


MEMORANDUM

CITY/BOROUGH OF JUNEAU
155 South Seward Street, Juneau, Alaska 99801

DATE: June 20, 2013

TO: Planning Commission

FROM: Laura A. Boyce, AICP, Planner
Community Development Department 

FILE NO.: APL2013 0001, Appeal

PROPOSAL: An appeal of a Director's Determination requiring an electrical easement for a proposed subdivision that would result in two lots.

GENERAL INFORMATION

Applicant: Larry Dietrick

Property Owner: Larry Dietrick

Property Address: 17305 Point Lena Loop

Legal Description: Polley Lot 20B

Parcel Code No.: 8-B35-0-101-007-1

Site Size: 1.7867 Acres

Comprehensive Plan Future
Land Use Designation: RLDR (Rural Low Density Residential)

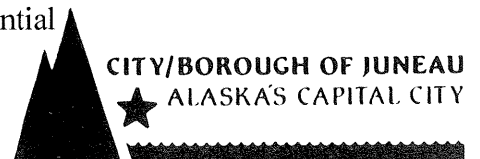
Zoning: D-3

Utilities: CBJ Water

Access: Point Lena Loop Road

Existing Land Use: Single-Family Residential

Surrounding Land Use:
North - Favorite Channel, Lena Cove
South - D-3, Single Family Residential, Pt. Lena Loop Road
East - D-3, Single Family Residential
West - D-3, Single Family Residential



Parties Referred to:

Mr. Larry Dietrick, Applicant and Appellant, Owner of subject property
Mr. Hal Hart, CBJ Community Development Department Director, Applicant
Mr. Rorie Watt, CBJ Engineering Director

Attachments:

Attachment A	Appeal Application
Attachment B	May 11, 2007 Draft Plat
Attachment C	November 22, 2005 As-built Survey
Attachment D	May 15, 2007 Memo from Ron King, includes As-built Survey
Attachment E	February 3, 2009 Letter from Kim Kiefer to Larry Dietrick
Attachment F	May 3, 2011 Letter from Nicole Jones to Kurt Fredriksson (Applicant's agent)

BACKGROUND

On November 22, 2005, Mr. Dietrick filed for a minor subdivision of his property on Point Lena Loop Road that would result in two lots. The existing home will remain on one lot, Lot 20B2, and the other lot will be vacant, Lot 20B1 (See Attachment B and C). Due to the dimensions of the existing lot, panhandle design isn't possible and therefore subdivision can only be reviewed and approved through CBJ 49.15.460(4)(a)(i) as follows:

- (i) *Subdivision lots shall meet the minimum dimensional standards established by chapter 49.25, article IV, provided that in cases of difficult topography or other circumstances rendering compliance impracticable, the director may approve other configurations if the lot:*
 - (a) *Meets the minimum lot size requirement;*
 - (b) *As drawn, is capable of containing a rectangle having two sides equal in length to the minimum lot width requirement and two sides equal in length to the minimum lot depth requirement;*
 - (c) *Has direct and practical access to a street maintained by an agency of government; and*
 - (d) *Has at least one practical building location.*

There is an existing electrical power line crossing the lot and staff has asked for a ten-foot wide electrical easement to be shown on the plat. Because the subdivision will cause the existing utility line to cross one lot to serve the other lot, there must be an easement to protect the property that is served by the utility. Staff has repeatedly asked for an easement to be shown on the plat for the existing electric utility service on the property. The act of subdividing the property necessitates the need for the easement (five feet on each side of the line for access and maintenance). The easement is required because the electric utilities will be serving more than one lot. The electrical easement would not be required if the line was relocated to the right-of-

way. CBJ platting and subdivision standards require that easements be shown on plats. At the time of subdivision application, the electrical utility was provided by an overhead line. During the course of this subdivision request, the applicant has since buried the electric service and installed a transformer. The underground utility line still crosses one property to serve the other and the transformer will be used by both properties; this joint use of service and location continues to necessitate the need for an easement.

Review for the subdivision has been ongoing since 2005, with repeated requests from staff for the information necessary for a complete application. In 2007, CBJ's Surveyor, Ron King, requested the easement be shown on the plat (see Attachment D, which includes an As-built survey). In 2009, Kim Kiefer, then Deputy City Manager, outlined in a letter to the applicant the remaining items that would be needed. One of the items listed repeated the request for either an electric utility easement to be shown or for relocation of utilities, per CBJ 49.15.430(E) and (F) (See Attachment E). Another example of staff's continued request from 2011 for the easement to be shown and an explanation for why it is needed is included in Attachment F; that decision was appealable, but was not appealed at that time.

The applicant has continued to question the requirement for an electrical easement to be shown on the plat. The Community Development Department (CDD) Director wrote a Director's Determination letter to Mr. Dietrick, dated May 9, 2013, outlining the Land Use Code requirements for an electrical easement. The appellant, Mr. Dietrick, is appealing that decision pursuant to CBJ 49.20.110, *Appeals to the planning commission* (see Attachment A).

APPEAL PROCEDURE

Appeals to the Planning Commission are regulated under CBJ 49.20.110:

49.20.110 Appeals to the planning commission.

(a) Review by the commission of a decision of the director, may be requested by filing a notice of appeal stating with particularity the grounds therefore with the department within 20 days of the date of the decision appealed. The notice shall be considered by the commission at a regular scheduled meeting. The department and any aggrieved person, including the developer, may appear at that meeting and explain to the commission why it should hear the appeal. The appeal shall be heard unless it presents only minor or routine issues and is clear from the notice of appeal and any evidence offered at the consideration thereof, that the decision appealed was supported by substantial evidence and involved no policy error or abuse of discretion.

The applicant filed the appeal on May 29, 2013, twenty days after the Director's Determination issued on May 9, 2013. Therefore, the appeal has been filed within the required time period. Staff believes that the decision under appeal is supported by substantial evidence and involves no policy error or abuse of discretion. The Code is clear that easements are to be shown on plats. This subdivision creates the need for an easement, which is required to be shown on the plat, as explained in the recent Director's Decision as well as by the previous requests sent to the applicant.

