

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.

General Identity of Action Being Appealed:

Planning Department File Number: Date of Action:
Name of Project or Subdivision:



Appellant's Information:

Last Name: First Name:
Address: City: State: Zip:
Phone Number: E-mail:

Relationship to Action: Applicant Agent of Applicant Municipal Agency Party of Interest

Applicant's Information: Same as Appellant

Last Name: First Name:
Address: City: State: Zip:
Phone Number: E-mail:

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 Date

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

Date: 6/7/21 Cash: Check: Credit Card: Receipt: Total Paid: \$1,130

CAUSES AND REASONS FOR REVERSING THE PLATTING BOARD'S APPROVAL OF S12599

I. Introduction

On May 19, 2021, the Platting Board approved Andre Spinelli's petition in Case S12599 to amend the preliminary plat approved on December 4, 2019, in Case S12420. Appellants, whose home abuts the subject property—i.e., parcels 020-043-02-000 and 020-043-03-000 (the "Property")—seek the reversal of S12599.

S12599 eliminated a phased construction condition and other conditions approved in S12420, enabling Spinell Homes (which bought the Property in 2020) and Mission Hills LLC (which now owns parcel 020-043-02-000) to add 27 families to an area already in violation of Municipality of Anchorage (Municipality or MOA) laws.¹ The area violates municipal laws because it lacks a secondary access road—which the Municipality refers to as a "life/safety access road."² S12599 enables Spinell Homes and Mission Hills to ignore the Municipality's laws even though they bought the Property knowing of the conditions that Mr. Spinelli petitioned the Platting Board to eliminate and that the Platting Board members—consistent with their livelihoods and personal and professional interests—agreed to eliminate. Specifically, with S12599, Spinell Homes and Mission Hills now need not wait for the construction of a secondary access road for ingress into and egress from the area in the event of an emergency, such as a hillside wildfire. They need not wait for the road even though no reason exists to believe it will be constructed anytime soon. For this reason and the others explained below, the Platting Board illegally approved S12420 and S12599, and a remand would be pointless: Mr. Spinelli can provide no evidence to cure several defects in his application, including many violations of the Anchorage Municipal Codes (AMC) and the Anchorage Municipal Code of Regulations (AMCR).

With the phased construction condition in S12420, the Platting Board unlawfully gave the green light to the construction of over a third of the proposed development. Well over 100 homes or lots platted for homes already exist above Elizabeth Street.³ 162nd Avenue is the only route of ingress and egress above Elizabeth. While there are two below Elizabeth (i.e., 156th Avenue and 162nd), Golden View Drive is the only road connected to both that does not ultimately dead end. Therefore, the approval of S12420 violated Municipality laws, and the approval of S12599—which relied on findings that the evidence does not support and/or that are irrelevant—further violated Municipal laws. Moreover, a biased body approved S12599: the Platting Board

¹ MOA, Public Inquiry Search Selection, <https://www.muni.org/pw/public.html> (Ex. 1).

² Anchorage, Alaska AO No. 2019-136, at 1 (adopted Nov. 19, 2019) (attached to Planning Dep't Current Planning Staff Analysis Platting 28 (Dec. 4, 2019) ("2019 Staff Report" 89)) (Herein, all pages that refer to the 2019 Staff Report, including its attachments, refer to the numbers in the lower right corner.) (MOA, CityView Portal, S12599 Planning Application Status (herein "S12599 Webpage")).

³ Appellants herein use Elizabeth as the starting point for the single access road because East 156th Avenue has been considered a separate access road. But the distance between 156th and East 162nd Avenue is "less than one-half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses." AMC 23.45.D107.2; MOA, Property Appraisal Dep't, MOAGIS Maps and Data, <https://muniorg.maps.arcgis.com/apps/webappviewer/index.html?id=493d6c82574c43d981bd2aaa384b3d60> (Ex. 35). Therefore, the area served by a single access road includes all the homes and lots platted for homes above Golden View Drive that are accessible only via 156th or 162nd.

members' financial and professional interests are aligned with those of Mr. Spinelli—and Spinell Homes and Mission Hills; and their comments understate the risk to the lives of the residents above Elizabeth, as evidenced, for example, in the comments of the vice chair, an Anchorage realtor, that adding 27 families imposes only “the inconvenience of increased traffic,” and the Platting Board is “just making small amendments.”⁴ Accordingly, in approving S12599, the Platting Board also violated Appellants' constitutional due process and equal protection rights. The Platting Board's violations put the lives of the residents above Elizabeth in danger in the event of a wildfire.

A few weeks before the Platting Board approved S12420, the Anchorage Municipal Assembly adopted an ordinance amending AMC 27.40.010, regarding the construction and maintenance of “life/safety access roads,” based on the following findings: “there are several areas of the municipality that fire, emergency medical, and private vehicles can only access, or evacuate, by a single route, some of which are sub-standard for emergency vehicles”; “to promote public safety, the 2012 International Fire Code, adopted by the Municipality, requires that new ‘[d]evelopments of one or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with two separate and approved fire apparatus access roads’ [AMC 23.45.D107.1]”; and “the McHugh Creek wildfire in 2016 and the MLK/Campbell Park wildfire in 2019 have again underscored the need for areas of the municipality to be served by at least two access routes.”⁵ In submitting the proposed ordinance, the mayor, also quoting AMC 23.45.D107.1, noted that “this is a ‘legacy’ problem: the municipality would not permit some of these developments to be constructed today.”⁶

Indeed, the Platting Board's exemption for Mr. Spinelli violates not only Municipal laws, but also the non-Municipal standards and codes the Platting Board relied on for the exemption. The Platting Board relied on National Fire Protection Association (NFPA) standard 1142 but ignored NFPA 1141, which, if applied, would require a secondary access road above Elizabeth.⁷ NFPA 1141 states that “[l]ife safety is paramount in all fire situations, and residents and occupants are encouraged to plan for timely evacuation or shelter.”⁸ Likewise, the Platting Board relied on a non-mandatory International Wildland-Urban Interface Code (IWUIC) form, but ignored the IWUIC code that—like the AMC, the AMCR, and NFPA 1141—mandates that the area above Elizabeth have a secondary access road. Moreover, the Platting Board-created exemption is not supported by evidence: no evidence shows, for example, that a private water system for 27 additional homes could make an evacuation in the event of a wildfire unnecessary, removing the need for a secondary access road.

Thus, in approving S12599, the Platting Board arrogated to itself the authority of the Anchorage Assembly by inventing an exemption for Mr. Spinelli to the legal limit on how many homes can

⁴ Transcript of Platting Bd. Hearing 42 (April 7, 2010) (Ex. 2).

⁵ Anchorage, Alaska AO No. 2019-136, at 1 (2019 Staff Report 89) (S12599 Webpage).

⁶ Mem. from Mayor Ethan Berkowitz to Anchorage Assembly, No. AM 726-2019, at 1 (Nov. 5, 2019) (2019 Staff Report 90) (S12599 Webpage).

⁷ NFPA 1142 is the “Standard on Water Supplies for Suburban and Rural Fire Fighting” (Ex. 3); NFPA 1141 is the “Standard for Fire Protection Infrastructure for Land Development in Wildland, Rural, and Suburban Areas” (Ex. 4).

⁸ NFPA 1144 (“Standard for Reducing Structure Ignition Hazards from Wildland Fire”), Annex A, Sec. A.1.2.1 (Ex. 5).

exist on a single access road. And without even attempting to establish a regulation, the Platting Board turns what—based on the authorities it relied on—should be a requirement to ensure a new development has water for firefighting into an exemption to the legal requirement for a secondary access road so that residents can evacuate and firefighters can access an area in a wildfire and so that residents can obtain emergency medical, firefighting, and police assistance if the only access road is blocked.

Furthermore, no evidence supports the Platting Board’s position that a limited water system is more important than a secondary access road. Nothing in the record supports the position, on which the Platting Board’s findings rely, of board member Don Porter—who makes his living designing underground water systems—that the Fire Department has “clearly determined that water is more important than access”: i.e., even where, as here, access consists of a one long, hazardous road. Nothing other than the Platting Board members’ unsupported assertions supports the related finding “that the development being put in with this fire system is in the balance of safety and is a safer solution than what was previously heard”: i.e., the addition of no more than 11 homes with automatic sprinkler systems and Firewise construction and landscaping until a secondary access road is constructed. Indeed, the Fire Department did not support removing the phased construction condition based on the proposed private water system: it supported removing the condition because—without relying on any new information—it reversed itself on whether a secondary access road (i.e., the Mountain Air Drive connection) will be built.⁹ The Fire Department relied on the private water system only as a basis for supporting the removal of the Firewise construction and landscaping conditions.¹⁰ It provided no explanation for supporting the elimination of the requirement that Phase I homes be protected with an automatic sprinkler system.¹¹

In fact, while the Platting Board finds that the private water system addresses only “some” of the fire concerns above Elizabeth “until this road is completed,” it also finds that the private water system is “fantastic” and adds “a massive layer of safety to the project.”¹² If the private water system is so valuable for protecting life and property, the Platting Board must require Spinell Homes to wait for the secondary access road and still provide the private water system under AMC 21.03.200(C)(9), which provides that “to the maximum extent feasible” a preliminary plat must do the following: promote “the public health, safety, and welfare”; mitigate “the effects of incompatibilities between” the subdivision and the surrounding neighborhood with respect to, among other things, traffic; provide “for the efficient movement of vehicular” traffic; and further “the goals and policies of the comprehensive plan and conforms to the comprehensive plan in the [required] manner.”¹³ Moreover, even if there were support for the position that “to the maximum extent feasible” includes an economic component, no evidence exists that Spinell

⁹ Mem. from Brian Dean, Fire Marshal, Fire Prevention Div., Fire Dept. to Shawn O’Dell, Senior Planner, Current Planning Div. (Feb. 19, 2021) (“2021 Fire Dep’t Mem.”) (attached to Planning Dep’t Current Planning Staff Analysis Platting 42 (March 3, 2021) (“2021 Staff Report”). (Herein, all page numbers that refer to the 2021 Staff Report, including its attachments, refer to the numbers in the lower right corner. The Planning Department omitted the fifth page of its 11-page report from the report’s online version.)

¹⁰ *Id.*

¹¹ *Id.*

¹² MOA Platting Board, Findings of Fact and Decision, S12599 Spruce Terraces Subdivision, Lot 1 – 27 Phase 1-3, at 2 (May 19, 2021) (hereinafter “S12599 Findings and Decision”) (S12599 Webpage).

¹³ AMC 21.03.200(C)(9).

Homes—which has built over 3,200 homes in Southcentral Alaska¹⁴—would be harmed (and if so to what extent) by providing the private water system without the elimination of the phased construction condition, especially given the Platting Board’s finding that the secondary access road “is going to be constructed.”¹⁵ Indeed, given that the Platting Board finds that it is “entitled” to rely on the road’s construction, no reason exists that the Platting Board does not require Spinell Homes to wait for the road to be built.

Thus, in deciding the case of Mr. Spinelli’s application, the Platting Board applied an exemption it created for Mr. Spinelli in violation of Municipal laws and without evidence that doing so would not endanger the lives of the hundreds of residents above Elizabeth, including those who have lived in the area since long before Spinell Homes and Mission Hills made their investments.

Finally, even if Spinell Homes and Mission Hills were harmed—and, again, there is no evidence of any harm—by waiting with their neighbors for the secondary access road, that harm could not outweigh the risk to the lives of the residents above Elizabeth if Spinell Homes and Mission Hills develop the Property years before the road’s construction. This is not the case just because Spinell Homes is the largest homebuilder in Alaska, and 27 houses represent less than one percent of the houses Spinell Homes has built in the state.¹⁶ Nor is this the case just because Spinell Homes and Mission Hills gambled on that harm when they bought the Property in 2020 (or less than a year after the approval of S12420) from financially strapped retirees who paid taxes on it for nearly four decades,¹⁷ knowing of the phased construction condition and the other conditions Mr. Spinelli now wants eliminated.¹⁸ This is also the case because there is (again) no evidence the proposed private water system could meaningfully assist in stopping a wildfire, especially one necessitating an evacuation. This is also the case because adding 27 families would impede an evacuation. This is also the case because if a fallen tree, a car accident, or bumper-to-bumper traffic on 162nd Avenue or Golden View Drive block the long single access road that Mr. Spinelli concedes is “hazardous,” the members of those families and over a hundred others could die despite all the water in the proposed private water system.¹⁹ This is also the case because if a fire or a medical emergency occurs and snow, ice, earthquake damage, or a car accident blocks the single access road then too no amount of water in the private water system will save a single life or home.²⁰ Fortunately, the Municipality’s laws do not authorize a developer, including Spinell Homes, to profit from building on their property when—as here—their profits would come at the risk of its neighbors’ lives.

¹⁴ Spinell Homes, Inc., <https://spinellhomes.com/> (Ex. 6).

¹⁵ S12599 Findings and Decision 2.

¹⁶ Spinell Homes, Inc., <https://spinellhomes.com/> (Ex. 6).

¹⁷ In 2018, Mr. Spinelli implied that proceeding with the proposed development was urgent because the then-owners “[a]ll have been retired for many years & need the sales revenue to fund their retirement instead of paying more taxes every year.” Letter from Tony Hoffman, PLS, The Boutet Co., to Dave Whitfield, Manager/Platting Officer, Current Planning Div.1 (May 7, 2018) (2019 Staff Report 28) (S12599 Webpage).

¹⁸ Letter from Hoffman to Whitfield (Dec. 21, 2020) (2021 Staff Report 23); MOA, Public Inquiry Search Selection, <https://www.muni.org/pw/public.html> (Ex. 1).

¹⁹ Letter from Hoffman to Ky Holland, Co-Chair, Rabbit Creek Cmty. Council 1 (Dec. 14, 2020) (2021 Staff Report 21) (S12599 Webpage).

²⁰ See, e.g., Letter from Robert Doehl, Bldg. Official and Dir., Dev. Servs. Dep’t, and Brian Dean, Anchorage Fire Marshal, Anchorage Fire Dep’t, to Hoffman-O’Malley Cmty Council Members 3 (Sept. 22, 2020) (noting that sprinkler systems “offer important life-saving capability when icy roads may impair response to a fire”) (Ex. 7).

