) unacceptable LOS, under MSB 11.12.080(A)(3), with traffic generated by the development:

(a) at the anticipated opening date of the development; or

(b) in the design year of the development, for a development expected to generate 250 or more vehicle trips during the peak hour of the



adjacent roadway on the anticipated opening date of the development.

(C) A traffic impact mitigation plan shall be submitted if a roadway has an unacceptable LOS under MSB 11.12.080(A)(3) without traffic generated by the development, either at the anticipated opening date of the development or in the design year of the development.

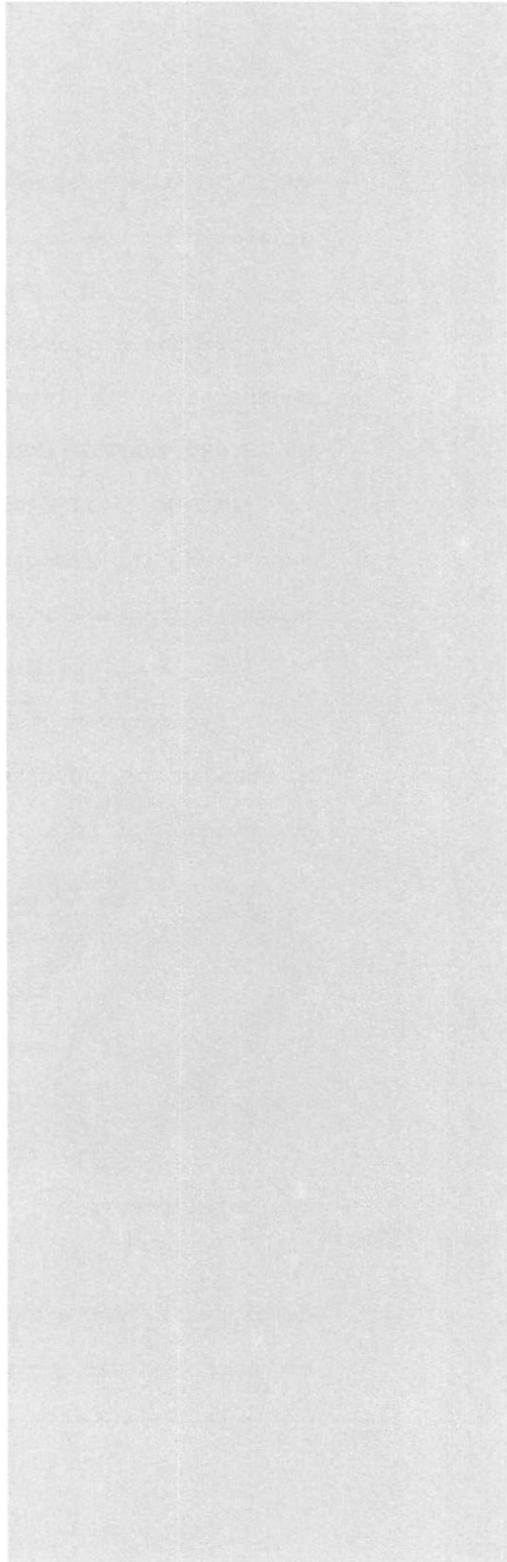
(1) The mitigation plan shall propose improvements to the roadway so the operation of the roadway does not deteriorate more than 10 percent in terms of delay time or other appropriate measures of effectiveness with the addition of the traffic generated by the development at the anticipated opening date of the development or in the design year.

(D) A traffic impact mitigation plan prepared under this section must identify all of the following:

(1) locations where road improvements are necessary to mitigate traffic impacts, including locations where the LOS is less than acceptable under MSB 11.12.080(A)(3);

(a) due to the development at either the anticipated opening date or the design year, or

(b) at either the anticipated opening



date or the design year without the development and improvements are necessary to prevent the LOS from deteriorating further;

(2) ~~r~~Road improvement alternatives that will achieve an acceptable LOS or minimize degradation of service below an already unacceptable LOS;

(a) on the anticipated opening date of the development, and

(b) in the design year of the development, for a development expected to generate 250 or more vehicle trips during the peak hour of the adjacent roadway on the anticipated opening date of the development;

(3) ~~b~~Bicycle or pedestrian access improvements necessary to accommodate bicycle and pedestrian traffic as negotiated between the Borough and the applicant; and

(4) ~~Improvements needed for internal~~internal circulation and parking layout plans~~and parking plans~~.

(E) The Borough will review and comment upon a traffic impact mitigation plan prepared under this section and submitted for a proposed development. The Borough will, in its discretion, request clarification or further analysis of the impacts that it considers

necessary to adequately consider the risks presented to the traveling public by the proposed development. If alternative means are proposed by an applicant for mitigation of the traffic impacts of a proposed development, the Borough will select the alternative that provides the greatest public benefit, at the least private cost, and that meets the appropriate LOS on an impacted roadway. If the Borough accepts a means of mitigation, the mitigation must be completed by the permittee as part of a construction permit issued under this title.