(b) *If the commission decides to hear the appeal, it shall announce whether it intends to review the entire decision, or merely a portion thereof and whether review shall be de novo or on the record. If the commission decides to hear the appeal, it shall give public notice thereof in a newspaper of general circulation in the municipality. The department shall prepare the record on appeal, which shall consist of the original application and supporting materials, written public comment thereon, and all notes, memoranda, minutes and other department material in relation thereto. The burden of proof in the appeal shall be on the party challenging the decision of the director. In a hearing de novo, proof shall be established by a preponderance of the evidence. If the appeal is heard on the record, argument may be heard, but no evidence outside the record shall be admitted and the decision of the department shall be upheld if there is substantial evidence in support thereof and no policy error or abuse or discretion therein. The commission may confirm, reverse, or modify the director's decision, or change the conditions which the director placed on approval. The commission shall support its action with written findings.*

RECOMMENDATION

While the appeal was filed in a timely manner, staff recommends that the Planning Commission not hear the appeal, as it does present only minor or routine issues. If the Commission decides to hear the appeal, it must choose whether to hear the appeal as de novo or on the record.

NOTICE OF APPEAL OF DIRECTOR'S DETERMINATION

Project Number	Project Name (15 characters)	Case Number APL 20130001	Date Received 15/29/13
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APPELLANT'S CONTACT INFORMATION:

LARRY DIETRICK
Appellant's Name

dietrick@ak.net
E-mail Address

789 2741
Home Phone

AK 99801
State Zip

17305 POINT LEWA LOOP
Mailing Address

Juneau
City

AK 99801
State Zip

X Larry Dietrick
Appellant's Signature

DECISION THAT IS BEING APPEALED
OPINION REQUIRING AN ELECTRICAL EASEMENT FOR
SUB 2005 - 00064

Date of Director's Determination MAY 9, 2013

****Attach a copy of the Director's Decision (E-mail, Notice of Decision, Letter, etc.)****

GROUND'S FOR APPEAL SEE ATTACHED

RECEIVED
MAY 29 2013
PERMIT CENTER/DOD

SPECIFIC QUESTIONS YOU WOULD LIKE THE PLANNING COMMISSION TO ADDRESS
REQUEST WAIVER OF THE OPINION TO REQUIRE
AN ELECTRICAL EASEMENT FOR SUB 2005 00064

APPEAL SPECIFICS (please fill in all that apply):

Parcel Number _____ Zoning District D3

Case Number SUB 2005-00064 Code Section PANHANDLE MINOR SUBDIVISION

Current Use of Land or Buildings RESIDENTIAL REQUEST

Proposed Use of Land or Buildings RESIDENTIAL

Other _____

For more information regarding the process and the submittals required, please see the reverse side.	APPEAL FEE			
	Fees	Check No.	Receipt	Date
	Notice Fees	\$ <u>200</u>	_____	_____
	Refund (Yes/No)	\$ _____	_____	_____
	Total Fee	\$ <u>200</u>	<u>1741</u>	<u>683751 5/29/13</u>

TO BE COMPLETED BY THE APPELLANT

Please attach a cover letter to fully explain the appeal if there is not adequate space on this form.

APPEAL SUBMITTAL REQUIREMENTS AND PROCESS

Notice of Appeal Submittal Date: Review by the Commission of the decision of the Director, may be requested by filing a notice of appeal stating with particularity the grounds therefore with the Community Development Department **within 20 days of the date of the decision appealed.**

Notice of Appeal Submittals: These items are needed for the Planning Commission to make an educated determination:

Forms: A completed Notice of Appeal form including the appellant's signature

Fees: A \$150 fee, and the fee will be refunded if the applicant prevails. All fees are subject to change.

Appeal Description: A detailed letter or narrative describing the findings, issues, concerns, grounds for appeal, and what you want the Planning Commission to specifically address

Submittals:

- A. Date of the Director's Determination
- B. Copy of the Director's Determination
- C. Photos (if applicable)

Document Format: All information submitted shall be either of the following formats:

- A. Electronic copies may be submitted by CD, DVD or E-mail in the following formats: .doc, .txt, .xls, .bmp, .pdf, .jpg, .gif, .xlm, .rtf or other formats pre-approved by the Community Development Department
- B. Paper copies may not be larger than 11" X 17" in size (Unless an alternate paper size is preapproved by the Community Development Department)

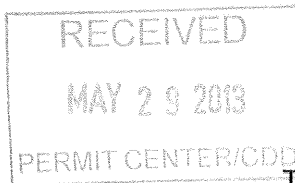
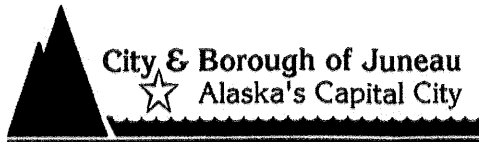
Appeal Hearings:

Hearing #1: Once the Notice of Appeal materials have been turned in and the fee has been paid, the notice of appeal will be considered by the Planning Commission at a regular scheduled meeting. The department and any aggrieved person, including the developer, may appear at that meeting and explain to the commission why it should hear the appeal.

The appeal shall be heard unless it presents only minor or routine issues and is clear from the notice of appeal and any evidence offered at the consideration thereof, that the decision appealed was supported by substantial evidence and involved no policy error or abuse of discretion.

Hearing #2: If the Commission decides to hear the appeal, it shall announce whether it intends to review the entire decision, or merely a portion thereof and whether review shall be de novo or on the record. If the commission decides to hear the appeal, it shall give public notice thereof in a newspaper of general circulation in the municipality. The department shall prepare the record on appeal, which shall consist of the original application and supporting materials, written public comment thereon, and all notes, memoranda, minutes and other department material in relation thereto. The burden of proof in the appeal shall be on the party challenging the decision of the director. In a hearing de novo, proof shall be established by a preponderance of the evidence. If the appeal is heard on the record, argument may be heard, but no evidence outside the record shall be admitted and the decision of the department shall be upheld if there is substantial evidence in support thereof and no policy error or abuse or discretion therein. The commission may confirm, reverse, or modify the director's decision, or change the conditions which the director placed on approval. The commission shall support its action with written findings.

******Upon its own motion, the Commission may forward a case directly to the Assembly without review, hearing or recommendation.***



City and Borough of Juneau
Engineering Department
155 South Seward Street
Juneau, Alaska 99801
Telephone: 586-0800 Facsimile: 463-2606

TO: Larry Dietrick

DATE: May 9, 2013

FROM: Hal Hart, Community Development Director

CC: Rorie Watt, P.E., Director, CBJ Engineering Department

RE: Lot 20 B, Polley Subdivision

At your request, we have reviewed CBJ code and your specific questions about requirements for your proposed subdivision. You have specifically asked whether an electrical service and electrical easement would be required and if so, which sections of CBJ code would require the service and easement.

