NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT

Under AMC 21.03.050A, any municipal agency or any party of interest for the application, as defined in AMC 21.14, may appeal a decision of the Planning and Zoning Commission, the Platting Board, or the Urban Design Commission to the Board of Adjustment within **20 days** after the date of service of the decision. To perfect the appeal, the appellant must file a *Notice of Appeal to the Board of Adjustment* with the Municipal Clerk's Office and pay the appeal fee and cost bond.

2018 FEB 27 PM 4:26
CLERK'S OFFICE
M.O.A.

General Identity of Action Being Appealed:

Planning Department File Number: S12388 Date of Action: 1/3/18

Name of Project or Subdivision: Lewis & Clark subdivision

Appellant's Information:

Last Name: Priestley First Name: Joan

Address: mailing 3705 Arctic Blvd # 1332 City: Anchorage State: AK Zip: 99503

Phone Number: +1 (907) 244-7983 E-mail: onecreativedoc@yahoo.com

Relationship to Action: ☐ **Applicant** ☐ **Agent of Applicant** ☐ **Municipal Agency** ☒ **Party of Interest**

Applicant's Information: ☐ Same as Appellant

Last Name: Big Country Enterprises First Name:

Address: R.A. 4700 E. 147th Avenue City: Anchorage State: AK Zip: 99516

Phone Number: +1 (907) 306-8104 E-mail: Tom@S4ak.com

NOTE: If you are not the applicant or his/her agent, you must include a certificate of service on the applicant with your notice of appeal, appeal fee, and cost bond.

Specifics of Appeal Certification

An appeal may be considered for the following three causes, singly or in combination:

1. **Procedural Error** - If you allege procedural error, specify those patterns which constitute the error and the manner in which the alleged error resulted in prejudice to your interest.
2. **Error in Application of Law** - If you allege legal error, specify the manner in which principles of law were incorrectly applied. Include reference to any ordinance, statute, or other codified law upon which the allegation of legal error is based.
3. **Findings or Conclusions that were Not Supported by Evidence** - If you allege that findings or conclusions are not supported by the evidence that was presented, specify and explain those findings or conclusions which lacked evidentiary support at the time of the action.

An appeal, for any cause, must be explained; and a reason must be given for why the appeal should be granted. Explain what corrective decision is desired by this appeal. A written statement of cause and reason for granting the appeal must accompany this notice to be considered.

I (we) hereby certify that I am (we are) qualified to make this appeal and that my (our) statement of cause and reason is true and correct to the best of my (our) knowledge.

Signature Joan Priestley MD **Date** 2/27/18

Statement Attached: ✓ **Appeal Fee ($1080):** ✓ **Cost Bond ($50):** ✓ **Preparation ($1.70 per page):** _____

Date: 2/27/18 **Cash:** ____ **Check:** ____ **Credit Card:** ✓ **Receipt:** 9999999998 **Total Paid:** $1,130

APPEAL

BEFORE THE MUNICIPALITY OF ANCHORAGE
BOARD OF ADJUSTMENT

SPECIFICS OF APPEAL CERTIFICATION

We, the undersigned concerned citizens, are all neighbors who live within 300 feet of the perimeter of the Lewis & Clark Subdivision, and/or who have submitted written or oral testimony about this project, hereby appeal the Findings of Facts and Decision of the Platting Board for the Lewis & Clark Subdivision, case # S12388. We are all "parties of interest" as defined at 21.14.040. This Notice of Appeal perfects our appeal to the Board of Adjustment, pursuant to AMC 21.30.050(A).

We are filing this appeal *pro se*, without benefit of counsel. The allegations of the *pro se* litigant "are held to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 92 S. Ct. 594, 30 L. Ed. 2d 652.

1. Pedestrian pathways (connectivity)

We agree with the reasoning applied to the request for a variance of 21.07.060D3bii, concerning a trail from Brownson Circle to Upper DeArmoun Road. As discussed in the Planning Department Staff Analysis, (hereafter "PDSA"), that path would save only about 200 feet, and only two lots would really benefit from this walkway (Exhibit 1- PDSA p.12) .