II. Errors

In approving S12599, the Platting Board violated AMC 21.01.040(C): “No building or structure shall be erected . . . nor shall any land . . . be used or changed, except in accordance with this title. No lot of record that did not exist on the effective date of this title shall be created, by subdivision or otherwise, that does not conform to the applicable requirements of this title.” And the Platting Board violated AMC 21.03.200(C)(9).²¹ For the reasons explained below, the Platting Board violated these provisions by violating AMC and AMCR provisions that do the following:

1. identify the purposes of and mandate the Platting Board’s compliance with the Municipality’s Land Use Ordinance;
2. require that two approved fire apparatus access roads serve an area with more than 30 houses unless all of the houses have an automatic sprinkler system or the fire code official reasonably determines that a second approved fire apparatus access road will connect with the area;
3. require that a development of more than 100 houses have access to at least four public streets to the extent feasible unless the Platting Board reasonably determines otherwise;
4. prohibit fire hydrants on a cul-de-sac unless the traffic engineer has approved the cul-de-sac;
5. limit cul-de-sacs to 900 feet unless the Platting Board grants a variance based on finding, among other things, that the variance will not adversely affect public welfare or other property;
6. prohibit Platting Board members from participating in a matter if they have a conflict of interest or their participation would create the appearance of impropriety;
7. limit preliminary plat applications to property owners and require they undertake certain actions in order for the Platting Board to decide their applications;
8. require the Platting Board give interested persons an opportunity to ask questions at hearings on preliminary plats; and
9. require that the Platting Board make specific findings and that its findings are supported by evidence in the record.

In addition, in approving S12599, the Platting Board violated Appellants’ United States and Alaska Constitutional rights to due process and equal protection.

First Set of Errors – The approval of S12599 violated AMC 21.01.030(B), (G), (K), and (L).

Approving S12599 violated AMC 21.01.030(B), (G), (K), and (L) because the addition of 27 homes above Elizabeth without a secondary access road, automatic sprinkler systems, and Firewise construction and landscaping does not (1) encourage a diverse supply of housing in safe neighborhoods, (2) protect residents from wildfires, (3) promote a pattern of land use and

²¹ Under AMC 21.03.200(C)(9), the Platting Board may approve a preliminary plat “only” if the plat does not violate AMC 21.07.060(D)(3)(d) and AMC 21.08.030(F)(6)(a) and, by implication, AMC 21.01.030(B), (G), (K), and (L), AMC 23.45.D107.1, and the AMCRs cited herein.

development that provides for adequate transportation, and (4) encourage land and transportation development patterns that promote public safety and offer transportation choices.²² Rather, the Platting Board’s approval places Mr. Spinelli’s monetary interest above the lives and property of the hundreds of residents above Elizabeth. Consistent with AMC 21.01.030, the Platting Board should not have treated Mr. Spinelli’s representation that he would provide a private water system as a substitute for the requirements of a secondary access road, automatic sprinkler systems, or Firewise construction and landscaping.

1. Adding 27 homes above Elizabeth without a secondary access road means that, in the event of a wildfire, the occupants of 144 homes (with the construction of houses on the vacant platted 29 lots)—conservatively estimated at 380 people with at least 288 cars²³—will depend for their lives on a single, long, steep, narrow, winding road that Mr. Spinelli concedes is “hazardous”: “The condition of the road and slopes in the hairpin corners will require an areawide redesign. The petitioner acknowledges that the condition of Sandpiper is hazardous for pedestrians and motorists alike.”²⁴
2. The U.S. Forest Service has declared Anchorage “a community-at-risk for wildfire,” and the Municipality has found that “[t]he entire MOA has the potential for wildfires.”²⁵ And the residents above Elizabeth are particularly at risk of loss of life from a wildfire given (among other things) the surrounding wilderness and the steep topography and that there is a single hazardous access road. The Anchorage Fire Department has noted, for example, that “[w]here the Miller’s Reach Fire of 1996 spread across mostly flat terrain and still burned more than 400 structures, a wildfire in South Anchorage would spread even faster because fire spread rates increase with slope.”²⁶ The Municipality has noted that the Hillside District Plan’s emergency services goals include “[p]lan for emergency

²² AMC 21.01.030(B), (G), (K), and (L) incorporate AMC 23.45.D107.1 as the Anchorage Assembly adopted that provision “to promote public safety.”²²

²³ Letter from Alan Birnbaum and Ruth Dukoff to Platting Board Members regarding “Case S12599 – Public Comments” 2, n.9 (April 5, 2021) (S12599 Webpage); Transcript of Platting Bd. Hearing 17 (Dukoff testified, “the full build-out for the proposed and existing developments of at least 144 homes would depend on a single access road every day and in the event of an emergency such as a hillside wildfire.”) (Ex. 2); Transcript of Platting Bd. Hearing 32-33 (Trond Jensen testified, “We’re No. 70 on the map and there’s at least five more to add to that. So development is moving forward making the situation worse and adding additional homes to this proposed plat before that road extension goes in would be adding to the danger.”) (Ex. 2). The average Anchorage household includes 2.64 persons. *See* Anchorage Demographics 47, <https://www.muni.org/Departments/OCPD/Planning/Publications/Anchorage%20Economic%20Indicators/03-2012Indicators-Anchorage%20Demographics.pdf> (Ex. 8). In fact, there are almost certainly more than 2.64 persons per household in the area: e.g., some homes include multiple families, and at least one house is a B&B. *See* Letter from Birnbaum to Platting Board Members n.9 (S12599 Webpage).

²⁴ Letter from Hoffman to Holland 1 (2021 Staff Report 21). In fact, an additional 33 homes and 18 lots platted for homes are served by a single access road—making the total 195, including the proposed subdivision—given that the area served by a single access road includes all the homes and lots platted for homes above Golden View Drive that are accessible only via 156th or 162nd. *See supra* note 3.

²⁵ Project Mgmt. & Eng’g, MOA, All Hazards Mitigation Plan Update, Anchorage, Alaska 44, 46 (Dec. 2016) https://www.muni.org/Departments/project_management/Documents/FINAL_MOA_AHMP_Update2016.pdf (Ex. 9).

²⁶ *Id.* at 43.

evacuation by ensuring that all residents have adequate egress from their neighborhood.”²⁷

3. While a private water system for 27 homes might be sufficient to suppress a house fire and prevent it from becoming a wildfire—assuming the Fire Department can arrive in time—there is no evidence that the private water system Mr. Spinelli promises would be effective in the event of a wildfire. Indeed, no amount of water will save lives and homes above Elizabeth if firetrucks cannot access the area and residents cannot evacuate because of an accident or burning trees blocking traffic on the single access road connecting to Golden View Road or because of the inability to enter the line of traffic on Golden View. With a fast moving wildfire and hundreds of people fleeing, accidents, burning trees, and traffic jams are likely to prevent residents from escaping and fire trucks and vehicles of other first responders from reaching the wildfire. Recognizing this, the Fire Department shares residents’ “concern about adequate egress routes for subdivisions, both new and existing.”²⁸
4. In fact, the Platting Board’s approval of S12599 contributes to the “legacy” problem the mayor identified because the area above Elizabeth exactly fits the Anchorage Assembly’s November 19, 2019, finding that many areas within the Municipality are served by a single, substandard access road.²⁹ The assembly made this finding two weeks before the Platting Board initially required Mr. Spinelli not build the majority of the development until after a secondary access road was approved and funded. Moreover, the proposed development would not only substantially exacerbate the life-threatening traffic hazards facing the residents above Elizabeth but also increase the risks of a wildfire: “Wildfires in the MOA are more likely to be caused by humans than by other sources. As development increases in areas with high wildfire potential, the chances of wildfire also increase.”³⁰
5. The critical importance of the existence a secondary access road in the area above Elizabeth before additional development occurs is evidenced in, among other things, a 2006 Hillside Subarea Transportation Study prepared for the Traffic Department:

The safety of existing and future homeowners is a priority. In the event of an emergency, the limited availability of road access can reduce the access into housing developments. Alternative access is necessary to provide secondary access for emergency vehicles. During this study it became evident that the existing development in the study area has maximized the

²⁷ MOA, Hillside District Plan Alternatives: A Framework for Public Discussion 19 (April 2008) https://www.muni.org/Departments/OCPD/Planning/Publications/Hillside%20District%20Plan/Framework_Plan_Final.pdf (Ex. 10).

²⁸ Letter from Doehl and Dean to Hoffman-O’Malley Cmty Council Members 2-3 (Ex. 7).

²⁹ Mem. from Berkowitz to Assembly, AM 726-2019, at 1 (2019 Staff Report 90) (S12599 Webpage); Anchorage, Alaska AO No. 2019-136, at 1 (2019 Staff Report 89) (S12599 Webpage).

³⁰ Project Mgmt. & Eng’g, MOA, All Hazards Mitigation Plan Update, Anchorage, Alaska 44 (Dec. 2016) https://www.muni.org/Departments/project_management/Documents/FINAL_MOA_AHMP_Update2016.pdf (Ex. 9); MOA, Wildfire Mitigation, Anchorage Wildfire Program (noting that “wildland fire ignitions in the Municipality of Anchorage are predominantly human-caused”).

<http://www.muni.org/Departments/Fire/Wildfire/Pages/AnchorageWildfireProgram.aspx> (Ex. 11).

current access. Future subdivision development must provide a secondary access to provide alternative roads to the study area not only for the benefit of traffic circulation but for emergency service.

Emergency service for police, fire and medical response can be best served when more than one access point is available to an area. As recommended earlier in this study, future development will require secondary access to the north connecting to Rabbit Creek Road at a point other than at Golden View Dr. and Rabbit Creek Road intersection.

The Technical Advisory Group made of area residents, community council representatives, developers, property owners and the municipal staff all recognize the need and important [sic] of secondary access for emergency services. The primary concern being the need for secondary access in the event of a wildfire. In the event of a large wildfire that requires mass evacuation of the property within the study area, residents are currently forced to travel down the hillside to Golden View Drive.

For the purpose of the study the International Fire Code (2000) was reviewed and is summarized below. This code is used by the Municipality to help guide development and access requirements for the purpose of responding to wildfire type emergencies. . . .

The primary reason for multiple access roads is to ensure that if one access road is blocked or otherwise unavailable, another will allow access to the fire department. The logic of the location is based on the reason that they be separated by enough distance to avoid a situation where both would be blocked or unavailable simply because they are too close to one another.³¹

6. Accordingly, the Traffic Department has consistently opposed the proposed development prior to funding for and approval of a secondary access road. In 2019, the Traffic Department “determined that a secondary access road ‘is critical from both . . . life and traffic safety viewpoints.’ ”³² In 2020, the Traffic Department again objected to the removal of the “secondary access requirement . . . prior to full build out of the proposed subdivision,” explaining that

This new subdivision continues to add to the growing problem of expansion on the hillside without construction of secondary access. Secondary access is critical from both a life and traffic safety viewpoints for emergency service access and the reduction in volume of daily traffic on the existing rights of way. . . . The proposed onsite water storage system address [sic] building construction and emergency vehicle access

³¹ USKH, Hillside Subarea Transportation Study, prepared for Traffic Dep’t, MOA 26-27 (Oct. 20016) (Ex. 12).

³² Memo from Randy Ribble, Assistant Traffic Engineer, Anchorage Traffic Dep’t to Current Planning Div. Supervisor, Anchorage Planning Dep’t (Nov. 22, 2019) (“2019 Traffic Dep’t Mem.”) (2021 Staff Report 46) (S12599 Webpage).

to water but does not address concerns that there is no egress from this and three adjacent subdivision [sic] if egress via Sandpiper Drive were impacted by a major Hillside event.³³

7. The Platting Board elevated the determination of the Fire Department over that of the Traffic Department. This was unreasonable, especially given the lack of evidence that in the event of a wildfire the Fire Department will send resources to the area above Elizabeth: it might well not because the existence of only one access road—which is long and hazardous—greatly increases the chance that firefighters and firefighting equipment would get trapped. If the issue were whether the Fire Department has adequate resources to suppress a wildfire, deferring to it would make sense. But the issue is whether in the event of a wildfire or other disaster the hundreds of residents above Elizabeth can quickly enough evacuate and the Fire Department and other first responders can quickly enough reach them. Regarding this issue of vehicular egress and access, the Traffic Department deserves deference.³⁴
8. In fact, the Platting Board’s position that the Fire Department’s determination is critical rings hollow because the Platting Board did not base its approval of the elimination of the phased construction condition on the Fire Department’s reason for supporting S12599. The Platting Board relied on Mr. Spinelli’s promise to provide a private water system for the 27-home development. The Fire Department did not support removing the phased construction condition on the availability of water: it based its decision solely on the “determin[ation] that the Mountain Air Drive connection will provide fire apparatus access road connection with future development.”³⁵ This demonstrates that the Fire Department recognizes that the availability of water is not the issue and that the private water system would not be sufficient to suppress a hillside wildfire—as opposed to a home fire.
9. Even if the Platting Board had accepted the Fire Department’s reason for supporting the removal of the phased construction condition, the Platting Board would have unreasonably relied on the Fire Department’s determination. The Fire Department provides no support for its conclusion that the Mountain Air Drive extension will be constructed other than noting what it knew in 2019: i.e., “The Mountain Air Dr. connection to Rabbit Creek Rd. has been added to the AMATS Transportation Improvement Program” (TIP).³⁶ But in 2019, the Fire Department insisted that the majority of the proposed development not go forward until after the secondary access

³³ Memo from Ribble to Current Planning Div. Supervisor, Anchorage Planning Dep’t (Jan. 26, 2021) (“2021 Traffic Dep’t Mem.”) (2021 Staff Report 46) (S12599 Webpage).

³⁴ See MOA, Hillside Dist. Plan, AO 2010-22, at 4-2 (Apr. 13, 2010) (“Some areas on the Hillside lack adequate routes for emergency access. In the public survey, the only concern that the majority of Hillside residents consistently reported as at least ‘a problem’ was the issue of wildfire safety. Substandard roads, multiple homes on private ‘driveways,’ and roads that are poorly maintained and poorly designed often create serious problems for emergency vehicles. Local fire crews report that fire engines and ambulances often have trouble finding and reaching homes to provide critical emergency services.”).

<https://www.muni.org/Departments/OCPD/Planning/Publications/Pages/HillsideDistrictPlan2010.aspx> (Ex. 13).

³⁵ 2021 Fire Dep’t Mem. (2021 Staff Report 42) (S12599 Webpage).