You have proposed to split the existing Lot 20 B, Polley Subdivision into two parcels. Your proposed subdivision would fall under the requirements of **CBJ 49.15.420 Minor Subdivisions** which governs subdivisions of parcels "into not more than four lots."

49.15.420 (e) requires, "The improvement and construction requirements of this title shall apply to all minor subdivisions..." **49.35 PUBLIC IMPROVEMENTS** details the improvements required of new subdivisions.

Electrical Service:

We do not find that CBJ code requires provision of an electrical service to a newly created lot that results from a minor subdivision.

Electrical Easement:

Your existing property has buried electrical service lines that feed into a transformer more than one hundred feet into the property. The buried lines and transformer are the property and responsibility of AEL&P, the power company. The buried lines serve the existing home. If the subdivision is completed as proposed, the buried lines would cross the newly created vacant **Lot 20 B1** and serve the existing home on the newly created **Lot 20 B2**. My staff has told you that an electrical easement would be required if the subdivision is completed.

CBJ 49.15.420 (f) reads:

"Survey, monumentation and certification. The commission shall, by regulation adopted under chapter 01.60, establish and enforce survey, monumentation, and certification requirements for minor subdivisions."

This code section authorizes the establishment and enforcement of surveying standards by regulation. The appropriate regulation section is: **Chapter 10 – Platting Requirements:**

04 CBJAC 010.010 (j)

"All easements shall have sufficient dimensions shown to be located on the ground. Easements shall be identified as to use and whether public or private."

Administrative Decision and Rationale:

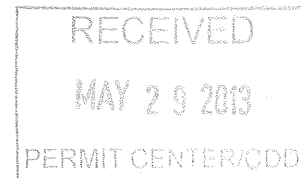
Your proposed subdivision would create a situation whereby privately owned and operated electrical facilities serving one property would cross another property. The subdivision itself causes a need for an easement. We interpret Chapter 10 of the Administrative Code to require an easement for existing public or private facilities that

cross newly created properties. It is our opinion that it is good public policy to alert purchasers of known encumbrances to properties, and we believe the requirement is founded in CBJ code and regulation.

An electrical easement in favor of **Lot 20 B2** is required across **Lot 20 B1** as a condition of the proposed subdivision. This is a Decision of the Director of the Community Development Department and is agreed to by the Engineering Director.

If you do not agree with this Administrative Decision, in accordance with **49.05.140** you may appeal the decision to the Planning Commission. The procedure for appealing to the Planning Commission is in **49.20.110 - Appeals to the Planning Commission**.

The full CBJ code may be found online at: <http://www.juneau.org/law/code/code.php>



Request Waiver of the Opinion to Require an Electrical Easement, not Required by CBJ code, for
SUB2005-00064

May 28, 2013

Grounds for Appeal



Background

The application for a panhandle subdivision for SUB2005-00064 was made in 2005.

The application was to subdivide a two acre parcel into two lots.

The area is zoned D3.

Preapplication conferences were held in 2004 – 2005. Per the preapplication meetings no improvements would be required including electrical service and easements since electrical service is adjacent and immediately available to both lots from AEL&P.

Per the preapplication conference the proposed panhandle minor subdivision met all zoning requirements.

No improvements, electrical or otherwise, were required or proposed in the application.

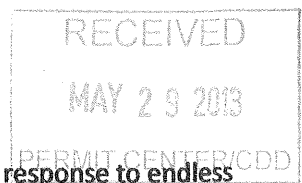
The preapplication conference identified no major issues.

The process for review of a minor subdivision, 49.15.420. 49.15.420(b) Process, specifies that the minor subdivision process shall be used for the review and recording of boundary and land survey plats.

49.15.420(d) specifies that minor subdivisions shall be reviewed and approved under the department approval process in Articles I and II. Article II, 49.15.220 Minor and major development, states that it is the intent of this chapter to require a shortened approval process for minor developments.

49.15.420(d)(1) states that the department shall, within ten working days of a receipt of a complete application, approve the plat, disapprove the plat, inform the applicant of the date when action on the plat may be expected, or approve the plat with conditions. 49.15.420(d)(2) states that upon notification of plat approval, the applicant shall complete required surveying and monumentation, make corrections to the plat and submit a black line, mylar, reproducible plat of the subdivision. A preliminary plat is not required for a minor subdivision.

Following submission of the application for SUB2005-00064 major changes were made in CBJ's requirements for minor subdivisions beginning in 2006. A survey was required before receiving notification of plat approval; requirements for major subdivisions were imposed; wastewater reviews and approvals were required; water line hookups were required; multiple reviews were conducted by multiple departments by multiple people on multiple occasions; as built were required; multiple



submissions of plat maps were required each time with additional changes made in response to endless additional demands; enormous costs have been incurred; repeated reviews were made of items already reviewed and approved; and a consultant was retained and worked tirelessly for over a year to seek agreement on specific changes to be able to finalize the plat map without being further subjected to unending changes.

The recent opinion in the May 9, 2013 document to require an electrical easement has enormous cost consequences, is not required by CBJ code and creates problems where no problem exists.

Grounds for appeal requesting Planning Commission waiver of the condition requiring an electrical easement for SUB2005-00064.

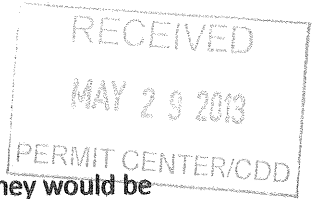
This is a request to waive the opinion to require an electrical easement for SUB2005-00064 imposed by the CBJ Engineering Department in a document dated May 9, 2013. The May 9, 2013 document is in response to multiple requests over multiple years to identify the specific provisions of the CBJ code that mandate that buried electrical service with a 10 foot wide easement be provided as a condition for approving a panhandle subdivision request.

The May 9, 2013 document finds that the CBJ code DOES NOT REQUIRE PROVISION OF AN ELECTRICAL SERVICE TO A NEWLY CREATED LOT THAT RESULTS FROM A MINOR SUBDIVISION. There is no requirement to provide an easement for existing electrical service because there is no requirement to provide any electrical service. This is consistent with the information provided by CBJ at the preapplication conferences in 2004 - 2005. No electrical service or other improvements were proposed in the application for the subdivision. Electrical service is otherwise reviewed as part of the building permit process that occurs after approval of the subdivision. The need for electrical easements are determined by the property owner and the power company.