Introduction

The developers' request for a variance of **21.07.060D.3.b.ii**, concerning a public pedestrian trail from Lewis & Clark Circle to Canyon Road, is different story, entirely. The discussion contained in the Planning Department Staff Analysis report provides clear and reasonable (if short)

explanations why none of the four criteria specified in **21.03.24G.3** (and Exhibit 1- PDSA p. 10-13) has been met.

This Appeal will expand that discussion.

Facilitating pedestrian access ("connectivity") to neighborhoods, trails and recreational areas is a clear and long-standing policy directive of Anchorage. This position is stated in MANY land use ordinances and other planning reports, notably including the Hillside District Plan, the Comprehensive Plan, the Transportation Plan and the Anchorage Pedestrian Plan.

We agree with and defer to the excellent and detailed analyses submitted by Dianne Holmes (Exhibit 2- PDSA p. 247-250 Holmes letter) and especially Nancy Peas (Exhibit 3- PDSA p. 236-246- Pease letter). Nancy's letter includes a multitude of references to the relevant wording in the various Plans and the AMC, itself.

See, for example, The Hillside District Plan, page 6-37, which implements Policy 14L, specifically for Conservation Subdivisions- "

> Connectivity: Open space shall provide continuity and link to open space area(s) of adjoining subdivisions, and public open space where feasible" (Exhibit 4- The Hillside District Plan, page 6-37)

Also see several policies in the 2020 Comprehensive Plan-

Policy 55 Provide pedestrian and trail connections within and between residential subdivisions in new plats,

PP, p.83 Promote community connectivity with safe, convenient, year-round auto and non-auto travel routes within and between neighborhoods . . . .

PP, p.66 Encourage the location and design of land use…enhance bicycle and pedestrian movement.

A pedestrian access path on the east side of the subdivision would meet these goals, by allowing direct and much shorter routes connecting with Canyon Road on the east, which is a gateway to several nice Rabbit Creek trails.

The plat that the developers brought to the Hillside Community Council meeting was different from the plat submitted to the Platting Board. The earlier plat showed a walkway (as a dotted line) from the Lewis & Clark cul-de-sac directly to Canyon Road (see Exhibit 5- earlier plat). That is the most logical place for the walkway.

Analysis

Title **21.07.010A.7** states a major policy goal:

> To encourage developments that relate to adjoining public streets, open spaces and neighborhoods with building orientation and physical connections that contribute to the surrounding network of streets, walkways, pathways and trails.

This goal is implemented at **21.07.060D.3.a** and **b.ii.**

21.07.060D.3.a (Street Connectivity):

> Within each residential development, the access and circulation system should accommodate the safe, efficient and convenient movement of vehicles, bicycles and pedestrians through the development; provide ample opportunities for linking adjacent neighborhoods, properties and land uses.

21.07.060D.3.b.ii (Internal Street Connectivity):

> Whenever cul-de-sacs are created, at least one 10 foot wide pedestrian access right-of-way or easement shall be provided

to the extent reasonably feasible, between the cul-de-sac head or turnaround and the closest adjacent street or pedestrian walkway.

There are four criteria which ALL must be met, to obtain a variance to an otherwise mandatory AMC provision found at **21.03.24G.3**. The S4 Group answers to these four items are largely conclusionary, without factual analysis (Exhibit 6- PDSA p. 37-39- Subdivision Variance Narrative). The Planning Department discussion (Exhibit 1- PDSA p. 10-13), and the letters referenced above by Nancy Peas and Dianne Holmes are much more detailed and persuasive.

The Platting Board erred in its decision granting the variance, for the following reasons:

1. There are no special conditions rendering the walkway "impractical, unreasonable or undesirable to the general public." As discussed below, the path is very much desired by the public. The first requirement for approval has not been met.

2. "The variance will not be detrimental to the public welfare." This is NOT the case at all. See discussion below. It demonstrates that the second requirement for approval has not been met.

3. "The variance would not nullify the intent of the mandates in Title 21." From the Planning Department- "the intent of the subdivision regulations is to make neighborhoods more walkable by promoting pedestrian connections between subdivisions" (Exhibit 1- PDSA p. 12). This variance would definitely nullify that intention. The third requirement for approval has not been met.