³⁶ *Id.*

road was funded and approved.³⁷ As the Fire Department does not—and could not—provide an explanation for changing its mind, no basis exists for accepting the Fire Department’s February 2021 determination.³⁸

10. Also, the Platting Board wrongly relied on Mr. Spinelli’s Fire Hazard Severity Form. The form, which is Appendix C of the International Wildland-Urban Interface Code (IWUIC), has no weight. It is “not part of the” IWUIC and can become part of it only “when specifically included in the adopting ordinance.”³⁹ The AMC does not include the form; nor is there evidence it should. Regardless, the form does not support the position that a private water system would eliminate the need for a secondary access road where a proposed subdivision will neighbor multiple existing subdivisions.⁴⁰ The form’s “purpose is to provide an alternative methodology . . . for analyzing the fire hazard severity of building sites using a pre-assigned value/scoring system for each feature that impacts the hazard level of a building site”: i.e., the form applies to an analysis of the fire hazard for only the proposed subdivision.⁴¹ The ingress and egress scoring points are “Subdivision Design Points,” and the total points are “Total for Subdivision.”⁴² Thus, the form is not evidence of the position that a private water system is more important than a secondary access road for saving lives in areas such as those above Elizabeth.⁴³

11. The Platting Board’s approval of S12599 violated AMC 21.01.030 because it implicitly relies on Mr. Spinelli’s assertion that, “because of the additional upfront expense of a

³⁷ Mem. From Mark Panilo, Inspector, Fire Prevention Div., Fire Dep’t to O’Dell (Nov. 21, 2019) (“2019 Fire Dep’t Mem.”) (2019 Staff Report 65) (S12599 Webpage).

³⁸ Indeed, this is not the first time that, regarding the proposed development, the Fire Department has made a determination that is not supported by the facts. In 2019, the Fire Department determined that the prior owners of the Property could construct 11 homes in the proposed subdivision. The Fire Department relied on Exception 1 of AMC 23.45.D107.1: “Where there are more than 30 *dwelling units* on a single public or private fire apparatus access road and all *dwelling units* are equipped throughout with an *approved automatic sprinkler system*[,] . . . access from two directions shall not be required.” This exception does not apply because not all—in fact, almost certainly very few or none—of the houses above Elizabeth have an approved automatic sprinkler system. Ours does not.

³⁹ 2021 IWUIC, <https://codes.iccsafe.org/content/IWUIC2021P1/arrangement-and-format-of-the-2021-iwuic> (Ex. 14).

⁴⁰ Mr. Spinelli did not even accurately complete the form. For example, he indicated that the subdivision will have “[d]ead-end roads 200 feet or less in length” despite obtaining a variance for a 1,250 foot cul-de-sac. Spinelli, Fire Hazard Severity Form (S12599 Webpage); Platting Board Summary of Action 2 (Dec. 4, 2019) (2019 Staff Report 25) (S12599 Webpage). Also, he indicated that the topography is “[m]ore than 8%, but less than 20%,” but his representative has conceded that in some areas of the subdivision the grade exceeds 20%. See Spinelli, Fire Hazard Severity Form (S12599 Webpage); The Boutet Company, Inc., Spruce Terraces Subdivision, Subdivision Design Variance Narrative, Cul de Sac Length 1 (March 13, 2018) (noting that the southeast corner “of the property exceeds 20% in grade, which makes a road connecting prohibitive without massive grading”) (2019 Staff Report 34) (S12599 Webpage).

⁴¹ 2021 IWUIC, <https://codes.iccsafe.org/content/IWUIC2021P1/arrangement-and-format-of-the-2021-iwuic> (Ex. 14); 2021 IWUIC, <https://codes.iccsafe.org/content/IWUIC2021P1/chapter-5-special-building-construction-regulations> (Ex. 15).

⁴² Spinelli, Fire Hazard Severity Form (S12599 Webpage).

⁴³ For example, where, as here, the private water system will serve one subdivision in an area with multiple subdivisions that lack a water supply and where all of the subdivisions are dependent on only one road and that road (a) is as hazardous—i.e., as long, steep, narrow, and winding—as the road above Elizabeth, (b) cuts through an area that is, as determined by the U.S. Forest Service and the Municipality, at risk of wildfire, and (c) already serves over a hundred homes and lots platted for homes.

water system and the site specific geographic conditions effect on constructability of the system, this plan depends on approval of the entire plat with no limitation on requirement for phasing.”⁴⁴ Nothing in the record supports this, and therefore, there was no basis on which the Platting Board could have determined that approving the petition was necessary to promote development.

12. Finally, the Platting Board’s approval of S12599 violated AMC 21.01.030 because it eliminated the Firewise construction and landscaping condition despite the position of the Fire Department that “Firewise homes are truly the most critical component of protecting lives and property.”⁴⁵ And it violated AMC 21.01.030 because it eliminated the automatic sprinkler system condition despite the findings of the Fire Department:

The data on sprinkler efficiency is compelling. An NFPA study found that they reduce the risk of death by 85%. . . . [S]prinklers reduce fire damage by 97% and limit the damage to one room on average Overall, 90 percent of the time the activation of a single sprinkler . . . is sufficient to control the fire. Given that home fires become deadly within 2-3 minutes due to modern building materials and furnishings and more open designs while discovery of the fire, calling 911 and arrival of fire response crews will occur rarely in this timeframe, the difference in being sprinklered is literally one of life and death.

....

Sprinkler provisions such as the one discussed above reduce house fire emissions by 99% by extinguishing the fire in its infancy. By greatly reducing the potential for a house fire to spread to wildland fuels and become a wildland fire threatening hundreds or even thousands of structures as higher summer temperatures with less rain exacerbate the risk, sprinklers achieve an exponential reduction in fire emissions.⁴⁶

Second Set of Errors – The approval of S12599 violated AMC 23.45.D107.1, AMCR 21.90.003(F)(3)(b), AMCR 21.90.003(F)(3)(c), AMCR 21.90.003(D)(3), and AMCR 21.90.003(C)(5).

In approving S12599, the Platting Board violated AMC 23.45.D107.1: “Developments of one- or two-family *dwelling units* where the number of *dwelling units* exceeds 30 shall be provided with two separate and *approved* fire apparatus access roads” unless an exception applies. There are two exceptions. Exception 1 states, “Where there are more than 30 *dwelling units* on a single public or private fire apparatus access road and all *dwelling units* are equipped throughout with an *approved automatic sprinkler system*[,] . . . access from two directions shall not be required.”

⁴⁴ Letter from Spinelli to Whitfield 1 (2021 Staff Report 16) (S12599 Webpage).

⁴⁵ MOA, Wildfire Mitigation, Anchorage Wildfire Program, [http://www.muni.org/departments/fire/wildfire/pages/anchoragewildfireprogram.aspx#:~:text=Firewise%20homes%20are%20truly%20the,modifications%20on%20an%20annual%20basis.\(Ex.11\)](http://www.muni.org/departments/fire/wildfire/pages/anchoragewildfireprogram.aspx#:~:text=Firewise%20homes%20are%20truly%20the,modifications%20on%20an%20annual%20basis.(Ex.11)).

⁴⁶ Letter from Doehl and Dean to Hoffman-O’Malley Cmty Council Members 2-3 (Ex. 7).

Exception 2 states, “The number of *dwelling units* on a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the *fire code official*.” The Platting Board likewise violated the regulations that parallel the code: AMCR 21.90.003(F)(3)(b), providing that “[r]esidential developments with 30 or more dwelling units shall be provided with separate and approved access roads, meeting the remote requirements of IFC D104.3”; and AMCR 21.90.003(F)(3)(c), providing that “[t]he number of dwelling units on a single fire apparatus road shall not be increased unless fire apparatus access roads will connect with future developments as determined by the fire code official.”

In addition, the Platting Board violated AMCR 21.90.003(D)(3), providing that “[t]he municipal traffic engineer shall review and approve or disapprove all waivers from the applicable standards in this regulation,” and violated AMCR 21.90.003(c)(5), providing that “[t]he municipal engineer shall review and approve or disapprove all design or construction waivers from the standards in this regulation.”

1. The Platting Board’s approval of S12599 violated AMC 23.45.D107.1 and AMCR 21.90.003(F)(3)(b)-(c)—“[e]mergency response” provisions—because it would add 27 homes to an area where Mr. Spinelli concedes more than twice the number of permitted one- or two-family dwelling units already exist on a single access road,⁴⁷ and because neither exception applies.⁴⁸
 - a. Neither the Platting Board nor the Fire Department relied on Exception 1.⁴⁹ Nor could they have done so as Appellants’ home does not have a sprinkler system, and there is no evidence that other homes above Elizabeth have a sprinkler system. (For this reason, the Fire Department wrongly relied on Exception 1 in 2019 in not objecting to the construction of 11 homes above Elizabeth.⁵⁰)
 - b. Exception 2 does not apply.⁵¹
 - i. The Fire Marshal determined that the Mountain Air connection will be built, but he did not state that it will be built in a reasonable period. For decades, others

⁴⁷ Letter from Spinelli to Whitfield 2, Encl. (2021 Staff Report 17-18) (S12599 Webpage).

⁴⁸ There is no evidence in the record that 162nd, Sandpiper, Elizabeth, and 156th are “*approved* fire apparatus access roads.” Also, it does not matter that the subdivision will have 27—not 30—homes. Just as AMC 23.45.D107.1 and AMCR 21.90.003(F)(3)(b) refer to “roads”—not a “road”—they refer to “developments”—not a “development.” Moreover, a contrary interpretation of these provisions would lead to absurd results: e.g., without violating the legal limit, the Platting Board could approve 100 adjoining developments with 29 homes each despite the existence of only one access road for all 2,900 homes.

⁴⁹ See S12599 Findings and Decision (S12599 Webpage); 2019 Fire Dep’t Mem. (2019 Staff Report 65); 2021 Fire Dep’t Mem. (2021 Staff Report 42) (S12599 Webpage).

⁵⁰ 2019 Fire Dept. Memo (stating “[t]he allowance for a single access roadway is permitted under the Exception 1 of IFC Section D107.1”) (2019 Staff Report 65) (S12599 Webpage).

⁵¹ There is no evidence the “fire code official”—i.e., the Anchorage Fire Chief—has delegated her authority under AMC 23.45.D107.1 to the Fire Marshal. AMC 23.45.202 (defining “fire code official” as the “fire chief or other designated authority charged with the administration and enforcement of the code, or a duly authorized representative”).

have also expected that the connection will be constructed.⁵² Absent evidence that a second approved fire apparatus access road will be built within a reasonable period, applying Exception 2 is arbitrary and capricious.

- ii. In fact, there is insufficient evidence that the Mountain Air connection will be built within the foreseeable future. Other than a 2020 ballot proposition that covers less than 1% of the estimated cost of the connection,⁵³ no evidence exists now that the Fire Marshal did not have in 2019: i.e., when he reached the opposite conclusion.⁵⁴ Indeed, he provided no reason for his reversal, stating only that the connection “has been added to the AMATS” TIP.⁵⁵ This was known in 2019 when the Platting Board agreed with the Fire and Planning Departments on the phased construction condition.⁵⁶ In fact, for good reason, the Fire Department expressly relied on Exception 2 in then supporting the condition.⁵⁷ As the Traffic Department explained, “the current TIP only shows funding for design (in 2020) and ROW acquisition (in 2022) and construction is not shown until after 2024 which is outside the bounds of the currently adopted TIP.”⁵⁸ The Right of Way Section has also noted, “there is no guarantee when the peripheral roads are to be built or at all.”⁵⁹ Regarding the only change since 2019, as the Traffic Department noted, the “proposed funding is only to complete the previous design. Until funding and construction is occurring there is no change to available secondary access for this section of the upper hillside.”⁶⁰ If anything, the Mountain Air

⁵² Letter from Tony Hoffman, PLS, The Boutet Co., to Dave Whitfield, Manager/Platting Officer, Current Planning Div.1 (May 7, 2018) (2019 Staff Report 28) (S12599 Webpage).

⁵³ Of the proposition’s \$1.11 million, only \$110,000 is for the extension. *See* MOA Assembly Mem. No. AM 22-2020, Ex. A, at 11 (Jan. 14, 2020)

<https://www.muni.org/Departments/Assembly/Clerk/Elections/SiteAssets/Pages/Forms/EditForm/AO%202020-002,%20As%20Amended%20OCR.pdf> (Ex. 16). This represents less than one percent of the total estimated \$13.5 million cost of the road. *See* “Table 2. Roadway Improvements: AMATS FFY 2019-2022 TIP Amendment 1,” at 3 (Sept. 24, 2020)

https://www.muni.org/departments/ocpd/planning/amats/amats%20tip%20docs/2019_2022/amendment_1/2019_2022_tip_amendment_1_final_09_24_20.pdf (Ex. 17); “Table 2. Roadway Improvements: AMATS FFY 2019-2022 TIP Amendment #2,” Public Review Draft 2 (Feb. 26, 2021)

https://www.muni.org/Departments/OCPD/Planning/AMATS/AMATS%20TIP%20Docs/2019_2022/Amendment_2/2019_2022_TIP_Amendment_2_Public_Review_Draft.pdf (Ex. 18). Without citing anything, Mr. Spinelli’s representative stated the road would cost \$7 million to \$9 million. *See* Letter from Hoffman to Frank Pugh, Chair, Rabbit Creek Cmty. Council 1 (March 12, 2018) (2019 Staff Report 51) (S12599 Webpage).

⁵⁴ 2019 Fire Dep’t Mem. (2019 Staff Report 65) (S12599 Webpage).

⁵⁵ 2021 Fire Dep’t Mem. (2021 Staff Report 42) (S12599 Webpage). AMATS stands for Anchorage Metropolitan Area Transportation Solutions.

⁵⁶ *See* Platting Board Summary of Action 2 (Dec. 4, 2019) (2019 Staff Report 25) (S12599 Webpage); 2019 Staff Report 19; 2019 Traffic Dep’t 1 (2019 Staff Report 62-63) (S12599 Webpage); 2019 Fire Dep’t Mem. (Staff Report 65) (S12599 Webpage).

⁵⁷ 2019 Fire Dep’t Mem. (stating, “[c]onstruction beyond Phase I is permitted to be restricted by the fire code official as stated in Exception 2 of IFC Section D107.1”) (2019 Staff Report 65) (S12599 Webpage).

⁵⁸ 2019 Traffic Dep’t Mem. 2 (2019 Staff Report 63) (S12599 Webpage).