The May 9, 2013 document states that buried electrical service lines serve the existing home from a transformer more than one hundred feet away. This is incorrect. The distance is less than one hundred feet.

The preexisting service was by overhead line. Because CBJ code provides for a shortened approval process of ten days for a panhandle minor subdivision it was originally thought that upgrade of the electrical service in conjunction with reconstruction of the existing structure, which was built in 1948, would occur after approval of the panhandle minor subdivision request and consistent with building permits. Because of the delays and extended reviews and requirements and lack of any time frame for issuance of any approval for the panhandle minor subdivision request the preexisting electrical service was modified and installed at great expense as a temporary measure to alleviate urgent safety issues.

The May 9, 2013 document correctly states that the buried lines and transformer are the property and responsibility of AEL&P. The May 9, 2013 document does not clarify that electrical easements on private property are not required by AEL&P. AEL&P may require execution of an easement that cross

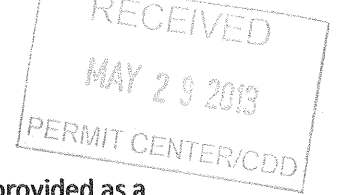


property lines but it is not a requirement. Should electrical easements be required they would be executed between AEL&P and the property owner. CBJ is not a party to electrical easements between AEL&P and a private property owner. It is strictly a private matter that allows the property owner and AEL&P to determine the best location, routing and preferred manner of service. The May 9, 2013 document states that "my staff has told you that an electrical easement would be required if the subdivision is completed". This is not correct. It was made clear at the pre-application conferences that no electrical improvements or easements would be needed for a panhandle minor subdivision. This is consistent with CBJ codes. This statement is referring to the additional add on requirement demanded by engineering that was imposed after multiple reviews of the plat map had already been conducted. Why this is an engineering issue is unclear. A request was made to identify the CBJ code that mandated this add on requirement. There have been numerous additional requests made to various CBJ staff for the CBJ code or other policy that mandates imposition of an electrical easement for a panhandle minor subdivision. No explanation of the CBJ code that mandate establishment of an electrical easement for a panhandle minor subdivision was provided until the May 9, 2013 document was received. The May 9, 2013 document confirms that there is no CBJ code mandating that electrical easements be provided for panhandle minor subdivision.

An alternative was offered to show the utility line on the plat map without it being designated as an easement even though electrical lines are not required by 4 CBJAC 010.010, Platting Requirements. No response has ever been received. Additional requests were made to identify the authority for requiring electrical easements. The planning department agreed to determine the underlying authority and agreed that if it was not required by CBJ code it should not be required as a condition of approval for a panhandle minor subdivision. The planning department later advised that it was not a requirement of the planning department and advised they would consult with the engineering department since the engineering department was imposing the requirement. By April, 2013 no response had yet been received and I was referred directly to the engineering department to find out the why an electrical easement was being required. The inquiry was made to the engineering department and the next thing received was the May 9, 2013 document signed by planning even though they previously could not identify the CBJ code that required an electrical easement as a condition of approval for a panhandle subdivision request. It has been over two years to get an explanation of this add on requirement with the end result being there is no CBJ code that requires an electrical easement for a panhandle subdivision request, only an opinion.

The May 9, 2013 document notes that plat maps for minor subdivisions must meet the survey, monumentation and certification requirements in Chapter 10: Platting Requirements. Chapter 10: Platting Requirements outlines the information to be included on plat maps.

04CBJAC 010.010 (j) states that "All easements shall have sufficient dimensions shown to be located on the ground. Easements shall be identified as to use and whether public or private." This section does not require the establishment of any easements for any purpose, electrical or otherwise. It only requires that if such easements exist that they have sufficient dimensions and be identified as to public or private on the plat map. Further no one has provided any justification for setting an electrical easement at 10 feet.



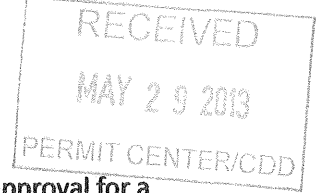
No CBJ code has been identified that requires that electrical services or easements be provided as a requirement for approval of a panhandle minor subdivision.

Without identifying any CBJ code that requires electrical services be provided for minor subdivisions the May 9, 2013 document proposes an administrative decision and rationale for requiring an electrical easement anyhow. The rationale asserts that "the subdivision itself causes a need for an easement...." The subdivision itself does not cause the need for an easement. There is no CBJ code, policy or other basis for this conclusion. There is no CBJ code or documentation that directs that information requirements for plat maps be used to impose the substantive requirement of establishing electrical services where none exist. Easements are undefined in 49.80.120. Establishment of easements is a taking of property. Easements for electrical service, where they exist or are needed, are executed between the property owner and the power company. CBJ does not regulate electrical easements. No easements exist and none are required. Power from AEL&P is immediately adjacent to both properties. Either property owner can arrange for direct access to power from AEL&P as may be desired. Overhead or buried services can be provided directly to each property to meet building plans and preferred routes through the property. Power can also be accessed directly via adjacent properties if so desired. The subdivision itself does not cause the need for any easement and no easements are needed to ensure access to electrical service.

The rationale provided in the May 9, 2013 document states that Chapter 10 of the Administrative Code requires "...an easement for existing public or private facilities that cross newly created properties." 04 CBJAC 010.010(j) does not require an easement for existing public or private facilities that cross newly created properties. It only requires that if such easements exist that they have sufficient dimensions and be identified as to public or private on the plat map. There were no easements included in the application and no easements currently exist. Both parcels are private land with direct access to electrical service from AEL&P as may be desired. Easements may or may not be part of some future arrangement for providing electrical service between either of the properties and AEL&P. There is no public interest, no public land and no public need for an easement.

The proposed requirement is also discriminatory because it grants free access of electrical service to a buyer and eliminates the ability of a seller to negotiate the value of the improvement in the sale price should the property be sold. The easement is not necessary to make sure electrical service is available since electrical service is directly and equally available to both properties. By requiring an electrical easement the borough is discriminating against the seller by eliminating the ability to include the cost of the improvement in the buyer/seller transaction

The rationale concludes by stating that "... it is our opinion that it is good public policy to alert purchasers of known encumbrances to properties, and we believe the requirement is founded in CBJ code and regulation." The rationale does not identify the CBJ code, regulation, policy, procedure or any other documentation that supports a public policy that requires or directs CBJ to intervene in private property transactions to alert purchasers of known encumbrances. In fact there are no encumbrances and the CBJ code does not require any electrical improvements as a condition of approval for a panhandle minor subdivision. There is no encumbrance because there is no easement. The only



encumbrance is the easement that CBJ is demanding be imposed as a condition of approval for a panhandle minor subdivision. It is not only a question of the whether or not electrical service is available or can be provided it is also discrimination to preclude the ability of the buyer to include the value of an improvement in a private party transaction. If a buyer did not want to pay the fair market value of buried electrical service they need only call AEL&P and have the preexisting overhead service reconnected.