4. "Compliance would result in undue hardship." Mr. Gionet, in his testimony at the hearing on January 3, admitted "of course this [pedestrian path] would not be a financially undue hardship for a simple walkway. . . " (Exhibit 7- Transcript, p. 43). So the fourth requirement for approval has not been met, either.

Discussion

The Platting Board devoted only one paragraph explaining the reasons for its important decision to grant this variance. We believe that its decision was based on insufficient evidence in the record, and on errors of fact.

Every written comment and oral testimony that addressed this issue asked for the walkway. In addition, every agency weighing in supported the pedestrian walkway, and asked that the variance be denied. None of the citizens or local agencies supported this variance. That includes the Planning Department and Non-Motorized Transportation (Exhibit 8- PDSA p. 210- Non-Motorized Transportation).

The Long Range Planning Division (LRPD) specifically did not support this application. The LRPD also wrote that "the applicant has not provided a clear and compelling case that the requested variance meets the four standards. . ." (Exhibit 9- PDSA p. 222- Long Range Planning).

At the January 3rd hearing, Mr. Gionet rather heavily promoted the issue of "safety." He used the word "safe" or "safety" 4 times in his opening remarks, and 9 times in his rebuttal (Exhibit X- Transcript, p. 15, 16, 17, 42, 43, 44,). He wants to make the subdivision "safe for the children," so they don't ride their bikes onto Canyon Road, with all its traffic. His stated goal, of course, is laudable.

However, the developers' solution to this "safety issue" is to deny the public and the subdivision homeowners any safe and direct access to Canyon Road and the nearby trails, through a short walkway.

The decision of the Platting Board will instead force all the neighbors, and every resident in the subdivision- to have to walk up to DeArmoun Road, then hike 1,231 feet east along DeArmoun, and then down all of Canyon Drive, starting in the northern-most area (that appears on the plat map to be the steepest part of Canyon Drive). That includes children on their bicycles.

It is important to note that DeArmoun Road is the only outlet for the entire locale in this area of the Hillside. Traffic on Canyon Drive is very light, compared to the daily load of speeding cars that traverse DeArmoun, night and day. Moreover, DeArmoun Road is recognized as a very substandard road, and Anchorage has no plans for improvements. DeArmoun "does not meet municipal requirements for shoulder width or pedestrian facilities" (like a sidewalk). See Exhibit 10- PDSA p. 216- Private Development Plan Reviewer.

In fact, the Planning Department (Exhibit 1- PDSA p. 12) clearly stated that the total extra distance is **2,200** feet- NOT the 200 feet as erroneously stated in the Platting board's explanation of its decision. See the Platting Board Findings of Fact and Decision (hereafter "FOFAD" (Exhibit 11- FOFAD p. 2). So the variance that supposedly "solves" this safety issue, in reality only makes matters worse. Not having access to Canyon Drive via a walkway from the cul-de-sac is very detrimental to the public welfare. The developers have definitely not met criteria # 2 and 3.

Strikingly, even the Traffic Engineer (Kristen Langley) sees no reason for this variance. She stated that "Traffic is not supportive of this variance [10 foot pedestrian access from the cul-de-sac bulbs] based on the information

provided in the application. . . . The information provided in the application is insufficient in addressing standards 3 and 4" (see Exhibit 12-

PDSA p. 226- Traffic Department). She surely would have had a lot to say, if this were really an issue about public safety, concerning traffic and pedestrians.

At the Hillside Community Council meeting, the developers admitted that Mr. Gionet will build a driveway from his Lot 7, directly onto Canyon Road (Exhibit 13- PDSA p. 42- Summary of Community Meeting). So his grandchildren will be able to bicycle right onto that steep, dangerous road, anyway- even with the variance in place, that denies all other people the right to access Canyon Road directly.

Also, his private driveway to Canyon Road means that he has no need of the "flagpole" part of his "flag lot," that connects to the cul-de-sac. That area is the perfect location for the 10 foot pedestrian walkway.

The Platting Board's decision also stated that "the wetland tract is a potential pedestrian access to Canyon Drive." Exhibit 11- FOFAD, page 2.

This statement is not true, for two reasons:

Both the Private Development and Watershed Management staff, in their letters, stated that the developers must maintain continuity of drainage waterways, and not raise, lower or regrade the property, nor alter the property in a manner that will affect the drainage patterns. (Exhibit 10- PDSA p. 214- Private Development, and Exhibit 14- PDSA p. 217- Watershed Management).