⁵⁹ Email from Lynn McGee, Senior Plan Reviewer, to Spencer Hickman, Planning Technician, MOA Current Planning Div. (Jan. 15, 2021) (2021 Staff Report 54) (S12599 Webpage). The Right of Way Section also noted that it “sees no dedication of right of way on the northwest corner of the proposed development.” *Id.*

⁶⁰ 2021 Traffic Dep’t Mem. (2021 Staff Report 46) (S12599 Webpage).

connection seems even less likely now than it did a decade ago when Anchorage had a \$5.2 million grant to construct it.⁶¹

iii. Indeed, the Platting Board’s findings and members’ own statements show that applying Exception 2 is arbitrary and capricious because the Fire Department has not determined—and cannot determine—that the Mountain Air connection will be built in the foreseeable future. The Platting Board’s findings concede that it is only “believed” the extension will be built and that the Platting Board “understand[s] that it is not guaranteed to occur in the immediate future.”⁶² However, the findings include the contradictory statements that the extension “is going to be constructed” and the “likelihood” that it will be built is “very high.”⁶³ The findings cite no facts that support the belief that the extension will be built in the foreseeable future or ever. At the April 7, 2021, hearing, the Platting Board’s vice chair recognized the following:

- “We have promises and hopes of a secondary access but we originally approved this with only 11 hours [sic], understanding that secondary access is critical.”⁶⁴
- “I guess my concern is that this can isn’t kicked down the road and we allow 27 more houses and, again, nothing happens with secondary access. How does the public’s concerns and our concerns get alleviated if we allow all 27 development [sic] without any—with this just being—it still is basically proposed. They haven’t even acquired the land.”⁶⁵
- “We’re just maybe not getting that secondary access as quickly as we anticipated.”⁶⁶
- “It’s going to go off Mountain Air but we also understand that that is not guaranteed to happen in the immediate future.”⁶⁷

Based only on a guess that the likelihood that the Mountain Air connection will at some indeterminate time be built, the Platting Board’s chair said, “we are entitled to rely on the existence or the expectation that that road will be put in as giving additional access.”⁶⁸ Also, Mr. Spinelli’s representative, Brandon Marcott, recognized that the Mountain Air connection is nowhere close to being a done deal. For example, he stated the following: “Mountain Air Drive is in design which is the best that we can do.”⁶⁹

⁶¹ Letter from Hoffman to Whitefield 1 (May 7, 2018) (2019 Staff Report 28) (S12599 Webpage).

⁶² S12599 Findings and Decision 2 (S12599 Webpage).

⁶³ *Id.*

⁶⁴ Transcript of Platting Bd. Hearing 40 (Ex. 2).

⁶⁵ *Id.* at 41.

⁶⁶ *Id.* at 42.

⁶⁷ *Id.* at 50.

⁶⁸ *Id.* at 52.

⁶⁹ *Id.* at 41.

2. Also, in prohibiting additional dwelling units on a single fire apparatus access road “unless fire apparatus access roads will connect with future developments as determined by the fire code official,” AMCR 21.90.003(F)[“Design”](3)(b)-(c) establishes a traffic-related and design standard. Accordingly, because approving S12599 violated AMCR 21.90.003(F)(3)(b)-(c), the Platting Board also violated AMCR 21.90.003(D)(3) and AMCR 21.90.003(C)(5): the traffic and municipal engineers have not approved a waiver of AMCR 21.90.003(F)(3)(b)-(c).

Third Set of Errors – The approval of S12599 violated AMC 21.07.060(D)(3)(d), AMCR 21.90.003(D)(3), and AMCR 21.90.003(C)(5).

In approving S12599, the Platting Board violated AMC 21.07.060(D)(3)(d), providing that “[u]nless the decision-making body determines otherwise, . . . any development of more than 100 residential units or additions to existing developments such that the total number of units exceeds 100 shall be required to provide vehicular access to at least four public streets to the extent reasonably feasible, due to topography, natural features, or the configuration of existing adjacent developments.”

1. As Appellants noted in their comments, one—concededly “hazardous”—access road now serves 88 constructed homes or homes under construction and 29 lots platted for homes, meaning that, with the Spruce Terraces Subdivision’s 27 homes, this road alone will serve 144 homes and potential homes.⁷⁰
2. Because Luna Street, which is above Elizabeth, dead-ends in both directions (A locked gate crosses it to the south.), the Traffic Department and Mr. Spinelli fail to include 10 homes in their counts. In addition, in 2019, the Traffic Department misstated that Spinell Homes’s “27 additional lots would increase potential number of lots served [by a single access road] to 105.”⁷¹ The department’s map includes 99 numbered lots above Luna, and the map counts lot 4 as one lot, but lot 4 includes 2 homes; counts lot 14 as one lot, but lot 14 includes 4 homes; counts lot 60 as one lot, but lot 60 includes 2 homes; and does not count the home at the southeast corner of Sandpiper and Luna, the lot at the northeast corner of Sandpiper and Luna, and the lot between lots 23 and 28.⁷² Mr. Spinelli misstated that there are 67 homes and 30 vacant lots above Luna.⁷³ Mr. Spinelli’s map identifies 71 lots with homes—i.e., as two lots are numbered 26—and it does not count 3 homes and a vacant lot at the north end of Windsong Drive, a second house on lot 9, and a second house on lot 57.⁷⁴
3. Thus, the Platting Board violated AMC 21.07.060(D)(3)(d): even without the proposed subdivision, more than 100 homes and lots platted for homes will exist above even Luna

⁷⁰ Letter from Birnbaum to Platting Board Members n.9 (S12599 Webpage).

⁷¹ 2019 Traffic Dep’t Mem. 1 (2019 Staff Report 62) (S12599 Webpage).

⁷² See 2019 Traffic Dept. Mem., Attach. (2019 Staff Report 64) (S12599 Webpage).

⁷³ Letter from Spinelli to Whitfield 2 (2021 Staff Report 17) (S12599 Webpage).

⁷⁴ Letter from Spinelli to Whitfield, Encl. (2021 Staff Report 18) (S12599 Webpage).

Street; with the proposed subdivision, significantly more than 100 homes and lots platted for homes will exist on a single access road; and a secondary access road “is feasible.”⁷⁵

4. Moreover, as a matter of law, the Platting Board unlawfully “determine[d] otherwise.”
 - a. Because the Platting Board based eliminating the phased construction and other conditions on providing a private water system with fire hydrants, determining otherwise violated AMCR 21.90.003(F)(3)(a): as explained below, the traffic engineer did not approve the cul-de-sac on which the hydrants would be located.⁷⁶ And determining otherwise violated AMCR 21.90.003(D)(3) and AMCR 21.90.003(C)(5) because the municipal engineer and the traffic engineer did not approve a waiver of AMCR 21.90.003(F)(3)(a).
 - b. Determining otherwise violated AMC 21.07.060(D)(3)(d) because the Platting Board based its decision on incorrect counts of the number of houses and lots platted for houses above Elizabeth: the Traffic Department incorrectly counted 78 lots in the area;⁷⁷ Mr. Spinelli incorrectly counted 97 lots.⁷⁸ In fact, as noted above, 117 houses and lots platted for houses already exist above Elizabeth.⁷⁹
 - c. Determining otherwise conflicted with the “transportation and connectivity” purpose of AMC 21.07.060. AMC 21.07.060 applies “to all development in the municipality.”⁸⁰ Given that the area above Elizabeth has only one access road, in approving S12599, the Platting Board failed “to support the creation of a safe and highly connected transportation system[. . .] [to] reduce emergency response times; [and] . . . [to] mitigate the traffic impacts of new development.”⁸¹ A private water system does not bear on the purposes of AMC 21.07.060(D).
 - d. Determining otherwise authorizes a developer that proposes to construct a private water system for its subdivision to add as many houses as it wants—e.g., even a thousand houses—to a single access road without violating AMC 21.07.060(D)(3)(d). Thus, in approving S12599, the Platting Board has created an unauthorized exception to the Anchorage Municipal Code and the Anchorage Municipal Code Regulations that violates and undermines the purposes of AMC 21.07.060.
5. In addition, the evidence does not support the Platting Board’s determination.
 - a. Adding 27 houses—and likely at least 50 vehicles—to the area above Elizabeth will bring the exceedance of the legal limit in AMC 21.07.060(D)(3)(d) to 44%,

⁷⁵ 2019 Traffic Dep’t Mem. 1 (2019 Staff Report 62) (S12599 Webpage).

⁷⁶ See *infra* p. 19.

⁷⁷ 2019 Traffic Dep’t Mem. 1 (2019 Staff Report 62) (S12599 Webpage).

⁷⁸ Letter from Spinelli to Whitfield 1 (2021 Staff Report 16) (S12599 Webpage).

⁷⁹ Letter from Birnbaum and Dukoff to Platting Board Members 2, n.9 (noting that, with the proposed subdivision, the total number of houses and lots platted for houses above Elizabeth is 144, meaning that there are already 117 houses and lots platted for houses above Elizabeth and even 107 above Luna) (S12599 Webpage).

⁸⁰ AMC 21.07.060(B).

⁸¹ AMC 21.07.060(A).

increasing the likelihood of a wildfire and risk of loss of life in the event of one.⁸² A private water system for those 27 houses might be useful—if the Fire Department can reach a hydrant in time—to prevent a fire in one of them or one of the few houses bordering the subdivision from becoming a wildfire. But a private water system would do nothing to facilitate a lifesaving evacuation; nor is there evidence that it would do anything to prevent a wildfire above Elizabeth from making an evacuation necessary to save lives.⁸³ There simply is no evidence that supports Mr. Spinell’s assertion—which the Platting Board adopted—that the private water system would be “a valuable resource to assist in firefighting the wildfires that affect the area.”⁸⁴ Rather, as the Traffic Department stated in 2019 in opposing the subdivision and stated in 2020 in opposing the removal of the phased construction condition because the total number of lots will exceed 100, “secondary access is critical from both a life and traffic safety viewpoints”: the existence of a private water system does not change this.⁸⁵ In other words, a private water system would not substitute for a secondary access road in fulfilling the purposes of AMC 21.07.060. As the Traffic Department explained, a private water system will “address building construction and emergency vehicle access to water but does not address concerns that there is no egress from this and three adjacent subdivision[s] if egress via Sandpiper Drive were impacted by a major Hillside event.”⁸⁶ In fact, while the Fire Department stated that with, “an NFPA 1142 compliant private firefighting water supply[,] . . . Firewise construction and landscaping techniques would no longer be required,” it did not refer to NFPA 1142 as a basis for removing the phased construction condition.⁸⁷

- b. Indeed, while the Platting Board required a private water system in accordance with NFPA 1142, this standard assists in the establishment of “the minimum water supply necessary for structural fire-fighting purposes”—not wildfires.⁸⁸ In fact, NFPA 1142 states that while it “does not exclude the use of this water for other fire-fighting or emergency activities,” it “does not apply to the calculation of an adequate amount of water for large, special fire protection problems.”⁸⁹ Moreover, while adopting NFPA 1142, the Platting Board ignored NFPA 1141. NFPA 1141 “covers the requirements for the fire protection infrastructure in wildland, rural, and suburban areas where there is an intended change of land use or intended land development”; its purpose “is to develop fire protection and emergency services infrastructure to reduce the impact of

⁸² See MOA, Anchorage Metropolitan Area Transportation Solutions and Alaska Dep’t of Transportation and Public Facilities, “Anchorage Bowl 2025 Long-range Transportation Plan,” Table 4-1, at 23 (noting that in 2002 the average Anchorage household had 2 vehicles) (Dec. 2005; revised April 2007),

https://www.muni.org/Departments/OCPD/Planning/AMATS/2025LRTP/2025_2027Chapter4.pdf (Ex. 19).

⁸³ The Fire Department has implicitly emphasized the need for a secondary access road for the area above Elizabeth: it noted that “[w]ith flashover conditions occurring in under 5 minutes, by the time suppression resources arrive much of the home can already be involved. On a dry or windy day this could easily transition to multiple structure involvement or a wildland fire.” Letter from Doehl and Dean to Hoffman-O’Malley Cmty. Members 2 (Ex. 7).

⁸⁴ Letter from Hoffman to Holland 2 (2021 Staff Report 22) (S12599 Webpage).

⁸⁵ 2019 Traffic Dep’t Mem. 1 (Staff Report 62) (S12599 Webpage); 2021 Traffic Dep’t Mem. (Staff Report 46) (S12599 Webpage).

⁸⁶ 2021 Traffic Dep’t Mem. (2021 Staff Report 46) (S12599 Webpage).

⁸⁷ 2021 Fire Dep’t Mem. (2021 Staff Report 42) (S12599 Webpage).

⁸⁸ NFPA 1142, Section 1.2 (Ex. 3).

⁸⁹ NFPA 1142, Sections 1.3.2, 1.3.3 (Ex. 3).

land use changes in wildlands, rural, and suburban areas.”⁹⁰ Section 5.1.4.1 of NFPA 1141—like AMC 21.07.060(D)(3)(d)—mandates that residential areas with over 100 households have at least 2 access routes. Likewise, while the Platting Board relied on the IWUIC’s Fire Hazard Severity Form—which the Municipality has not adopted and which states, “The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance”—the Platting Board ignored the IWUIC’s Wildland-Urban Interface Area Requirements.⁹¹ Section 402.1 states, “Subdivisions shall comply with Sections 402.1.1 and 402.1.2”: Section 402.1.1 states that new subdivisions “shall be provided with fire apparatus access roads”; and Section 402.1.2 states that new subdivisions “shall be provided with water supply.”⁹²

- c. In determining otherwise, the Platting Board ignored that if a wildfire from the south or west blocks the proposed subdivision’s only route of escape and the Fire Department’s only route of reaching the subdivision, the Platting Board’s determination could mean the loss of 27 families.
- d. Even if the Platting Board could have disregarded AMC 21.07.060(D)(3)(d) if the development would result in an exceedance of only a few houses and the single access road was short, straight, wide, flat, and in excellent condition, none of this is the case. Again, there are already 17% more houses and lots platted for houses, and there would be, with the proposed development, 44% more. And as Mr. Spinelli concedes, “The condition of the road and slopes in the hairpin corners will require areawide redesign. The petitioner acknowledges that the condition of Sandpiper is hazardous for pedestrians and motorists alike.”⁹³ The Platting Board did not even consider the length—1.5 miles—switchbacks, narrowness, steepness, and condition of the single access road and the other roads above Elizabeth.⁹⁴
- e. In ignoring AMC 21.07.060(D)(3)(d), the Platting Board apparently relied on a 2018 “preliminary traffic analysis” prepared for Spinell Homes that is based on six-year-old data, that the Planning Department did not refer to in 2019, and that concerns the impact on commuters—not residents above Elizabeth evacuating because of an emergency, such as a wildfire—of the proposed development on an intersection that is over half a mile from the intersection of Golden View and E. 162nd Avenue.⁹⁵ In other words, the Planning Department relied on a study that says nothing about whether adding 27 families to the already overburdened, “hazardous” Sandpiper Drive would worsen a life-threatening situation in an emergency.⁹⁶ With a single access road, in an area-wide emergency, hundreds of children and adults could be

⁹⁰ NFPA 1141, Sections 1.1, 1.2 (Ex. 4).

⁹¹ Spinelli, Fire Hazard Severity Form (S12599 Webpage).

⁹² 2021 IWUIC, Sections 402.1, 402.1.1, and 402.1.2, <https://codes.iccsafe.org/content/IWUIC2021P1/chapter-4-wildland-urban-interface-area-requirements> (Ex. 20).

⁹³ Letter from Hoffman to Holland 1 (2021 Staff Report 21) (S12599 Webpage).