(F) The traffic impact mitigation plan shall ensure:

(1) internal circulation and parking layout provides sufficient queuing distance within the development between the roadway and potential internal block points so that traffic does not regularly back up onto the roadway; and

(2) impacts to pedestrian and bicycle traffic are mitigated.

(G) The Borough will, in its discretion, relax the requirements for mitigation under this section, if it finds in writing that the:

(1) without the traffic generated by the development, roadway and intersection ~~only marginally~~ achieve an acceptable LOS under MSB 11.12.080(A)(3) ~~without the traffic generated by the development~~ and would likely fall below an acceptable LOS within five years from the opening date;

(2) traffic generated by the development results in an unacceptable LOS under MSB 11.12.080(A)(4); and

(3) cost of mitigating the impacts is disproportionate to the cost of the development.

11.12.100 WAIVER OR REDUCTION OF STANDARDS

(A) The Borough may waive or reduce specific standards of this chapter based on physical constraints associated with the property or adjacent roadway, or mitigating factors associated with a traffic impact mitigation plan.

11.12.110 NONCONFORMING DRIVEWAYS

(A) Driveways which were permitted by the Borough prior to the date of adoption of this ordinance, but which do not otherwise meet standards of this chapter, are allowed to remain in the location that they were permitted except for when a permit is required under MSB

11.12.030 (A) (4) .

(B) Existing driveways which were given approval to construct, but which were not given final approval by the Borough as of the date of adoption of this chapter, are allowed to remain and may be approved under the standards that were in place at the time approval to construct was given. In cases where the standards in place at the time approval to construct was given are in conflict with this chapter, the lesser standards apply.

(C) Driveways in existence prior to July 3, 1984 shall be automatically granted a permit upon request.

Section 3. Effective date. This ordinance shall take effect January 1, 2021.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2020.

VERN HALTER, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

Resolution No. PC 20-25

Driveway Standards (MSB 11.12)

Transportation Advisory Board Resolution TAB20-02

HANDOUTS

**MATANUSKA-SUSITNA BOROUGH
TRANSPORTATION ADVISORY BOARD
RESOLUTION NO. TAB 20-02**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH TRANSPORTATION ADVISORY BOARD RECOMMENDING ASSEMBLY APPROVAL AN ORDINANCE ADOPTING MSB 11.12 DRIVEWAYS STANDARDS IN ORDER TO ENSURE DRIVEWAYS WITHIN BOROUGH RIGHT-OF-WAYS MINIMIZE NEGATIVE IMPACT TO DRAINAGE, MAINTENANCE, AND SAFETY OF THE TRAVELING PUBLIC

WHEREAS, in April of 2016 the Mat-Su Borough Assembly signed Resolution 17-003 supporting the rewrite of the 1991 Subdivision Construction Manual (SCM); and

WHEREAS, a group of subject matter experts was formed to review the document, consisting of local Land Surveyors, Civil Engineers, Developers, Homebuilders, Board Members, two members of the Transportation Advisory Board and borough staff; and

WHEREAS, their review meetings began in June of 2018. They met 27 times over the next 18 months, and finalized the 2020 Subdivision Construction Manual; and

WHEREAS, one of the major changes to the document was that the section on Driveways was removed from the Subdivision Construction Manual and a new MSB Chapter 11.12 Driveways was created; and

WHEREAS, the draft ordinance was reviewed and approved by the SCM working group, posted on the project web page and advertised on the Planning Department and MSB Facebook pages.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Transportation Advisory Board hereby recommends the following:

11.12.040 A 2(h)(iii) - require the determination be accompanied by supporting calculations.

11.12.070 A(3) - include a maximum driveway width determination similar to 11.12.060.

11.12.090 D (4) - revise to "Improvements needed for internal circulation and to prevent traffic from queueing on borough roadways."

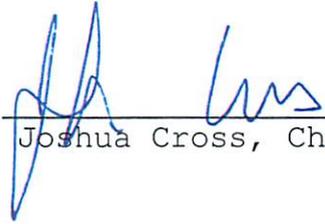
11.12.090 G (1) - revise to "roadway and intersection achieve an acceptable LOS under MSB 11.12.080 (A) (3) but would likely fall below an acceptable LOS within five years without the traffic generated by the development."

11.12.090 G (3) The borough adopt thresholds that define disproportionate costs.

11.12.110 - add item (C) Driveway encroachments existing prior to July 3, 1984 shall be automatically granted a permit upon request.

BE IT FURTHER RESOLVED, that the Transportation Advisory Board recommends adoption of an ordinance adopting MSB 11.12 driveways standards provided our recommendations are addressed in the final ordinance.

ADOPTED by the Matanuska-Susitna TRANSPORTATION ADVISORY BOARD this 10 day of July 2020.



Joshua Cross, Chair

ATTEST



Kim Sollien, Planning Services
Manager, Staff Support