All the drainage presently flows to the south side of the parcel. The only available Tract A connection to Canyon Drive from the Lewis & Clark cul-de-sac involves crossing south for hundreds of feet, right through Wetland

1, then trudging east inside the southern-most part of the conservation easement, for about 935 feet more. This area is one of the steepest parts of the entire parcel (Exhibit 5- PDSA p. 69- earlier plat map). This path would require extensive regrading. So this "southern route" trail is just not going to happen.

More importantly, even if a trail or pedestrian path could somehow be bulldozed through the conservation easement, it would not provide a PUBLIC access. The cul-de-sac is a public road, and the walkway connecting it to Canyon Drive will offer the public access required by title 21 (Exhibit 13- PDSA p. 43- Summary of Community Meeting). Title 21 demands and provides for PUBLIC access to such walkways.

However, only the homeowners in the subdivision will be allowed any access to the natural conservation area. So this trail through the conservation easement would provide only PRIVATE access, to a highly restricted and small number of people.

Mr. Gionet acknowledged this disparity in his testimony at the January 3rd hearing- "We have already plotted out open space that will allow the residents of the development to more safely access Canyon Road. . . to insure that the residents have 100% safe access. . . south through the open space to Canyon Road" (Exhibit 7- Transcript, p. 16). So the general public (especially the local neighbors) derive no benefit at all, from this alternative plan.

Summary

This variance fails to meet all four standards necessary for approval. In fact, the "solution" created by the variance is worse than the original perceived safety problem.

> " 'Substantial evidence' means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." **21.03.050A.11.c**

There is no "substantial evidence in the record" to support this decision, but there is a lot of evidence in the record for denying this variance.

We urge the Board of Adjustment to take appropriate corrective action, on this one- either remand the case back to the Platting Board with an order to change their Resolution, or substitute the Board of Adjustment's independent decision.

We also ask the Board of Adjustment to take official notice of Alaska case law to guide the Board's decision, specifically *Fields v. Kodiak City Council*, 628 P.2d 927, 933 (Alaska 1981) and any subsequent cases which followed that landmark decision. The ruling in that case was that:

> A board's failure to provide findings, that is, to clearly articulate the basis of its decision, precludes an applicant from making the required specification and thus deny meaningful judicial review. . . . Only by focusing on the relationship between evidence and findings, and between findings and ultimate action, can we determine whether the board's action is supported by substantial evidence."

In our case, the Platting Board engaged in a procedural error by improperly ignoring the explicit requirements of Title 21, concerning connectivity that benefits the public. The Board also failed to provide sufficient legal or factual findings to support its decision, about all material requirements for approval (**21.07.010A7** and **21.03.24G.3**). The record does not support such a drastic departure from the clear requirements of Title 21.

2. Maximum lot coverage allowable

Title **21.08.070B.5** states:

> The maximum lot coverage requirements for lots in a conservation subdivision as set forth in chapter **21.06**, may be increased by no more than 10%.

The developers stated in their Application: The R-8 district's required maximum lot coverage is 5%, but this may be increased to 15% (Exhibit 15- PDSA p. 25 and 27- Platting Application Narrative).

This erroneous math computation was specifically addressed in the written comments (Exhibit 16- PDSA p. 251, 253, 255- written comments). The Planning Department staff also corrected and clarified this matter in the Planning Department Staff Analysis report. It reads: "The R-8 district's required maximum lot coverage is 5%, but this may be increased to **5.5%**" (Exhibit 1- PDSA p. 9)

However, nothing in the record indicates that this important issue has been concluded or resolved. Therefore, we believe that the Platting board made a procedural error, by not including a resolution or motion to add a Plat Note stating that the maximum lot coverage could be increased up to no more than 5.5% of the lot size. Future buyers deserve to know how large a house they can build on these lots.

We request appropriate action from the Board of Adjustment, to correct this omission concerning the Plat Notes.

3. The necessity in Title 21 for Level 4 Screening landscape and 100 foot setback for lots 13 and 14

Title **21.08.070B.4.h** states:

> Common open space with level 4 screening landscaping shall be provided along any lot line abutting a residential neighborhood where any adjoining lot is greater than 150% of the average lot size along that lot line of the conservation subdivision.