⁹⁴ See Google Earth, <https://earth.google.com/web/@61.07280111,-149.75454644,374.86910173a,1833.66202676d,35y,-0h,0t,0r>.

⁹⁵ See Mem. from Andrew Ooms, PE, and Wende Willber, AICP, PTP, Kettelson & Assoc. to Spinelli (Apr. 6, 2018) (2021 Staff Report 30-40) (S12599 Webpage); see also Transcript of Platting Bd. Hearing 5 (Ex. 2).

⁹⁶ Letter from Hoffman to Holland 1 (2021 Staff Report 21) (S12599 Webpage).

stuck in their cars because of an accident or a fallen tree or because of a traffic jam at the roads that interest Sandpiper and 162nd or at the intersection of 162nd and Golden View, where, if they arrive, they may need to wait again to enter bumper-to-bumper traffic stretching from the intersection of Rabbit Creek and Golden View.

Fourth Set of Errors – The approval of S12599 violated AMCR 21.90.003(F)(3)(a).

In approving S12599, the Platting Board violated AMCR 21.90.003(F)(3)(a), providing that “[s]treets with hydrants on them shall have continuity and not be dead ends, unless located on cul-de-sacs approved by the traffic engineer and the fire department,” as well as AMCR 21.90.003(D)(3) and AMCR 21.90.003(C)(5).

The traffic engineer did not approve the Spruce Terrace Subdivision’s cul-de-sac. In 2019, the Traffic Department stated that it “objects to granting” a variance to AMC 21.08.030(F)(6)(a), which limits the length of cul-de-sacs in R-10 zoning districts to 900 feet.⁹⁷ It explained that the variance “is for 1250 feet that is internal to the subdivision,” but “[i]f you were to evaluate the entire length of Sandpiper Drive to [the] intersection of Sandpiper Drive with Wind Song Drive the length of the Cul-de-Sac would be approximately 3600 feet in total length.”⁹⁸ Also, the Traffic Department could not have approved the cul-de-sac because, in doing so, it would have been supporting a development that it repeatedly objected to on “life and traffic safety” grounds.⁹⁹ In 2019, in objecting to the proposed preliminary plat, the Traffic Department stated its “positions on this plat remains the same as initially provided—that any future development in this area needs to have assurance that secondary access will be constructed.”¹⁰⁰ In 2020, the Traffic Department stated it “continues to have an objection about the size of the proposed development.”¹⁰¹

Nor did the municipal engineer or the traffic engineer approve a waiver to AMCR 21.90.003(F)(3)(a).

Fifth Set of Errors – The approval of S12599 violated AMC 21.08.030(F)(6)(a) and AMC 21.03.240(G)(3)(b).

In approving S12599, the Platting Board violated AMC 21.08.030(F)(6)(a), providing that “[w]here topography and traffic circulation permit, the length of a cul-de-sac right-of-way shall not exceed 900 feet in the R-6, R-8, R-9, R-10, and TA zoning districts, and 600 feet in all other zoning districts. The platting authority may approve longer cul-de-sacs when necessary to accommodate natural features.” Also, the Platting Board violated AMC 21.03.240(G)(3)(b), providing that granting “the specific variance will not be detrimental to the public welfare or injurious to other property in the area in which such property is situated.”

⁹⁷ 2019 Traffic Dep’t Mem. 2 (2019 Staff Report 63) (S12599 Webpage).

⁹⁸ 2019 Traffic Dep’t Mem. 2 (2019 Staff Report 63) (S12599 Webpage).

⁹⁹ 2019 Traffic Dep’t Mem. 1 (2019 Staff Report 62-63) (S12599 Webpage).

¹⁰⁰ 2019 Traffic Dep’t Mem. 1 (2019 Staff Report 62) (S12599 Webpage).

¹⁰¹ 2021 Traffic Dep’t Mem. (2021 Staff Report 46) (S12599 Webpage).

1. In 2019, the petitioners sought a variance for a cul-de-sac of 1,250 feet.¹⁰²
2. As noted above, the Traffic Department objected to granting the variance, noting that the actual length of the cul-de-sac would be approximately 3,600 feet.¹⁰³
3. In approving S12420, the Platting Board relied on the Planning Department’s support for a variance to AMC 21.08.030(F)(6)(a). The Planning Department’s support was based on the phased construction condition.¹⁰⁴ “Staff is recommending approval of the plat with Phase I only being developed until secondary access is approved for construction. Once the secondary access connection is achieved, the remaining phases of development will take place that constructs the cul-de-sac.”¹⁰⁵ The Planning Department found that because the cul-de-sac “will not be constructed until secondary access is funded and approved for construction . . . the granting of the variance will provide a road to be built for the subdivision that both adequately serves the neighborhood and accommodates emergency response vehicles.”¹⁰⁶
4. In approving S12420, the Platting Board implicitly relied on the phased construction condition as a basis for granting the variance to the length of the cul-de-sac. But in approving S12599, the Platting Board ignored the effect of removing this condition on its approval of the variance.
5. In fact, as explained above, while adding 27 homes to the area above Elizabeth will increase the risk of a wildfire and the loss of life in the event one requires an evacuation, a private water system for the 27 additional homes will not lessen the need for an evacuation or—unlike a secondary access road—help save lives in the event of one. Accordingly, in removing the phased construction condition, the Platting Board violated AMC 21.08.030(F)(6)(a) because the length of the proposed subdivision’s cul-de-sac will exceed 900 feet and, based on the Planning Department’s reasoning (which the Platting Board inferably adopted), violated AMC 21.03.240(G)(3)(b) because without the secondary access road, Mr. Spinelli cannot show that granting the variance would not be detrimental to the welfare of the hundreds of people living above Elizabeth.

Sixth Set of Errors – The approval of S12599 violated AMCR 21.11.306(C).

In approving S12599, the Platting Board violated AMCR 21.11.306(C), providing that “[t]he board shall also consider whether the personal interest or involvement of the board member in the matter to be decided would prevent that member from fairly evaluating the evidence or that, based on all the surrounding circumstances, participation by the board member would create the appearance of impropriety in the proceedings.”

¹⁰² The Boutet Company, Inc., Spruce Terraces Subdivision, Subdivision Design Variance Narrative, Cul de Sac Length 1 (March 13, 2018) (2019 Staff Report 34) (S12599 Webpage).

¹⁰³ 2019 Traffic Dep’t Mem. 2 (2019 Staff Report 63) (S12599 Webpage).

¹⁰⁴ 2019 Staff Report 14-15 (S12599 Webpage).

¹⁰⁵ *Id.* at 15.

¹⁰⁶ *Id.* at 14.

Homes and why, or why she could now be impartial.¹¹³ This time, all five board members who voted on a motion to direct her to participate voted in favor of the motion.¹¹⁴

3. Platting Board vice-chair Cross is a licensee with Real Estate Brokers of Alaska.¹¹⁵ He is the president of the Real Estate Exchange Network, which describes itself as “Alaska’s largest and oldest real estate investment network.”¹¹⁶ Mr. Cross’s spouse, Sveta Cross, is on the “leadership team” of the Real Estate Exchange Network and is a “VP of Mortgage Lending” at Guaranteed Rate, a residential mortgage company.¹¹⁷
4. Platting Board member Valerie Ritz is a real estate agent.¹¹⁸ She and her husband own many real estate businesses in Alaska.¹¹⁹
5. Platting Board chair Clayton Walker, Jr. is a real estate attorney with Alaska Law Offices, Inc. According to his firm’s website, he has “represented parties in real property law matters for more than 20 years.”¹²⁰
6. Platting Board member D. Mark Seward is a land surveyor who owns Seward & Associates Land Surveying.¹²¹
7. Platting Board member Don Porter is the Utilities Group Manager at R&M Consultants, Inc. According to R&M Consultants website, he “is responsible for utility systems design and coordination, including underground water/sewer plan and profiles, trench and piping details, arctic pipe protection and rehabilitation design for existing pipe systems. His experience includes serving as project manager and/or project engineer for a variety of utility, site development, airport and road improvement projects for public and private clients throughout Alaska.”¹²²

¹¹³ MOA, April 7, 2021, Live Streaming and Archived Meetings/Podcasts at <http://www.muni.org/watchnow>, 4:40 minutes – 10:00 minutes, <https://meetings.muni.org/AgendaOnline/Meetings/ViewMeeting?id=4062&doctype=1> (Ex. 23).

¹¹⁴ MOA, Platting Board, Minutes of April 7, 2021, Meeting 2 (Ex. 24).

¹¹⁵ Real Estate Brokers of Alaska, <https://www.realestatebrokersofalaska.com/licensees> (Ex. 25).

¹¹⁶ Real Estate Exchange Network, <http://alaskarex.com/> (Ex.25).

¹¹⁷ *Id.*; Guaranteed Rate, Sveta Cross, <https://people.rate.com/sveta-cross-1766438> (Ex. 25).

¹¹⁸ Facebook, <https://www.facebook.com/Valerie-Ritz-Real-Estate-1398872930437882/> (Ex. 26).

¹¹⁹ Div. of Corps., Bus. and Prof’l Licensing, Alaska Dep’t of Comm., Cmty., and Econ. Dev., Ritz Consulting One Limited Partnership, Entity Details; Ritz Consulting Corp., 2021 Biennial Report; Ritz Consulting 1741 E 53rd Biennial Report, LLC; Ritz Consulting AZ, LLC, 2021 Biennial Report; Ritz Consulting COLO, LLC, 2021 Biennial Report; Ritz Consulting Forest Park, LLC, 2021 Biennial Report; Ritz Consulting Mallard, LLC, 2021 Biennial Report; Ritz Consulting MN, LLC, 2021 Biennial Report; Ritz Consulting Tall Spruce, LLC, 2021 Biennial Report; Paul J. Ritz, License Details, <https://www.commerce.alaska.gov/cbp/main/> (Ex. 26).

¹²⁰ Alaska Law Offices, Inc., <https://aloinc.com/business-law-firm/anchorage-business-lawyer/anchorage-real-estate-attorney/> (Ex. 27).

¹²¹ Div. of Corps., Bus. and Prof’l Licensing, Alaska Dep’t of Comm., Cmty., and Econ. Dev. <https://www.commerce.alaska.gov/cbp/main/Search/ProfessionalDetail/AELL6918> (Ex. 28); Better Business Bureau, <https://www.bbb.org/us/ak/eagle-river/profile/land-surveyor/seward-associates-land-surveying-1296-22638410> (Ex. 28).

¹²² R&M Consultants, Inc., <https://www.rmconsult.com/service-categories/utilities/>; Don Porter, LinkedIn, <https://www.linkedin.com/in/don-porter-8b9a0581/>; R&M Consultants, Inc., <https://www.rmconsult.com/service-categories/utilities> (Ex. 29).

8. The Platting Board members did not indicate that they and their immediate family members have not done business with Mr. Spinelli or any entity that he is financially associated with, including Spinell Homes or Mission Hills.
9. The Platting Board members did not represent that they and their immediate family members would not do business with Mr. Spinelli or any entity that he is financially associated with.
10. The Platting Board members did not represent that disapproving S12599 would not adversely affect them financially or professionally or adversely affect the companies they and their spouses work for.
11. Approving S12599 was in the business interests of all of the Platting Board members: disapproving it would have adversely affected their and/or their spouses' chances of doing business with Mr. Spinelli, the entities he is financially associated with, and/or others involved in the real estate industry. Again, at a minimum, the Platting Board members' financial and professional ties to the real estate industry and, thereby, Mr. Spinelli, Spinell Homes, and Mission Hills created the appearance of impropriety in their decision-making on S12599.

Seventh Set of Errors – The approval of S12599 violated AMC 21.03.020(F)(1) and AMC 21.03.020(F)(3) and apparently violated AMC 21.03.200(C)(2), AMC 21.03.020(B)(2)(a), AMC 21.03.020(E)(2), AMC 21.03.020(E)(3), AMC 21.03.020(F)(2), and AMCR 21.20.003.

The approval of S12599 violated AMC 21.03.020(F)(1), providing that “[t]he director shall only initiate the review and processing of an application if such application is complete. . . . No further processing of an incomplete application shall occur until the deficiencies are corrected.” It also violated AMC 21.03.020(F)(3), providing that “[a]s a consequence for any false or misleading information submitted or supplied by an applicant on an application, that application shall be deemed incomplete.”

Also, nothing on the Municipality’s S12599 Planning Application Status webpage shows that S12599 complied with the following requirements:¹²³

- AMC 21.03.200(C)(2), providing that before filing an application for “a modification of an already-approved subdivision, the applicant shall request a pre-application conference”;
- AMC 21.03.020(B)(2)(a), providing that “[n]o application for these types of approvals shall be accepted until after the pre-application conference is completed and the applicant receives written notification of the conclusions”;
- AMC 21.03.020(E)(2), providing that “[a]pplications required under this chapter shall be submitted in a form and in such number as required in the user’s guide”;

¹²³ S12599 Webpage.

- AMC 21.03.020(E)(3), providing that “[a]pplications shall be accompanied by the fee amount established by the assembly and listed in the user’s guide”;
 - AMC 21.03.020(F)(2), providing that an “application shall be considered complete if it is submitted in the required form, includes all mandatory information, including all supporting materials specified in the Title 21 User’s Guide, and is accompanied by the applicable fee. A pre-application conference shall have been held, if required, pursuant to subsection 21.03.020(B), pre-application conferences”; and
 - AMCR 21.20.003, imposing fees for applications to amend preliminary plats.¹²⁴
1. Under AMC 21.03.020(D)(1), “[w]hen an authorized agent files an application under this title on behalf of a property owner, the agent shall provide the municipality with written documentation that the owner of the property has authorized the filing of the application.” Accordingly, only a property owner may submit an application for an amendment to a preliminary plat.
 2. Mr. Spinelli is the S12599 applicant, but he does not own the Property. Spinell Homes purchased the Property on September 16, 2020.¹²⁵ On October 28, 2020, Mission Hills, LLC, which Spinell Homes owns, purchased parcel 020-043-02-000.¹²⁶ In a letter dated the next day, Mr. Spinelli said, “let this letter server [sic] as formal request to initiate the process for a revision to some of the special conditions placed on the plat in Case 12420.”¹²⁷ The letter is on Spinell Homes stationary, but only Mr. Spinelli’s name—i.e., not his title—is on the letter. Although Spinell Homes’s website identifies Mr. Spinelli as Vice President of Design and Development,¹²⁸ according to Spinell Homes’s 2015, 2017, 2019, and 2021 Biennial Reports, he is not an officer of Spinell Homes: he is one of its five directors and owns 15% of its shares.¹²⁹ On November 10, 2020, Mr. Spinelli signed an authorization certificate for the application to amend the preliminary plat; again he did not provide a title.¹³⁰ On December 14, 2020, Tony Hoffman—whom Mr. Spinelli authorized to represent him on the S12599 application—referred to “[t]he petitioner (Andre Spinelli) and his representatives from The Boutet Company and Triad Engineering.”¹³¹ As Spinell Homes owned only half of the Property on December 21, 2020, Mr. Spinelli, through his representative, misrepresented that “since the case was originally heard in 2019, Spinell Homes has taken ownership.”¹³² The S12599 application

¹²⁴ To the extent the application could not be complete because there is no Title 21 User’s Guide, that does not excuse Mr. Spinelli from the need to comply with the requirement. The User’s Guide has been required since January 1, 2014. As the largest homebuilder in Alaska, Mr. Spinelli could have—in the past seven years—petitioned the Director of the Community Development Department to issue the guide and, if necessary, sought a court order directing the director to issue it. *See* Spinell Homes, <https://spinellhomes.com/> (Ex. 6).