It is not good public policy for CBJ to alert purchasers of anything. To do so would duplicate the requirements of the State of Alaska for buyers and sellers to complete, subject to penalty, the Residential Real Property Transfer Disclosure Statement prepared in compliance with Alaska Statute (AS) 34.70.010 - 34.70.200. This disclosure statement includes identification of any easements as well as all other information related to informing purchasers of any type or kind of encumbrance. The buyer/seller transaction allows for the negotiation of the costs of improvements and establishment of easements. No CBJ codes, regulations or any other documentation are identified in the May 9, 2013 document that state it is good public policy to alert purchasers involved in a private party transaction of anything.

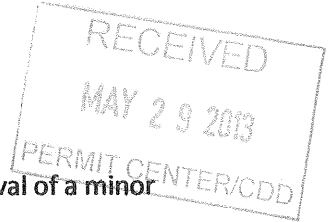
If the "opinion" is for CBJ to intervene in private property transactions then it can only be assumed that CBJ could also require that they alert buyers of a leaky roof, bad plumbing, inadequate foundation, poor insulation or any other aspect of a buyer/seller transaction. Property issues, including electrical easements, are already addressed in the existing process for private party transactions through the mandatory disclosure statements, engineering inspections, realtor review, title searches and due diligence that is the foundation for negotiating sales agreements. There is no need for CBJ intervention.

The "opinion" contradicts the ordinance. The May 9, 2013 document does not identify any CBJ code, policy or document directing that electrical easements be provided. The May 9, 2013 document does not identify any CBJ code, policy or document that electrical easements be established to alert purchasers. The "opinion" is an unnecessary intervention into private property transactions that is not supported by CBJ code and only creates a problem that is otherwise already resolved through private party transactions. Establishment of an easement mandates that buried electrical service be provided at no cost to the buyer. The May 9, 2013 document clearly states that electrical service to a newly created lot that results from a minor subdivision is not required. Neither does 49.15.420(f) require establishment of any easement for electrical services as a condition for approval of a panhandle minor subdivision. The subdivision itself does not cause any need for any easements, public or private. There is no public land, no public interest and no public easement. There is also no private easement and there is no need for any electrical easements at all. Electrical service is a private matter and the proposed subdivision allows for direct access to electrical service in whatever manner and routing is desired.

Establishment of an easement by CBJ for a private party and a private purpose would be acceptable if CBJ provides compensation for the value of the land, cost of the improvement and lost value of use of the land to construct a home.

SUMMARY

Electrical service or improvements are not required as a condition for approval of a minor subdivision.



There is no requirement to establish electrical easements as a condition for approval of a minor subdivision.

No electrical easements exist.

No electrical service or easements are included in the application for the approval of the panhandle minor subdivision. (SUB2005-00064)

Electrical service from AEL&P is adjacent to both properties.

Electrical service is equally available and can be provided directly to each property by AEL&P by either overhead or buried means.

Electrical service across adjacent properties can also be negotiated with adjacent property owners.

Electrical easements are not required by AEL&P.

State property disclosure statements require disclosure of easements as well as other conditions and defects for all residential property transactions.

Establishment of easements by CBJ to alert purchasers is, duplicative with state requirements, discriminatory and not necessary since it is provided for and is directly resolved by the property owner and AEL&P and accommodated in any buyer/seller transaction.

Establishing the easement is a taking of property without compensation.

Establishment of the easement is discriminatory and precludes the ability to recover any cost of the improvement as well as the loss of the value of the property.

No CBJ code or document was identified in the May 9, 2013 document that supports establishment of electrical easements to alert purchasers as a condition for approval of a panhandle minor subdivision request.

Establishing of the easement obstructs the ability to expand the footprint of the existing structure during reconstruction.

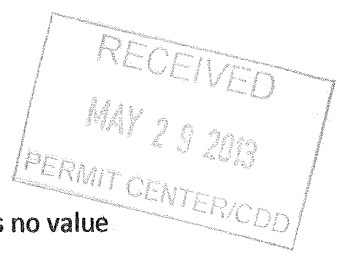
Establishment of the easement obstructs the ability to change the location of the temporary electrical service to meet redesign and reconstruction of the existing structure.

Establishment of the easement restricts legitimate use of the property for any other purpose.

Establishment of the easement mandates delivery of electrical service in way that is neither efficient nor preferred.

The means for establishing the best and most efficient manner for delivery of electrical service is determined by the property owner and AEL&P.

The means for delivery of electrical service is reviewed by CBJ during the building permit process.



Mandating the form and method of delivery of electrical service is restrictive and there is no value added and no public interest.

The "condition" to require an easement creates problems where none exist.

There is no value added and no public interest.

SUB2005-00064 readily meets all of the zoning requirements. Despite meeting all of the zoning requirements this application has been subjected to endless add on requirements. It is now 2013, some 8 years after submission of the application and it is now necessary to come to the planning commission to get a ruling on an "opinion" for another add on requirement. Another construction season has been lost. The frustration and process that is needed for approval of a panhandle minor subdivision request is extreme. CBJ code provides that the minor subdivision be an abbreviated process to be completed in 10 days. The process is ignored and the add on requirements are onerous and unpredictable. If all you had to do was to meet the D3 zoning requirements this would have been approved in 2006. The process and add on requirements are a major impediment to additional lots, additional housing, additional construction, additional property taxes, permanent residency and long term commitments and contributions to the community. There is no consideration for the sequential nature of the development process. Approval of the subdivision is held hostage as a means to impose add on requirements.

It is respectfully requested and plead that you waive the opinion to require an electrical easement as a condition for approval of a panhandle minor subdivision - SUB2005-00064. This would allow the already completed and reviewed plat map to be finalized and approved.....assuming no more add on requirements.