The developers' application even admits, somewhat obliquely, that "the northern half of our western boundary may be applicable to the required screening easement" (Exhibit 15- PDSA p. 27- Platting Application Narrative). Their current plat shows that "the northern half of the western boundary" means lots 13 and 14 (Exhibit 17- PDSA p. 16- plat).

The Planning Staff Analysis states:

> Tract A is the common open space for this conservation subdivision. No level 4 screening landscaping is required because the residential lots adjoining the subdivision are less than 150% (Exhibit 1- PDSA p. 9).

We believe that the Planning Department's statements in its Staff Analysis report concerning this AMC section misstate the applicable law, and come to an erroneous conclusion.

Some definitions are in order.

Abutting- touching or bordering. See illustration under "adjacent." 21.14.040

Abutting lots- two lots abut when they share a common lot line. 21.14.040

Adjacent- abutting or across an alley 21.14.040

Adjacent lots- two lots are adjacent when they have a common lot line (abutting) or where they are separated only by an alley or local or private street or pedestrian right-of-way.

Adjoining-

Mirriam-Webster dictionary-

> "Adjoining, adjacent, bordering all mean near or close to something. Adjoining implies touching, having a common point or line: an adjoining yard. Adjacent implies being nearby or next to something else: all the adjacent houses; adjacent angles. Bordering means having a common boundary with something: the farm bordering on the river."

Webster's New World Law dictionary, (2010 ed.)

" Adjoining- abutting, bordering upon, sharing a common boundary, touching."

Lot line- the fixed boundaries or property lines of a lot described by survey located on a plat filed for record. 21.14.040

Property line-

A demarcation limit of a lot dividing it from right-of-way, or other lots or parcels of land. 21.14.040

Lot lines are specific and discrete. Title 21 further divides lot lines into "front lot line;" "rear lot line;" "side lot line" and "street lot line" (see 21.14.040). Clearly, the north-south rear lot lines of Lots 13 and 14, on the western-most side of those Lots in the Conservation Subdivision, constitute the only lot lines in question, that abut the much larger residential lots directly to their west, that are outside of the plat parcel.

According to the latest plat, Lot 13 is **72,093** square feet, or **1.655** acres. It abuts the rear lot line of Lot 2 of the Vergason-Jones subdivision (VJS). Muni property records show that VJS Lot 2 measures **210,530** square feet, which is **4.83** acres (one acre having 43,560 square feet) (Exhibit 18- Muni Property Appraisals). The size of VJS Lot 2 is far more than the minimum "150% larger," so a Level 4 Landscaping, 100 feet wide, needs to be installed on Lot 13.

Similarly, Lot 14 is **94,305** square feet, or **2.165** acres. It abuts the REAR lot line of Lot 1 of the Vergason-Jones subdivision (VJS). Muni property records show that VJS Lot 1 measures **189,240** square feet, which is **4.34** acres (one acre still having 43,560 square feet) (Exhibit 18- Muni Property Appraisals). The size of VJS Lot 1 is also far more than the minimum "150% larger," so a Level 4 Landscaping, 100 feet wide, should be installed on lot 14, also.

Admittedly, this AMC section calls for an adjoining parcel outside of the Conservation Subdivision to be greater than 150% of the average lot size along that lot line of the conservation subdivision. So we add up Lots 13 and 14, and divide by two to obtain the average lot size:

1.655 + 2.165 = 3.82, ---- by 2 = 1.91. So these two lots fail the second part of the test. Even their average size is still too small.

In contrast, Lot 12 has a partial abutment with a completely different (east-west) SIDE lot line of VJS Lot 2. Farther west, Tract A also partially abuts this same east-west SIDE lot line of VJS Lot 2. Lot 12 and Tract A are both enormous, so Lot 12 does not need any 100 foot wide landscaping. However, even if a reviewer were (erroneously) to include Lot 12 in the calculations, the average lot size for Lots 12, 13 and 14 is still just 2.60 acres (3.99 + 1.655 + 2.165 = 7.81, --- 3 = 2.60). 150% of 2.60 is 3.90 acres, and the

acreage of VJS lot 1 is 4.34 acres, and VJS lot 2 is 4.83 acres- still more than the minimum 150% increase.