¹²⁵ MOA, Public Inquiry Search Selection, <https://www.muni.org/pw/public.html> (Ex. 1).

¹²⁶ Parcel 020-043-02-000 was not included in the Municipality’s records system until six months later, i.e., on April 24, 2021: i.e., two weeks after the public hearing on S12599. *See* MOA, Public Inquiry Search Selection, <https://www.muni.org/pw/public.html> (Ex. 1).

¹²⁷ Letter from Andre Spinelli, Spinell, to Whitfield (Oct. 29, 2020) (2021 Staff Report 16) (S12599 Webpage).

¹²⁸ *See* Spinell Homes, <https://spinellhomes.com/about-spinell/meet-the-team/> (Ex. 30).

¹²⁹ *See* Div. of Corps., Bus. and Prof’l Licensing, Alaska Dep’t of Comm., Cmty., and Econ. Dev. <https://www.commerce.alaska.gov/cbp/main/search/entities> (Ex. 31).

¹³⁰ Authorization Certificate (Nov. 10, 2020) (2021 Staff Report 20) (S12599 Webpage).

¹³¹ Letter from Hoffman to Holland 1 (2021 Staff Report 21) (S12599 Webpage).

¹³² Letter from Hoffman to Whitfield (2021 Staff Report 23) (S12599 Webpage).

contains no reference to Mission Hills’s ownership of half of the Property, let alone an authorization certificate for anyone to represent Mission Hills regarding the application.

3. Accordingly, as Mr. Spinelli does not own the Property and even Spinell Homes owns only half of it, the application was incomplete and misleading. Therefore, the Platting Board wrongly approved it.
4. In addition, Mr. Spinelli’s application appears incomplete because the record does not include evidence that, as required by AMC 21.03.200(C)(2), Mr. Spinelli requested a pre-application conference.¹³³ The record does not contain the notification—i.e., of the conclusions of a pre-application conference—that AMC 21.03.020(B)(2)(a) would have required Mr. Spinelli receive had a pre-application conference occurred. Nor is there evidence of the following: (1) that Mr. Spinelli submitted the application in the required form and included all the mandatory information and supporting materials required in the Title 21 User’s Guide as required under AMC 21.03.020(E)(2) and (F)(2); and (2) that he paid the fees required under AMC 21.03.020(E)(3) and AMCR 21.20.003.

Eighth Set of Errors – The approval of S12599 violated AMCR 21.11.302(C).

In approving S12599, the Platting Board violated AMCR 21.11.302(C), providing that “[a]ny interested party may direct questions to the staff or any person testifying by submitting the question to the chairman.”

At the April 7, 2021, hearing, the Platting Board did not give interested parties an opportunity to ask questions of the Planning Department’s staff or of anyone who testified. Moreover, the March 3, 2021, Notice of Public Hearing and the Platting Board’s webpage make no allowance for interested parties to ask questions. The former states only that individuals will have 3 minutes and representatives of groups will have 5 minutes to testify.¹³⁴ While noting that Platting Board members may ask questions, the latter states, “The Board strictly limits the amount of time for anyone’s testimony to one time per agenda item and to time limits.”¹³⁵

1. Had the Platting Board complied with AMCR 21.11.302(C), Appellants would have asked the Planning Department and Mr. Spinelli’s representatives who testified questions such as the following, and for each answer, Appellants would have asked for the specific evidence and records that support the answer:
 - a. What evidence—i.e., other than the passage of the ballot proposition to fund design work for a secondary access road—that did not exist when the Platting Board

¹³³ Cf. AMC 21.03.020(B)(2)(b) (“Pre-application conferences are not required for minor amendments to already-approved conditional uses or site plans. All other changes to already-approved applications require a pre-application conference.”).

¹³⁴ MOA Platting Board, Notice of Public Hearing: Wed., March 3, 2021 (Ex. 32).

¹³⁵ MOA Platting Board, Public Participation, webpage,

http://www.muni.org/Departments/OCPD/Planning/PublicParticipation/Pages/PublicParticipation_PlattingBoard.aspx (Ex. 33); *see also* MOA, April 7, 2021, Live Streaming and Archived Meetings/Podcasts

at <http://www.muni.org/watchnow/2/8>,

<https://meetings.muni.org/AgendaOnline/Meetings/ViewMeeting?id=4062&doctype=1> (Ex. 23).

- imposed the phased construction condition supports the determination of the Fire Department that a secondary access road will be built?
- b. What evidence shows that the proposed private water system for 27 additional homes eliminates the need for a secondary access road to protect the lives of the residents above Elizabeth in the event of a wildfire or other emergency?
 - c. What evidence supports finding that a private water system for the proposed development's 27 homes would protect the lives of persons living above Elizabeth enough to offset the risk to their lives from eliminating the phased construction condition?
 - d. Were the benefits of the proposed private water system in preventing a wildfire weighed against the increased threat to the lives of the persons living above Elizabeth as a result of adding 27 homes to the area? If not, why is such an analysis not critical to deciding whether to eliminate the phased construction condition?
 - e. What evidence supports finding that the proposed private water system could prevent an area-wide wildfire from requiring an evacuation, lessen the need for an evacuation in the event of a wildfire, or help save lives in the event of a wildfire?
 - f. What evidence supports finding that the proposed private water system will prevent more homes from being destroyed by fire or from starting wildfires than the requirements that new homes have sprinkler systems or use Firewise construction and landscaping techniques or both?
 - g. What evidence exists that in the absence of a secondary access road the Fire Department could quickly enough reach the proposed subdivision in the event of a fire within or outside the subdivision to prevent a wildfire from starting or spreading, especially in dry, windy conditions?
 - h. What evidence exists that adding 27 homes to the area above Elizabeth will not, in the absence of a secondary access road, depress the market value of the homes above Elizabeth?
 - i. How many houses above Elizabeth have approved automatic sprinkler systems under AMC 23.45.D107.1, Exception 1?
 - j. How does the 2018 Kittelson & Associates preliminary traffic analysis show that a secondary access road is not needed in the event of a fire above Elizabeth?
 - k. What evidence supports the Planning Department's assertion that "[i]n installation of the water system requires the developer to fully build out the streets and water utilities"?
 - l. How many applications to the Platting Board has Mr. Spinelli, Spinell Homes, or any other entity that Mr. Spinelli is associated with made in the past 20 years that an Anchorage resident objected to? Of those applications, how many did the Platting Board deny?
 - m. What communications did Mr. Spinelli, Spinell Homes, or any other entity that Mr. Spinelli is associated with, including those companies representing him in connection with his application, have with the Planning Department or any other agency of the Municipality regarding his application?
 - n. Are all of the recorded communications, including emails and notes of meetings, between (i) the Planning Department and/or any other municipal agency and (ii) Mr. Spinelli, Spinell Homes, and/or their representatives on S12599 and S12420 among the online records available in S12599 and S12420? If not, why? As soon as possible, please provide all of those records to the public. If you will not, why?

- o. Do the Planning Department and Mr. Spinelli agree that prospective purchasers of the proposed 27 additional homes should be told about AMC 23.45.D107.1 and AMC 21.07.060(D)(3)(d)? If not, why?
 - p. Do the Planning Department and Mr. Spinelli agree that prospective purchasers of the proposed 27 additional homes should be told about S12420 and S12599? If not, why?
 - q. What recourse against the Municipality, Mr. Spinelli, and Spinell Homes will residents above Elizabeth have if because of the 27 additional homes and the single access road there is injury or loss of life during an evacuation?
2. Had the Platting Board complied with AMCR 21.11.302(C), Appellants would have asked the Planning Department additional questions such as the following, and for each answer, Appellants would have asked for the specific evidence and records that support the answer:
 - a. In connection with S12599 or S12420, did anyone from the Planning Department or another municipal agency or a contractor for a municipal agency visit the area? If so, what were their findings about the sole access road?
 - b. To what extent did the Planning Department consider that adding 27 homes to the area above Elizabeth increases the likelihood of a loss of life during an evacuation as a result of, e.g., an accident or fallen tree blocking traffic on the single, long, steep, narrow, winding road connecting to Golden View or because of the inability to enter the line of traffic on Golden View?
 - c. Based on AMC 23.45.D107.2, why does the area served by a single access road not include all the homes and lots platted for homes above Golden View Drive that are accessible only via 156th or 162nd?
 - d. What effort did the Planning Department make to verify Mr. Spinell's representations: e.g., that providing a private water system depends on the elimination of the phased construction and other conditions?
 - e. What evidence supports Mr. Spinelli's representations?
 - f. How did the Planning Department determine the number of houses above Elizabeth?
 - g. Why did the Planning Department apply NFPA 1142 but ignore NFPA 1141 and NFPA 1144?
 - h. Why would the Planning Department consider the IWUIC Fire Hazard Severity Form but ignore IWUIC Sections 402.1 and 402.1.1?
 - i. Did the Planning Department check with the Fire Department on whether, in the event of a wildfire in the area above Elizabeth, the Fire Department might decide not to send resources there given the lack of a secondary access road?
 - j. Why did the Planning Department ignore the Right of Way Section's comment that "there is no guarantees [sic] when the peripheral roads are to be built or at all"?¹³⁶
 - k. What is the Planning Department's response to the Right of Way Section's comment that it "sees no dedication of right of way on the northwest corner of the proposed S12599"?¹³⁷

¹³⁶ Email from McGee to Hickman (2021 Staff Report 54) (S12599 Webpage).

¹³⁷ *Id.*

- l. If this development is approved without a secondary access road, on what ground could the Planning Department oppose additional developments in the same or similar areas as long as they have their own private water systems?
- m. Where is the evidence that the Planning and Fire Departments considered the length, steepness, width, slope, turns, and other conditions of the single access road above Elizabeth in deciding to support removing the phased construction condition?
- n. Why should more weight be given to the Planning Department's and the Fire Department's assessments than to the Traffic Department's assessment of the single access road and whether adding 27 more homes to the area above Elizabeth poses an unreasonable risk to lives in the event of a need to evacuate?
- o. Doesn't the addition of more homes in the area increase the likelihood of a wildfire?
- p. Is the total estimated cost of the Mountain Air extension \$13.5 million? If not, what is the estimated cost; what is it based on; and who prepared it?
- q. On what grounds did the Planning Department and Platting Board ignore AMCR 21.90.003(F)(3)(a)?
- r. Did the Traffic Department wrongly measure the length of the cul-de-sac as 3,600 feet? If so, why is the Traffic Department wrong?
- s. Without the phased construction condition, what is the basis for the Planning Department's and the Fire Department's support of the variance to AMC 21.08.030(F)(6)(a)?
- t. On what grounds did the Planning Department permit Mr. Spinelli to submit the Fire Hazard Severity Form after the deadline for written comments?
- u. Given that the Municipality has not adopted the IWUIC and the Fire Hazard Severity Form, what weight would the Fire, Traffic, and Planning Departments give the form and why?
- v. Was the form correctly completed: e.g., will the subdivision only have "[d]ead-end roads 200 feet or less in length," and is no part of the topography "[m]ore than 8%, but less than 20%"?
- w. Where is the documentation that Spinell Homes authorized Mr. Tony Hoffman of the The Boutet Company to file the application on its behalf? (Had Mission Hills's deed been recorded before the April 7, 2021, Platting Board hearing, this and other questions would have referred to Mission Hills, as well.)
- x. How was the S12599 application complete when it was not submitted by Spinell Homes? If the application was not complete, on what legal and factual grounds were the requirements in, e.g., AMC 21.03.020(D) and AMC 21.03.020(F) waived?
- y. What evidence exists that the Fire Chief has delegated to the Fire Marshal her authority to determine that a secondary fire apparatus access road will connect with the proposed development?
- z. What evidence did the Fire Marshal rely on for his determination that a secondary access road will be built? Of this evidence, what evidence was not available when the Platting Board approved S12420?
- aa. When will a secondary access road be built?
- bb. What evidence exists that 162nd, Sandpiper Drive, Elizabeth, and 156th are approved fire apparatus access road?
- cc. Was a pre-application conference held? If not, on what legal and factual grounds was the requirement waived?

- dd. If a pre-application conference was held, where is the notification—i.e., of the conclusions of the pre-application conference—as AMC 21.03.020(B)(2)(a) requires? If there was no notification, on what legal and factual grounds was the requirement waived?
 - ee. Was the fee required under AMC 21.03.020(E)(3) and AMCR 21.20.003 paid? If not, on what legal and factual grounds was the requirement waived?
 - ff. Was the application submitted in the required form? If not, on what legal and factual grounds was the requirement waived?
 - gg. Did the application include all the mandatory information and supporting materials required in the Title 21 User’s Guide? If not, on what legal and factual grounds were the requirements waived?
 - hh. Did the municipal traffic engineer and the municipal engineer approve a waiver of AMCR 21.90.003(F)(3)(a)? If not, on what legal and factual grounds were the requirements waived?
 - ii. What conflicts checks were done on the Platting Board members, including their spouses, other family members, and business associates?
 - jj. Why would Karin McGillivray be less impartial in this matter than she would have been in Case S12575?
 - kk. On what basis does the Planning Department believe the Platting Board members’ participation in S12599 does not create the appearance of impropriety in the proceedings?
 - ll. How often has the Platting Board disapproved a developer’s application?
 - mm. How often has the Platting Board disapproved an application of Mr. Spinelli, Spinell Homes, or anyone making an application on behalf of Mr. Spinelli or Spinell Homes?
 - nn. Does the Planning Department deny that residents in the area have been told by representatives of the Municipality that there will be no more development in the area until a secondary access road is built?
 - oo. How many applications to the Platting Board have developers made in the past 20 years that an Anchorage resident objected to? Of those applications, how many did the Platting Board deny?
3. Had the Platting Board complied with AMCR 21.11.302(C), Appellants would have asked Mr. Spinelli’s representatives who testified questions such as the following, and for each answer, Appellants would have asked for the specific evidence and records that support the answer:
- a. What evidence supports Mr. Spinelli’s assertion that “because of the additional upfront expense of a water system and the site specific geographic conditions effect on constructability of the system, this plan depends on approval of the entire plat with no limitation on requirement for phasing”?¹³⁸

¹³⁸ Letter from Spinelli to Whitfield 1 (2021 Staff Report 16) (S12599 Webpage).