MEMORANDUM

CITY/BOROUGH OF JUNEAU

155 South Seward Street, Juneau, Alaska 99801

TO: Matt Halitsky, CDD
FROM: Ron King General Engineering

DATE: May 15, 2007
FILE: Harlequin Point
SUB2005-00064

RE: Review Comments

Plat: Remove note 7 from the plat **DONE** (*Note was added by the owner/surveyor, not approved by CBJ*)

Line Table has record information only. Measured distances must be shown or designated as record and measured. (R&M) **DONE** (*Note: Table changed with various submittals*)

The monument previously set by the surveyor of record for the south corner of Lot 2 is out of position by more than 3 feet. Change the detail to found and removed. Show the monument set in the proper location. **DONE** (*Existing monument was not set to standards it was out of position*)

Final review of the files (previous submittals) has a sketch that shows a power line to Lot 1 crossing Lot 2. This will require an easement shown on the plat. **NOT COMPLETE** (*See Drwg by BEAN*)

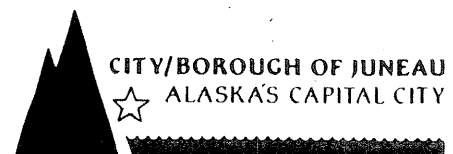
Previous reviews have mentioned ADEC approval for on site wastewater disposal. It is actually CBJ approval that is required, per CBJ Title 49.15.430(G). My oversight. Please have owner comply. The approval includes the existing system. **NOT COMPLETE** (*Applies to all subdivisions*).

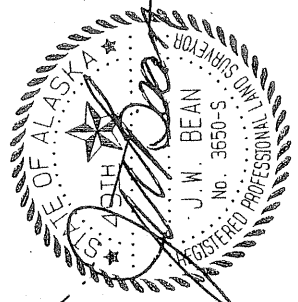
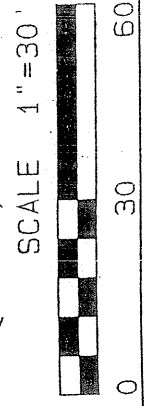
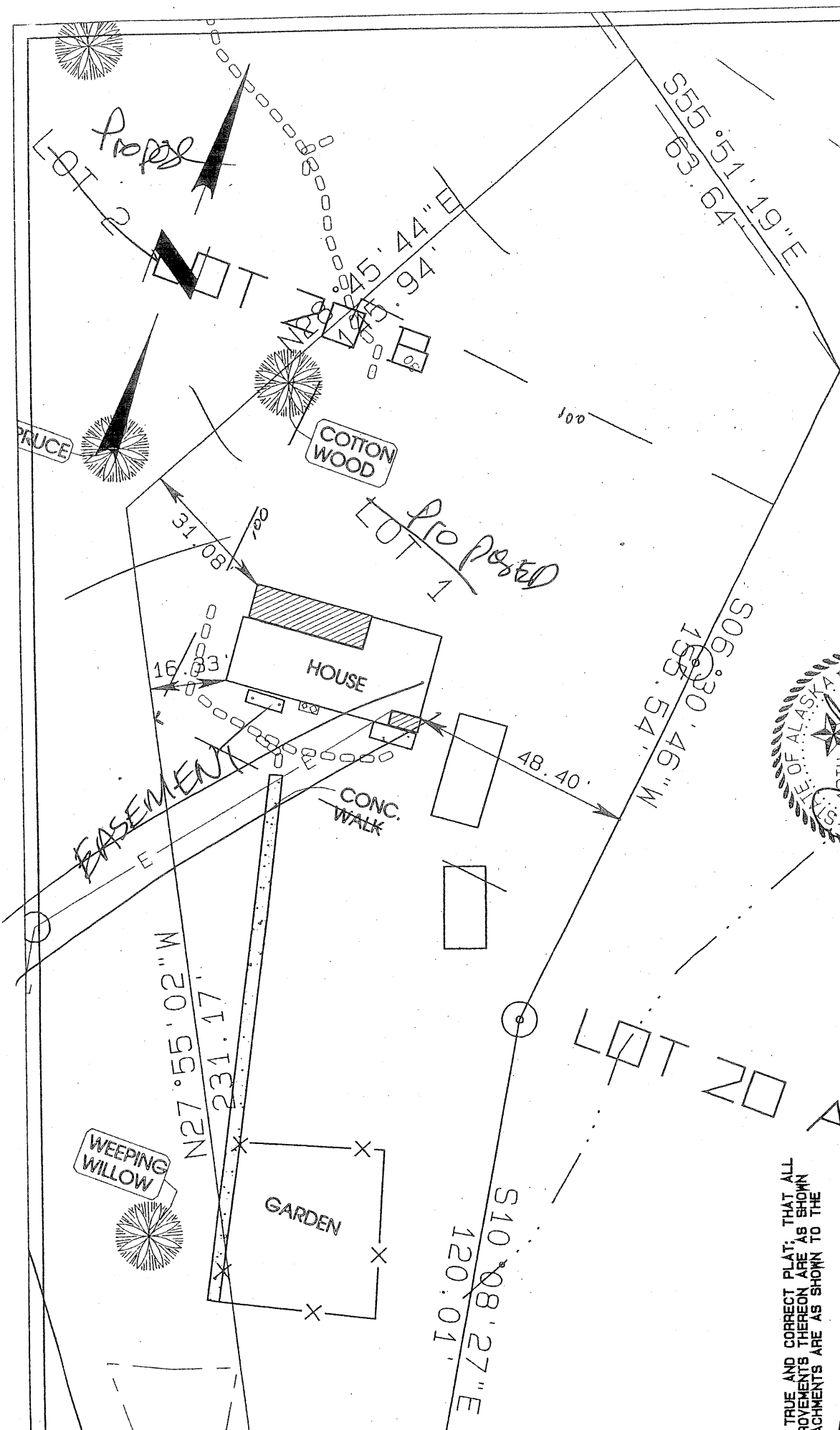
All monumentation shall be complete prior to recording. **DONE** (*I will field verify*)

A bond is required for the new water service or to be installed prior to recording.
NOT COMPLETE

Due to the number of corrections to be made another submittal will be required and all the items will be complete prior to review. This includes the Wastewater Issues and the Bond.

ATTACHMENT D





A TRUE AND CORRECT PLAT, THAT ALL IMPROVEMENTS THEREON ARE AS SHOWN AND ENCUMBRANCES ARE AS SHOWN TO THE

BEAN AS-BUILT SURVEY

LOT 1

HARLEQUIN POINT SUBD.