In the light of this analysis, the statements made by Mr. Dryer at the hearing are not accurate:

> "There's (sic) only three lots to the west that we abut and we only have three lots and a tract. So if you add up our Lot 12, 13 and 14 and Tract A that abut the western boundary, we have a total of 29 acres, which is an average lot size of about nine and a half acres. So we comply with that part of the Code. We do not need a 100 foot setback there." (Exhibit 7- Transcript, p. 47).

Lots 13 and 14 should not be grouped with Lot 12 and the large Tract, because these several parcels abut different lot lines of the surrounding (and much larger) properties.

The map submitted by Gail Morrison, a GIS-certified cartographer, shows what the new lot sizes and contours would look like, for lots 13 and 14 (Exhibit 19- large and smaller map by Gail Morrison). She was working from the lot sizes on the plat that existed before the latest incarnation, so the numbers are a little different. But the general idea is the same.

One other related issue is worth addressing. "Adjacent" can mean a lot that is separated by a public or private street- see the diagram illustrating "adjacent lots" at **21.14.040**, page 5. The developers clearly believe that **21.08.070B.4.h** applies to other lots near their subdivision. On page 5 of the Narrative, they stated that "the lots surrounding to the north and east are less than 150% of the average abutting lot sizes in Lewis & Clark" (Exhibit 15- PDSA p. 27).

Actually, this statement may not be true. This issue will be further discussed, or abandoned, in the forthcoming brief.

We believe that the Platting Board engaged in a procedural error, and an error of interpretation of the law as stated in Title 21, by failing to consider in its FOFAD the issue of mandatory Level 4 Landscaping on the western boundary of lots 13 and 14. In turn, the Planning Department staff engaged in an error of law interpretation, in their Staff Analysis report.

Pursuant to **21.03.050.11.b**, the Board of Adjustment is empowered to consider matters involving the interpretation of any statute. It can substitute its independent judgment, if it chooses, in any dispute. We request that the Board of Adjustment do so, concerning this issue.

4. Unreliable numbers

A. *Acreage*

The square footage of this parcel seems to keep changing, without a rational basis. The first application, whose survey was performed by the same S4 Group back in 2014, included VJS lot 2 (Exhibit 20- App # 2014-0219 Proposed Subdivision). The total footage of that project was listed at **70.05** acres.

By the time the Planning and Zoning recommended against the project, the size of the same two parcels had grown to **72.66** acres (Exhibit 21- PZC Resolution # 2015-026). Mr. Dreyer represented the same two parcels as being 73 acres, in his letter dated 4/30/15 to a Planning Department employee (Exhibit 22- PDSA p. 120- S4 Group letter 4/30/15).

In 2016, the developers again tried to obtain approval for an R-6 SL (Special Limitations) subdivision. This time, they included both lots in the adjacent

Vergason-Jones Subdivision. Surprisingly, the new Letter of Authorization signed by all the developers STILL stated that this new, expanded subdivision (with both VJS large lots) contained only **70** acres (Exhibit 22A- Letter of Authorization 9/1/16).

In the latest proposal, both VJS lots have been excluded from the present plat, yet the total acreage is <u>still</u> listed as **70.05** acres. See the Application form (Exhibit 23- Application cover page) and the Platting Application Narrative S4 Group letter dated 11/9/17 (Exhibit 15- PDSA p. 21 and 24- Application Narrative). The chart on page 9 of the present Application shows a "net total area," including all the lots and Tract A, of just **65.63** acres (Exhibit 24- PDSA p. 29- chart).

We cannot tell if this number includes the interior rights-of-way or not. Even allowing for the space taken up by the two cul-de-sacs, we cannot reconcile any of these constantly changing numbers.

The Agenda of the Platting Board for 1/3/18 lists the acreage as **67.83** acres (Exhibit 25- Platting Board Agenda). That number is **2.20** acres more than the same parcel size shown on the developers' most recent Application. The Letter of Authorization dated 10-25-17, and signed by four of the developers, says the property is "approx **70** acres" (Exhibit 26- PDSA p. 41- Letter of Authorization 10-25-17).