- b. What evidence supports Mr. Spinelli’s assertion that the proposed private water system would be “a valuable resource to assist in firefighting the wildfires that affect the area”?¹³⁹
- c. What evidence supports Mr. Spinelli’s assertion that the proposed “water system could additionally benefit the other homes in the area by providing AFD access to firefighting water”: e.g., what quantity of water would the Fire Department be able to access, and how many other homes could benefit from that water?¹⁴⁰
- d. How many vacant lots does Mr. Spinelli assert “are owned by the neighboring homes and used as additional yard”—rather than or as well as for, e.g., an investment purpose? And what evidence supports the assertion?
- e. How many vacant lots does Mr. Spinelli assert “are extremely undesirable”? And what evidence supports the assertion that these lots are undesirable and will not be developed “at a normal pace”?¹⁴¹
- f. Under what legal authority did Mr. Spinelli sign the authorization for Mr. Tony Hoffman of The Boutet Company to seek an amendment to S12420?
- g. Under what legal authority did Mr. Hoffman seek an amendment to S12420 given that Mr. Spinelli apparently did not sign the Authorization Certificate as an authorized officer of Spinell Homes?
- h. Is the statement on the Spinell Homes website that Mr. Spinelli is a vice president of Spinell Homes false? If not, why is it inconsistent with Spinell Homes’s filings with (at least) the Alaska Department of Commerce, Community, and Economic Development?
- i. Has Mr. Spinelli or any entity in the business of real estate that he is financially connected with, such as Spinell Homes, ever done business with any current or former member of the Platting Board? If so, which members, and what and how much business has he or any of those entities done?
- j. Might Mr. Spinelli or any entity in the business of real estate that he is financially connected with, such as Spinell Homes, do business with any member of the Platting Board who decided S12599 in the next 10 years? Would Mr. Spinelli and any such entity promise not to do business with any member of the Platting Board who decided S12599 in the next 10 years?
- k. How much real estate does Mr. Spinelli and the entities in the business of real estate that he is financially connected with, such as Spinell Homes, own in Anchorage? How much do they own in Southcentral Alaska? How much do they own in Alaska?
- l. How many houses has Spinell Homes and the entities it controls sold since it started doing business in Alaska?
- m. Why was a private water system not included in the S12420 application?
- n. How much did Spinell Homes pay for the Property; how much would Spinell Homes expect to profit with the private water system and without the phased construction condition; how much would Spinell Homes expect to profit with the private water system and the phased construction condition?¹⁴² (Again, had Mission Hills’s deed

¹³⁹ Letter from Hoffman to Holland 2 (2021 Staff Report 22) (S12599 Webpage).

¹⁴⁰ Letter from Spinelli to Whitfield 1 (2021 Staff Report 16) (S12599 Webpage).

¹⁴¹ Letter from Spinelli to Whitfield 2 (2021 Staff Report 17) (S12599 Webpage).

¹⁴² Appellants are entitled to this information—and to the same information for Mission Hills—given that Mr. Spinelli asserts that the phased construction condition should be eliminated because Spinell Homes cannot

been recorded before the April 7, 2021, Platting Board hearing, this and other questions would have referred to Mission Hills, as well.)

4. Had the Platting Board complied with AMCR 21.11.302(C), Appellants would have asked the other residents who testified the following: who told you and when were you told that there would be no more development in the area until a secondary access road is built, and do you have any records that support your answer?

Ninth Set of Errors – The approval of S12599 violated AMCR 21.11.304, and each of the Platting Board’s findings are unsupported by evidence and/or are irrelevant.

In approving S12599, the Platting Board violated AMCR 21.11.304(A), providing the following: (1) “[e]very finding of fact shall be supported in the record of the proceedings”; (2) the “findings shall be sufficient to provide a reasonable basis for understanding the reasons for the decision”; and (3) “[i]n considering and applying any applicable approval criteria, the board shall make specific findings as to why the criteria have or have not been met.”

The table below shows why each of the Platting Board’s findings—which include no citations to any records—are unsupported by evidence in the record or are irrelevant or both and, therefore, why they do not support the Platting Board’s approval of S12599.

Also, the Platting Board failed to provide “specific findings” establishing that Mr. Spinelli’s application meets all of the criteria in AMC 21.03.200(C)(9). For example, it made no specific findings as to why, with the elimination of the phased construction condition, the preliminary plat does not violate AMC 21.08.030(F)(6)(a) even though, as discussed above, the variance the Platting Board approved in S12420 was expressly based on the phased construction condition: e.g., there is no specific finding as to why—despite the elimination of the phased construction condition—“[t]he granting of the specific variance will not be detrimental to the public welfare or injurious to other property in the area in which such property is situated.”¹⁴³ Also, for example, the S12599 Findings of Fact and Decision state, in the conclusions, that the Platting Board reviewed “the goals and objectives of the applicable elements of the *Hillside District Plan*.” But there is no specific finding as to why Mr. Spinelli’s application meets the AMC 21.03.200(C)(9) criterion that, “to the maximum extent feasible,” approving the application “[f]urther the goals and policies of the comprehensive plan and conforms to the comprehensive plan in the manner required by section 21.01.080, Comprehensive Plan.”

	FINDINGS	ERRORS
1	(a) “The Board took into consideration public testimony and studied the case	What the Platting Board considered is not a finding that supports its decision.

develop the Property with a private water system without full build out. Letter from Spinelli to Whitfield 1 (2021 Staff Report 16) (S12599 Webpage). Also, in the S12420 application, Mr. Hoffman, who represents Mr. Spinelli, made the point that the Property was then owned by four retirees who “need the sales revenue to fund their retirement instead of paying more taxes every year.” Letter from Hoffman to Whitfield 1 (2019 Staff Report 28) (S12599 Webpage).

¹⁴³ AMC 21.03.240(G)(3)(b); *see supra* pp. 19-20.

	<p>packet, particularly public safety; land use and how it affects the livability of the neighborhood, and off-site impacts from drainage, private well, and on-site septic systems.”¹⁴⁴</p>	
2	<p>(a) “The Board took into consideration . . . off-site impacts from drainage, private well, and on-site septic systems.”¹⁴⁵</p> <p>(c) “The Board is allowing the petitioner to add a fire grid and private water system, which also resolves the issues the neighbors had about water use in their neighborhood and all the wells being drilled. This resolves a lot of those concerns”¹⁴⁶</p>	<p>Drainage, water availability, and water quality do not bear on whether the Platting Board validly eliminated the phased construction, sprinkler system, and Firewise construction and landscaping conditions.</p> <p>Indeed, including these items in the findings and stating that it considered them in approving S12599 and that the private water system resolves the water-use issues shows that the Platting Board was so biased in favor of Mr. Spinelli that it advanced irrelevant and unsupported positions to support its decision.</p>
3	<p>(b) “The elimination of the phasing plan is supported as it will be necessary to install a private water system and hydrants for all of the properties and necessitates full build of the entire subdivision.”¹⁴⁷</p> <p>(m) “Economically, it would not be viable for a private party to put in a fire suppression system, such as this, without being able to develop the entire package all at once, rather than doing it in a phasing plan.”¹⁴⁸</p>	<p>Even if there were evidence for these representations, they would be irrelevant.</p> <ol style="list-style-type: none"> 1. A private water system and its cost are irrelevant to whether a secondary access road is required before Spinell Homes and Mission Hills can add another 27 homes above Elizabeth. As discussed above, a private water system is not an exception to, e.g., AMC 23.45.D107.1, AMC 21.07.060(D)(3)(d), AMC 21.08.030(F)(6)(a), AMC 21.03.240(G)(3)(b), AMCR 21.90.003(F)(3)(a), or AMCR 21.90.003(F)(3)(b).¹⁴⁹ 2. Spinell Homes and Mission Hills are not guaranteed a profit or even to avoid a loss on their investment. Nothing required them to purchase the Property,

¹⁴⁴ Findings and Decision 1 (S12599 Webpage).

¹⁴⁵ Findings and Decision 1 (S12599 Webpage).

¹⁴⁶ Findings and Decision 2 (S12599 Webpage).

¹⁴⁷ Findings and Decision 2 (S12599 Webpage).

¹⁴⁸ Findings and Decision 3 (S12599 Webpage).

		<p>and they purchased it knowing about the phased construction and other conditions and about the legal requirements intended to protect lives that Mr. Spinalli now wants ignored.</p> <p>Regardless, these findings are based on Mr. Spinelli’s assertion that “because of the additional upfront expense of a water system and the site specific geographic conditions effect on constructability of the system, this plan depends on approval of the entire plat with no limitation on requirement for phasing.”¹⁵⁰ And they are based on Mr. Marcott’s assertion at the April 7, 2021, hearing that Spinell Homes “need[s] the full phase of the development to fund the improvements.”¹⁵¹ These assertions have no weight because no evidence supports them. Moreover, there is no reason to believe that Spinell Homes, as the largest homebuilder in Alaska, does not have the resources to construct the water system unless the Platting Board eliminates the phased construction condition.¹⁵²</p>
4	<p>(c) The private water system “add[s] a massive layer of safety to the project, which is why the Fire Department is so supportive of it.”¹⁵³</p> <p>(d) “[A]dding the fire hydrants and allowing this to go forward is a fantastic way to resolve some of the fire concerns in this area, until this road is completed.”¹⁵⁴</p> <p>(e) “Board member Porter supports the action in finding that the Fire Department has clearly determined that water</p>	<p>As explained above, including in showing the errors to findings (b) and (m), even if a private water system adds protection, it does not remove the legal requirement of a secondary access road.¹⁵⁸ In deciding Mr. Spinelli’s application, the Platting Board cannot create an exception to the law.</p> <p>In any event, no evidence supports the findings. No evidence shows that in the event of a wildfire necessitating an evacuation residents above Elizabeth would be safer with the private water system than with a secondary access road.</p> <p>Accordingly, Platting Board member Cross’s assertion that a resident would prefer a bedroom with “a fire sprinkler system and an extinguisher” to “two points of egress” is more evidence of bias in favor of Mr. Spinelli.¹⁵⁹</p>

¹⁴⁹ See *supra* pp. 11-20.

¹⁵⁰ Letter from Spinelli to Whitfield 1 (2021 Staff Report 16) (S12599 Webpage).

¹⁵¹ Transcript of Platting Bd. Hearing 34 (Ex. 2).

¹⁵² A recent search of just the Municipality of Anchorage’s property database for “Spinell Homes” and “Mission Hills” identified 129 parcels—many of which might be, like the Property, quite large. See MOA, Public Inquiry Search Selection, <https://www.muni.org/pw/public.html> (Ex. 34).

¹⁵³ Findings and Decision 2 (S12599 Webpage).

¹⁵⁴ *Id.*

¹⁵⁸ See *supra* at 11-20, 32-33.

¹⁵⁹ Transcript of Platting Bd. Hearing 49 (Ex. 2).

<p>is more important than access. It was stated that it will be 50 or 60,000 gallons worth of storage and 500 GPM capability to fill a 2,500-gallon tanker that could radiate out from anywhere; and that is actually uphill rather than coming from downhill, once it is on-site. Adding the fire storage and water to fight a fire has been deemed a higher priority based on the calculations that have been presented to the Board.”¹⁵⁵</p> <p>(i) Adding fire hydrants will “increase[e] the safety and ability to put out fires.”¹⁵⁶</p> <p>(l) “With respect to public safety, the findings are that the development being put in with this fire system is in the balance of safety and is a safer solution than what was previously heard.”¹⁵⁷</p>	<p>Mr. Cross’s analogy is meritless. A resident would surely prefer the two points of egress from a neighborhood—i.e., a secondary access road—in the event of a wildfire requiring an evacuation. (Ironically, in making his analogy, Mr. Cross recognizes the value of a sprinkler system, but he approves the removal of the sprinkler system condition.)</p> <p>Likewise meritless—and evidence of the bias in favor of Mr. Spinelli—is Mr. Porter’s assertion. No law and no one other than the Platting Board make the availability of a private water system a higher priority than a secondary access road. Recognizing that a private water system does not supplant the secondary access road requirement, the Fire Department reversed itself on the phased construction condition based solely on the position that a secondary access road will be built; but (again) in supporting that position it relied, without explanation, on the information it knew in 2019 when it reached the opposite conclusion.¹⁶⁰ Also, other than Mr. Porter’s own unsupported calculations, no calculations were presented to the Platting Board.</p> <p>Indeed, as noted above, the Platting Board adopted NFPA 1142 as the standard for the subdivision’s private water system, but NFPA 1142 does not apply to fighting wildfires.¹⁶¹ And (again) the Platting Board relied on NFPA 1142, but ignored the mandate in NFPA 1141—which is also in AMC 21.07.060(D)(3)(d)—that residential areas with more than 100 households have at least 2 access routes.¹⁶²</p> <p>Also, there is no evidence that a private water system for 27 houses is more valuable than a sprinkler system and Firewise construction and landscaping, which the approval of S12599 removed for the eleven homes in Phase 1. In fact, the Fire Department and the Development Services Department’s September 20, 2020, letter explains the following: (1) sprinklers “achieve an exponential reduction in fire emissions” and thereby reduce the potential for a house fire to “become a wildland fire threatening hundreds</p>
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¹⁵⁵ Findings and Decision 2 (S12599 Webpage).

¹⁵⁶ *Id.* at 3.

¹⁵⁷ *Id.*

¹⁶⁰ *See supra* pp. 13-14.

¹⁶¹ *Id.* at 17.

¹⁶² *Id.* at 2, 17-18.