ARE-SUB LOT 208 POLLEY SUBD

WITHIN U.S.S. 3055

JOB No 11028

SCALE AS-SHOWN

DATE 2-15-06

CITY & BOROUGH OF JUNEAU

City Manager's Office
155 S. Seward St., Juneau, AK 99801
Phone: (907) 586-5240 Fax: (907) 586-5677
Kim_Kiefer@ci.juneau.ak.us

February 3, 2009

Larry Dietrick
17305 Point Lena Loop
Juneau, Alaska 99801

RE: Harlequin Point Subdivision (SUB2005 – 00064)

Dear Mr. Dietrick:

I reviewed your December 21, 2008 letter and I am sorry you feel you are getting the run around from the CBJ. I reviewed my notes from our meetings and phone calls last winter and the three items Daniel Sexton outlined in his August email to you are the same items we discussed in March as the items needed to complete the review process for your minor subdivision to move forward.

My understanding is the project is a minor subdivision. Initially there was discussion about creating a pan handle lot but that could not be done because of inadequate lot width for each parcel. Furthermore, since it was a minor subdivision the requirements outlined in 49.15.420 apply, including all the requirements of a major subdivision except section 49.15.430 (1) (O).

We discussed three items you would need to provide to finalize your subdivision application, 1) soils test report from a licensed engineer, 2) the information needed for the plat and specifically the electrical easement because it passes through one lot to get to the other lot, and 3) the bond needed for the garage because it crosses property lines.

Soil Certification For Each Lot

CBJ code 49.15.430 (G) outlines the need for certification from a qualified engineer licensed by the state, to indicate the lots are large enough and have soil of sufficient permeability to permit the construction of approved systems for on-lot waste disposal.

Specifically, what is needed for the permit application to be complete for final review:

A letter from an Alaska certified engineer that states there is ample room on each lot to create a drain field. They don't have to create the drain fields, just confirm there is room on each lots to have material brought in for a on lot waste disposal system if needed.

This is a bit of a change from what we discussed. Instead of having a licensed engineer do the soils test, they can confirm there is space to create the drain fields.

155 So. Seward Street, Juneau, Alaska 99801-1397
ATTACHMENT E

Utility Easement or Relocation of Utilities

The information needed for a plat are specifically outlined in 49.15.430. Major subdivision sections (also a requirement of minor subdivisions) outlines the requirement for plats and section (F) specifically addresses the need for "Existing sewer and water mains, drainage culverts, or underground structures within the tract shall be shown with pipe sizes and grades indicated. Existing pole lines, ditches, canals, natural drainage channels and open waterways shall be shown." Section (E) states that "The plat shall indicate the locations, widths and names of all existing or platted public ways within or adjacent to the tract, as well as existing structures, easements, watercourses, U.S. Survey lines and numbers, and other important features."

What is needed for the permit application to be complete for final review:

Provide a plat that includes all the items listed in 49.15.430 (1) (A – R with the exception of O)

Garage Demolition Information/Bond

Based on the draft plat of Harlequin Point Subdivision that we discussed it was my recollection that the garage was going to be split by the new property line. Structures have to be located within the property lines not over them.

What is needed for the permit application to be complete for final review:

A bond to insure either the garage is taken down or moved within a set period of time, or

Investigate the option of moving the property line so it does not place the structure on the property line. If this is possible, it would also required a fire protection agreement deed restriction on the plat, and possibly a variance. This insures that as long as the building is there no structure can be built up to the property line/garage on the adjacent property. If you want to go with this option the plat will need to be changed to reflect the new property line and submitted with the additional information outlined in the Utility Easement or Relocation of Utilities.

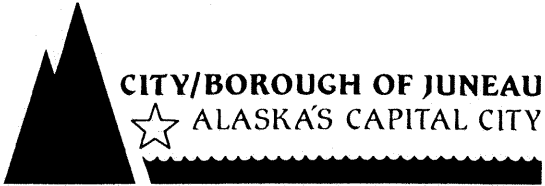
These three items are the final items needed to complete the application and allow staff to complete the review of your project. If you think it would be helpful to you I can set up a meeting with Dale Pernula, CDD Director and Daniel Sexton, Planner I to review these requirements. Let me know if you would like me to set up this meeting.

Sincerely,



Kimberly Kiefer
Deputy City Manager
155 South Seward
Juneau, Alaska 99801

cc: Dale Pernula, CDD Director
Daniel Sexton, CDD Planner



May 3, 2011

File No.: SUB2005-00064

PCN: 8B35-0-101-007-1

Kurt Fredriksson
17000 Glacier Highway
Juneau, AK 99801

Subject: Minor Subdivision Plat Approval Requirements

Dear Mr. Fredriksson:

This letter is a follow-up on the remaining concerns regarding the minor subdivision plat approval requirements pertaining to the Harlequin Point Subdivision. The specific concerns that have been raised are the utility easement and the water and sewer plat notes.

Title 49, Land Use Code speaks to easements for utilities in several places as well as a definition of utilities:

CBJ §49.15.430(1)(K) The layout, names, grades and widths of proposed rights-of-way and easements within the subdivision shall be shown.

CBJ §49.35.730 *Construction Plans* Construction plans required under this chapter shall include the location of all existing and proposed utilities.

CBJ §49.40.110 *Utilities* Public rights-of-way or easements, together with the right of ingress and egress, shall be provided where necessary for public utilities.

CBJ §49.80.120 *Utilities* means all structures involved in the generation, transmission or distribution of electricity, gas, steam, water or sewage.

In this case the electrical easement would not be required if the electrical line was relocated to the right-of-way and accessed the proposed 20B2 lot directly from the right-of-way. However, utility that crosses one lot to serve another must have an easement to protect the property that uses the utility. There are a few reasons that an easement is required. One reason is so that the property owner who has the utility crossing their property is aware of the encroachment. If there is a maintenance need, the easement provides a legal right for the neighboring property owner to repair the utility.

ATTACHMENT F

If Mr. Dietrick does not want to provide an easement then the utility must be relocated so that it does not cross the proposed adjacent property (lot 20B1). This requirement was outlined in a letter to Mr. Dietrick dated February 3, 2009 from Deputy City Manager, Kimberly Kiefer.