How much land has actually been involved in all these applications? Who can tell- the numbers just keep changing, for the same parcels. But if we cannot know how much land is really here, we cannot determine how many lots should legitimately be allowed, or the real lot sizes. That is very disconcerting.

Note for any forthcoming rebuttal- in this analysis, we have taken into consideration the different parcels included in the many incarnations of the Lewis & Clark Subdivision. The numbers still just do not add up.

B. Slopes

Similarly, the slope of this property seems to keep changing, as well. The Planning Department Staff Analysis states that "the average slope is approximately 12%" (Exhibit 1- PDSA p. 11). In their second rezone Application, the developers list the slope for just NE corner area lots 9, 10 and 11 as 13%, and the rest of the land becomes a lot steeper (Exhibit 27- 2017-0072 Application, page 125).

The letter from the Garness Engineering Group dated 4/29/15 stated that the slope ranged from 5% up to 20% over the entire parcel (Exhibit 28- Garness Engineering Group letter 4/29/15). The developers submitted a diagram of the parcel with their Request for Reconsideration to the PZC. They show "average slope 9%" (Exhibit 29- slope diagram). From these conflicting numbers, we really cannot know the true slope of this parcel.

C. The missing 60 feet

The developers' calculation of the longitudinal (horizontal, east-west) length of the parcel is another example of numbers that do not match. Adding all the east-west linear feet on each lot, as listed by the developer in the plat map, plus 60 feet for the cul-de-sac road where it empties into DeArmoun Road, plus 30 feet for the Canyon Road right-of-way, the total linear footage comes to 1,923.70:

202.99	Lot 14
400.00	Lot 16
60.00	cul-de-Sac
296.03	Lot 1
185.24	Lot 2
185.24	Lot 3

264.39	Lot 4
300.31	Lot 5
30.00	Canyon Road right-of-way
1,923.70	

However, the Plat diagram also shows a horizontal, east-west distance of **1,983.63**, as measured from the western US Geological Survey monument directly above Lot 14, to the eastern monument that is above Lot 5. This is a difference of 60 linear feet. We do not understand how the developers' numbers could be so different. They should exactly match the monument-to-monument distances.

Mr. Davis commented in writing (Exhibit 16- PDSA p. 258- written comments section), and we believe, that "this plat design should NOT BE APPROVED until an independent surveyor can determine the real measurements." If the platted parcel is actually 60 linear feet longer than the developers' number show, then all the lot sizes need to be adjusted upwards, as well. That adjustment, in turn, will force more acreage to be added to the Conservation Easement.

The numbers given by the developers, over time, have been inconsistent and confusing. Just how big is this plat, really? That important question, in turn, determines how many lots can be developed, and how big they are.

We believe that the Platting Board members engaged in a substantial procedural error by improperly ignoring these important discrepancies. Maybe a new survey by an independent surveyor would be appropriate, before lots are approved.

5. Riparian rights

The Rabbit Creek Community Council (RCCC) members stated their concerns about the lack of riparian protection easements on the plat (Exhibit 30- PDSA p. 233 – RCCC letter 12/15/17). So did Dr. Priestley, in her written comments (Exhibit 16- PDSA p. 256- Priestley comments). So did Nancy Pease, in her letter (Exhibit 3- PDSA p. 236- Pease letter). This issue may be discussed more fully in the forthcoming brief.

Lots 1, 7, 8, 9, 10, 11, 16 and Tract A all are or may be affected by these setback requirements. We believe that the lengths and widths of such setbacks should be clearly marked on the Plat map. Buyers deserve to know how much of their land is not buildable. Therefore, we believe that the Platting board made a procedural error, by not including a resolution to direct the developers to amend their plat to include evidence of these easements that are mandated at **21.08.040F** and **21.07.020B.4.a** and **4.b**.

6. Did we miss the memo??

The Application Narrative letter states that a report from Dan Young of Terrasat (about the water availability) and "an updated soils analysis and testing" report from Steven Eng of Northrim Engineering were both attached to the Application (Exhibit 15- PDSA p. 25- Narrative Report).