Ron King, Chief Regulatory Surveyor, states that plat notes are a common platting standard and that water and sewer notes are required to be provided on the plat. Currently provision for the on-site sewer for the two lots is unclear. It appears from the information submitted, specifically the letter from State of Alaska Department of Conservation dated September 6, 2006, that the existing house on the proposed lot 20B2 is hooked up to the on-site wastewater system that is located on the proposed lot 20B1.

Before any further review of the minor subdivision can be completed, the following items must be submitted:

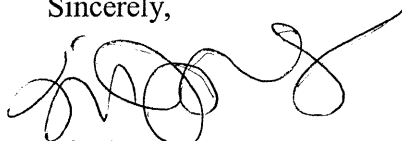
- Current as-built survey showing where the underground power lines and on-site waste water are located and
- A revised paper copy of the plat showing a configuration that provides a 100' x 100' square that fits on both lots, a requirement of CBJ §49.15.460(4)(A)(1)(b).
- Signatures and payment for the bond (to address the garage that spans the proposed property line)

If the above discussed items cannot be met, then the minor subdivision cannot be approved.

The process for appealing the director's determination can be found in Title 49, CBJ §49.20.110(a-c). The fee for appealing the director's determination is \$200.00 and is refunded if the applicant prevails.

Please feel free to contact me with any questions; I will be happy to assist you.

Sincerely,



Nicole Jones, Planner
Community Development Department
(907) 586-0218
E-mail: Nicole_Jones@ci.juneau.ak.us

CC: Larry Dietrick, property owner
Ron King, Chief Regulatory Surveyor

Attachments: Letter from State of Alaska, Department of Environmental Conservation dated September 6, 2006
Letter from Kimberly Kiefer, dated February 3, 2009
CBJ §49.20.110(a-c) Appeals to the Planning Commission

STATE OF ALASKA

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER
WASTEWATER DISCHARGE PERMIT PROGRAM**

FRANK H. MURKOWSKI, GOVERNOR
410 Willoughby Avenue, Suite 303
P.O. Box 111800
Juneau, Alaska 99811-1800
PHONE: (907) 465-5300
FAX: (907) 465-5274
<http://www.state.ak.us/DEC/>

September 6, 2006

Larry Dietrick
17305 Point Lena Loop Road
Juneau, AK 99801

Re: Final Approval to Operate an Alternate Onsite Wastewater Treatment and Disposal System:
USS 3055 Lot 20B1, 17301 Point Lena Loop Road, Juneau.
ADEC Plan Tracking Number 5358.

Dear Mr. Dietrick,

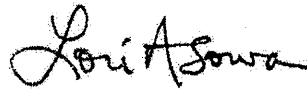
The Department has reviewed the Certification of Construction form submitted for the domestic wastewater system consisting of a 750 gallon per day, Jet Secondary treatment system, followed by UV disinfection and discharge to -4' MLLW. The treatment and disposal system serves a three bedroom house and occasional use by private RV, and is sized to treat wastewater from up to 5 bedrooms total.

In accordance with 18 AAC 72.240(b), final approval to operate is hereby issued. The completed construction and operation certificates are attached.

Proper operation and regular maintenance of your treatment system is important. Homeowners are encouraged to read and follow the operation and maintenance manual for your specific treatment system and to keep all maintenance records.

Please call me at (907) 465-5167 if you have comments or questions.

Sincerely,



Lori Sowa
Environmental Engineering Associate

Attachments:

- (1) *Construction and Operation Certificate* with signed Approval to Operate.

cc: Ron Hansen, PE, Hansen Engineering, 4117 Birch Lane, Juneau, AK 99801

ARTICLE I. APPEALS

49.20.110 Appeals to the planning commission.

(a) Review by the commission of a decision of the director, may be requested by filing a notice of appeal stating with particularity the grounds therefor with the department within 20 days of the date of the decision appealed. The notice shall be considered by the commission at a regular scheduled meeting. The department and any aggrieved person, including the developer, may appear at that meeting and explain to the commission why it should hear the appeal. The appeal shall be heard unless it presents only minor or routine issues and is clear from the notice of appeal and any evidence offered at the consideration thereof, that the decision appealed was supported by substantial evidence and involved no policy error or abuse of discretion.

(b) If the commission decides to hear the appeal, it shall announce whether it intends to review the entire decision, or merely a portion thereof and whether review shall be de novo or on the record. If the commission decides to hear the appeal, it shall give public notice thereof in a newspaper of general circulation in the municipality. The department shall prepare the record on appeal, which shall consist of the original application and supporting materials, written public comment thereon, and all notes, memoranda, minutes and other department material in relation thereto. The burden of proof in the appeal shall be on the party challenging the decision of the director. In a hearing de novo, proof shall be established by a preponderance of the evidence. If the appeal is heard on the record, argument may be heard, but no evidence outside the record shall be admitted and the decision of the department shall be upheld if there is substantial evidence in support thereof and no policy error or abuse or discretion therein. The commission may confirm, reverse, or modify the director's decision, or change the conditions which the director placed on approval. The commission shall support its action with written findings.

(c) Upon its own motion, the commission may certify a case directly to the assembly without review, hearing or recommendation.

(Serial No. 87-49, § 2, 1987; Serial No. 92-10, § 3, 1992; Serial No. 95-35, § 4, 1995; Serial No. 97-01, § 6, 1997)

49.20.120 Appeal to the assembly.

Appeal to the assembly is a matter of right. Unless ordered otherwise by the commission or the assembly, a decision by the commission shall not be stayed pending appeal, but action by the appellee in reliance on the decision shall be at the risk that the decision may be reversed on appeal. The appeal of a commission decision not to hear a case shall be limited to that issue, the remedy for which shall be a remand to the commission for a hearing on the merits of the case. Appeals shall be conducted according to chapter 01.50 of this Code, except as provided in this section.

(Serial No. 87-49, § 2, 1987; Serial No. 91-41, § 2, 1991)

ARTICLE II. VARIANCES

49.20.200 Variance.

A variance is required to vary dimensions or designs standards of this title.

(Serial No. 87-49, § 2, 1987)

49.20.210 Submittal.

Except as provided in this article for de minimis variances, an application for a variance shall be submitted to the board of adjustment through the department.

(Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 2, 1995)

49.20.220 Scheduling and fee.

(a) If the director determines that the variance applied for is de minimis, the application shall be administered by the department according to subsection 49.20.230(a) and subsection 49.20.250(a).

(b) If the director determines that the variance applied for is other than de minimis and the application is complete, it shall be scheduled for public hearing. If the application is filed in con-