Yet no such reports were included with the 27 page Application that was posted on the internet, which is the only way the public can read and study such documents (Exhibit 31- screen shot of the internet postings). In addition, the Platting Board might have made important decisions without having all the information that they needed to study, to make the most informed determinations in this important matter.

Later in the PDSA, there is a report from Steven Eng dated February 2017. It includes diagrams of soils testing data that was performed between 2010 and 2016, that have already been thoroughly analyzed and criticized (Exhibit 32- PDSA p. 67-96- Northrim cover sheet). The only "update" appears to be the new plat map that has been substituted into this old report. So where is the promised update?

Same thing with the Terrasat soils testing report- it is just the same old same old, that we have seen before (Exhibit 33- PDSA p. 187-208- Terrasat cover sheet). Where is the compiled report? Some of our neighbors, who have become very interested in this development, are engineers who are well-qualified to analyze technical reports (Exhibit 34- Flattop Technical Services letter 5/24/2017).

The condition and composition of the soils on this property have been a huge concern for the neighbors. So our inability to review these key documents has greatly prejudiced us in this matter.

We believe that it was a serious procedural error for the Platting board to approve the preliminary plat of the developers, while failing to inquire about these omissions in the Application that was posted online. Appropriate action from the Platting Board would have been to postpone the hearing until the Platting Board members, and certainly the very interested members of the public, had sufficient time to access the reports, analyze them and make written or oral comments about them.

We also ask the Board of Adjustment to take official notice of certain Alaska case law, specifically *Alaska Corn Company v. Sears Robuck & Co.*, 3 AN-15-06026 (Superior Court, 2015), to guide the Board's decision. In that case, the Superior Court ruled:

> "The only way to preserve a meaningful right to judicial review . . . is to provide aggrieved parties with an opportunity to articulate their objections and build a record for appeal. Any right of appeal is meaningless without an opportunity to build an evidentiary record at the level of the initial decision. . . An appellant is placed at an unfair disadvantage . . . ."

Therefore, we request that the Board of Adjustment take appropriate action in this matter, including (where appropriate) substituting its independent judgment for that of the Platting Board.

7. The "most unkindest cut of all" (to quote Shakespeare)

An overarching question concerns the legitimacy of the approval of this plat, at all. The issue is whether the plat and the approval of it are in conformance with **21.08.070B.4**.

We believe that this plat should not have been approved, because 15 of 16 lots are not in conformance with either the lot size and/or the width mandated in an R-8 development. Three lots are less than 1.5 acres; 2 are 1.5 to 2 acres; 4 are 2 to 2.5 acres; 1 is 2.5 to 3 acres; 1 is 3 to 3.5 acres, and 4 are 3.5 to 3.99 acres. Only one lonesome lot exceeds the usual R-8 lot size.

However, time constraints compel us to defer further discussion of this most important issue, until we write the brief in support of this Notice of Appeal. We raise this issue now, to preserve our right to present a more detailed discussion, in our forthcoming brief.

Conclusions and corrective action desired:

For the reasons stated above, the concerned citizens who have joined this appeal request that the Board of Adjustment (using *Fields v. Kodiak City Council*, 628 P.2d 927, 933 (Alaska 1981) as a guide):

1. Vacate the Platting Board's approval of the plat because it is procedurally and substantively deficient, and fails to meet the required Approval Criteria found at 21.03.200C.9.a, .b, .e, .i, and .k. The Board of Adjustment could remand this matter to the Platting Board, with plat approval conditioned on compliance with the specific requirements of Title 21.

   Such order (we hope) would include an order for a new public hearing, after posting on the Muni website all of the reports that were supposed to be contained in the Application, and sending out notices to the public of the new hearing.

2. Make a determination on each of the issues presented, and remand them back to the Platting Board for future action.

3. Or, as an alternative, substitute the board's own independent opinion as you sees fit, on any issue raised in this Appeal. The concerned citizens reserve the right, to the extent permissible and allowable by law, to amend and supplement this Appeal.

Date: February 27, 2018

Joan Priestley MD

Joan Priestley and other concerned citizens (see attached list)

Certificate of Service

The concerned citizens hereby certify that we have mailed a copy of this Appeal by first class mail, to Paul Gionet, the registered agent for Big Country Enterprises.

Date: 2/27/18

Signor: Joan Priestley MD