		<p>or even thousands of structures”; and (2) “[w]ith flashover conditions occurring in under 5 minutes, by the time suppression resources arrive much of the home can already be involved. On a dry or windy day this could easily transition to multiple structure involvement or a wildland fire.”¹⁶³</p> <p>And at the April 7, 2021, Platting Board hearing, Mr. Spinelli’s representative did not testify “that it will be 50 or 60,000 gallons worth of storage.” Rather, Mr. Marcott testified, “We’re anticipating probably somewhere in the 50 to 60,000 gallon range.”¹⁶⁴</p> <p>Finally, Mr. Marcott did not say that the private water system will be available at no cost outside the subdivision. Instead, he said Spinell Homes “anticipate[s]” entering into “some sort of water use agreement.”¹⁶⁵</p>
5	<p>(d) “The only agency not in support was the Traffic Department due to of [sic] the number of cars continuing to go down Sandpiper Drive until that secondary access is constructed. However, it is believed that the secondary access will be constructed and will go up Mountain Air Drive, but we also understand that it is not guaranteed to happen in the immediate future.”¹⁶⁶</p> <p>(h) “The roadway . . . is going to be constructed”¹⁶⁷</p> <p>(j) “The likelihood that Mountain Air will, in fact, be developed by the</p>	<p>As discussed above, the evidence does not support the “beli[ef]” that a secondary access road “will be constructed” in the foreseeable future, let alone the finding that “[t]he likelihood that Mountain Air will, in fact, be developed by the Municipality and/or the State of Alaska is very high.” Indeed, as discussed above, many of the Platting Board members’ own statements during the April 7, 2021, hearing belie this finding.¹⁷⁰</p> <p>As discussed above, for example, the only change regarding the secondary access road since 2019—when the Fire and Planning Departments and the Platting Board insisted on the phased construction condition—is the passage of the April 2020 ballot proposition, representing merely 0.8% of the total estimated cost of the Mountain Air extension.¹⁷¹ Again, as the Traffic Department explained in January 2021, the “proposed funding is only to complete the previous design. Until funding and construction is occurring there is no change to available secondary access for this section of the upper hillside.”¹⁷² And as the Traffic Department stated in November 2019, it “cannot support</p>

¹⁶³ Letter from Doehl and Dean to Hoffman-O’Malley Cmty. Council Members 2-3 (Ex. 7).

¹⁶⁴ Transcript of Platting Bd. Hearing 38 (Ex. 2).

¹⁶⁵ *Id.* at 39.

¹⁶⁶ Findings and Decision 2 (S12599 Webpage).

¹⁶⁷ *Id.*

	<p>Municipality and/or the State of Alaska is very high.”¹⁶⁸</p> <p>(k) “Based on that, we are entitled to rely on the existence or the expectation that that road will be put in and will be providing additional access.”¹⁶⁹</p>	<p>the addition of homes in this area without construction of a secondary access being guaranteed.”¹⁷³</p> <p>Also, as roads fall within the Traffic Department’s expertise, no basis—other than bias in favor of Mr. Spinelli—exists for the Platting Board’s refusal to follow the Traffic Department’s consistent position that above Elizabeth “[s]econdary access is critical from both a life and traffic safety viewpoints.”¹⁷⁴ This is especially the case given that the only access road is long and hazardous.¹⁷⁵ Nor, as discussed above, is there a reason for not agreeing with the Traffic Department’s consistent position on the likelihood of a secondary access road’s construction, especially as no agency or anyone else has identified evidence contradicting this position.¹⁷⁶</p> <p>Finally, the Traffic Department is not “[t]he only agency not in support” of removing the phased construction condition. The Development Services Department did not support removing the condition. Rather, it said, “The Private Development Section . . . defers to Fire on the removal of the sprinklering [sic] and Fire Wise Construction conditions and to Traffic and Planning on the phasing condition.”¹⁷⁷</p>
6	<p>(f) “The Fire Hazard Severity Form that was discussed with the Fire Department and provided to the Board more strongly weighted the access to water, than the ingress/egress.”¹⁷⁸</p>	<p>As discussed above, the IWUIC’s Fire Hazard Severity Form is irrelevant.¹⁷⁹ It does not apply under the AMC. Nor does it apply outside a subdivision: i.e., to an analysis of the need for a secondary access road in an area with multiple subdivisions that already have well over 100 homes or lots platted for homes. It does not evidence that for saving lives a private water system for a proposed subdivision is more important than a secondary access</p>

¹⁷⁰ See *supra* p. 14.

¹⁷¹ *Id.* at 13.

¹⁷² 2021 Traffic Dep’t Mem. (2021 Staff Report 46) (S12599 Webpage).

¹⁶⁸ *Id.* at 3.

¹⁶⁹ Findings and Decision 3 (S12599 Webpage).

¹⁷³ 2019 Traffic Dep’t Mem. 2 (2019 Staff Report 63) (S12599 Webpage).

¹⁷⁴ 2021 Traffic Dep’t Mem. (2019 Staff Report 46) (S12599 Webpage); 2019 Traffic Dep’t Mem. 1 (2019 Staff Report 62) (S12599 Webpage).

¹⁷⁵ See *supra* pp. 6, 18.

¹⁷⁶ *Id.* at 8-9, 17.

¹⁷⁷ Mem. From Judy Anunciacion, Private Dev. Eng’r, Dev. Servs. Dep’t to Shawn Odell, Senior Planner 3 (2021 Staff Report 45) (S12599 Webpage).

¹⁷⁸ Findings and Decision 2 (S12599 Webpage).

¹⁷⁹ See *supra* p. 10.

		<p>road, especially where, as here, (1) the area is prone to wildfires, (2) the area contains multiple other subdivisions—including over 100 homes or lots platted for homes—(3) none of the other subdivisions has a water supply, (4) few (if any) of the homes have a sprinkler system or were built with Firewise construction and landscaping techniques, and (5) all of the subdivisions depend on one long, hazardous road in the event of wildfire necessitating an evacuation. Indeed, as discussed above, the IWUIC itself makes clear that the Platting Board wrongly relied on the Fire Hazard Severity Form for the finding that a limited private water system is more important than a secondary access road in the area above Elizabeth: the IWUIC explicitly mandates that new subdivisions “be provided with” multiple fire apparatus access roads <i>and</i> a water supply.¹⁸⁰ Finally, there is no evidence that the Fire Hazard Severity Form was discussed with—as opposed to only provided to—the Fire Department and that the Fire Department gave it any weight.¹⁸¹</p>
7	<p>(g) “There has been absolutely no complaint with the Fire Department with respect to their ingress/egress to the area.”¹⁸²</p>	<p>This finding is irrelevant and unsupported: whether the Fire Department received complaints regarding the lack of a secondary access road does not bear on the lawfulness of developing the subdivision without a secondary access road. This finding too is so irrelevant that it further evidences the bias in favor of Mr. Spinelli as the Platting Board—not the Fire Department—decides whether to approve applications for preliminary plats and amendments to preliminary plats based on, among other things, the existence of a secondary access road. And, therefore, the Platting Board—not the Fire Department—is the correct body to raise this issue with.</p> <p>In fact, several members of the community testified that they understood that no houses will be added to the area until a secondary access road is built. Anthony Henry testified, “Phase 2 of the subdivision I live in, Shangri-La, was supposed to have a second road put in before they allowed—the city allowed development of that second phase of the subdivision.”¹⁸³ Christian Henry testified,</p>

¹⁸⁰ *Id.* at 18; 2021 IWUIC, Sections 402.1, 402.1.1, and 402.1.2, <https://codes.iccsafe.org/content/IWUIC2021P1/chapter-4-wildland-urban-interface-area-requirements> (Ex. 20).

¹⁸¹ Transcript of Platting Bd. Hearing 10, 34 (Ex. 2).

¹⁸² Findings and Decision 2 (S12599 Webpage).

¹⁸³ Transcript of Platting Bd. Hearing 12 (Ex. 2).

		<p>“When I bought the house seven years ago, I was told that there would be no more developments until that was an actual existing road.”¹⁸⁴ David Rabiski testified there had “been five different times where we’ve met before the platting board and every time the fire department, police department have said that the road system is not adequate to add more houses and we have repeatedly asked for the second exit out of all of these areas to go out to Rabbit Creek Road and we were told it would happen and we were told that no more houses would be built by the platting board and—but when the money got withdrawn, they went ahead and let the people build.”¹⁸⁵</p>
8	<p>(h) There is “the likelihood that Luna (the drive that currently is gated) may be removed, so that those homes would have closer access to the fire hydrants.”¹⁸⁶</p>	<p>This finding is unsupported. Indeed, no evidence even remotely suggests that the locked gate across Luna Street might be removed.</p> <p>Mr. Spinelli’s representative speculated that Luna is “secondary access for Prominence” Point, but a locked gate is the opposite to access.¹⁸⁷</p>
9	<p>(i) “Property owners’ insurance rates will be reduced the closer they are to fire hydrants, so it would be very valuable to those homes in that development. With respect to reducing their insurance costs”¹⁸⁸</p>	<p>This finding is irrelevant and unsupported. Its inclusion as a finding is more evidence of the Platting Board’s bias in favor of Mr. Spinelli.</p>

Tenth Set of Errors – The approval of S12599 violated Appellants’ Constitutional Rights to Due Process and Equal Protection Under the United State and Alaska Constitutions.

In approving S12599, the Platting Board violated Appellants’ constitutional rights to due process and equal protection. Section 1 of the Fourteen Amendment to the United States Constitution prohibits state and local governments from depriving “any person of life, liberty, or property, without due process of law.” And article I, section 7 of the Alaska Constitution provides, “No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.” Section 1 of the Fourteenth Amendment to the United States Constitution also prohibits state and local governments from denying any person of “the equal protection of the

¹⁸⁴ *Id.* at 14.

¹⁸⁵ Transcript of Platting Bd. Hearing 27 (Ex. 2).

¹⁸⁶ Findings and Decision 2 (S12599 Webpage).

¹⁸⁷ Transcript of Platting Bd. Hearing 43 (Ex. 2).

¹⁸⁸ Findings and Decision 2 (S12599 Webpage).

laws.” And article I, section 7 of the Alaska Constitution provides, “all persons are equal and entitled to equal rights, opportunities, and protection under the law.”

1. The Platting Board’s approval of S12599 violated Appellants’ due process rights.¹⁸⁹
 - a. S12599 adversely affects Appellants’ interests. It has increased the risk to their lives in the event of a hillside wildfire or other emergency and has increased the risk of such a wildfire. That risk now exceeds what the Municipality’s laws consider reasonable. And because of this, it has diminished Appellants’ enjoyment of their only home, where they have loved living since their youngest son entered elementary school 16 years ago, before a substantial amount of development above Elizabeth. Moreover, Appellants expect that S12599 will make selling their home more difficult and will diminish the sale price because otherwise interested buyers will not want to live in the area because of the heightened risk of dying in an evacuation.
 - b. S12599’s adverse effects on Appellants are the result of the Platting Board’s biased proceedings.
 - i. As explained above, the livelihoods of the Platting Board members depend on real estate development, meaning they are—because of their financial and professional interests—biased in favor of Mr. Spinelli.¹⁹⁰ As a result of that bias, for example, they directed Ms. McGillivray to participate in S12599, ignoring her personal relationship with Mr. Spinelli’s family and that she had always recused herself in matters involving Spinell Homes.¹⁹¹
 - ii. The Platting Board’s findings demonstrate its bias. Again, they are not supported by evidence and/or are irrelevant to Mr. Spinelli’s application. Parties before the Platting Board have rights. Platting Board members have responsibilities: e.g., they determine what facts are relevant and how to apply them. Accordingly, in stating that it is “entitled to rely on the existence or expectation” that the Mountain Air connection will be built, the Platting Board highlighted that it sees itself as Mr. Spinelli’s alter ego—not as a neutral decision-making body.¹⁹² The

¹⁸⁹ See, e.g., *Copeland v. Ballard*, 210 P.3d 1197, 1201, 1203-04 (Alaska 2009) (stating, “Due process includes the right to a neutral and unbiased decision-maker who presides over proceedings that are fair and that have the appearance of fairness”; and stating, “When assessing whether an administrative action violates the due process clause of the Alaska Constitution,” the Alaska Supreme Court uses “the framework established by the United States Supreme Court in *Mathews v. Eldridge*”—i.e., it “weigh[s]: (1) the private interest at stake; (2) ‘the risk of an erroneous deprivation’ of the private interest and the value of additional safeguards; and (3) the government interest—noting particularly the cost and ‘administrative burdens’ entailed by additional procedural protections” (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976))); *Robles v. Providence Hosp.*, 988 P.2d 592, 596 (Alaska 1999) (stating, “In determining whether due process has been observed by an administrative agency, this court reviews the proceedings: [T]o assure that the trier of fact was an impartial tribunal, that no findings were made except on due notice and opportunity to be heard, that the procedure at the hearing was consistent with a fair trial, and that the procedure was conducted in such a way that there is an opportunity for a court to ascertain whether the applicable rules of law and procedure were observed.” (quoting *In re Hanson*, 532 P.2d 303, 305 (Alaska 1975))).

¹⁹⁰ See *supra* pp. 21-23.

¹⁹¹ MOA, Platting Board, Minutes of April 7, 2021, Meeting 2 (Ex. 24).

¹⁹² Findings and Decision 3 (S12599 Webpage).

Platting Board members' statements on Mr. Spinelli's application further evidence their bias. For example, the vice chair stated that not having a secondary access road imposes only "the inconvenience of increased traffic" and that the Platting Board is "just making small amendments" to the preliminary plat.¹⁹³ Nor did any Platting Board members correct the similar statements of the Planning Department: secondary access is only "a public benefit," and "let's also remember this is just an amendment."¹⁹⁴

- c. S12599's adverse effects on Appellants are the result of the inadequacy of the Platting Board proceedings, which also reflect the Platting Board's bias in favor of Mr. Spinelli.
 - i. Mr. Spinelli had months to work on his application with assistance from the Planning Department and many other municipal agencies. But the Platting Board did not require the Planning Department to make its analysis of the application and the records on which it relied available to the Platting Board and the public sufficiently in advance of the hearing for either to meaningfully review and comment on them. The Planning Department did not make them available until the day before the hearing was initially scheduled. (Presumably, this was not the reason the hearing was postponed.)
 - ii. Appellants had much less time than Mr. Spinelli to testify. The Platting Board did not provide an opportunity for Appellants to exercise their right to ask questions even while, after Mr. Spinelli's time to testify had expired, the Platting Board asked Mr. Spinelli's representative, "Were there any other areas that you wanted to add some additional testimony?"¹⁹⁵ The Platting Board accepted written comments from Mr. Spinelli after the time Appellants were told the period for submitting written comments had expired.¹⁹⁶ Appellants expect additional evidence of the violations of the AMC and AMCR and of the bias of the Platting Board would have been revealed had the Platting Board given Appellants the opportunity to ask questions.
 - iii. The rules governing appeals to the Board of Adjustment further the Platting Board's bias in favor of Mr. Spinelli. Under AMC 21.05.050(A)(11)(c), the Platting Board's factual findings, including those adopted "by necessary implication," "may be considered as true" if the record contains "adequate" evidence to support them or on the basis of which they "may be reasonably inferred." In addition, under AMC 21.03.050(A)(11)(d), the Board of Adjustment may overturn the Platting Board on "disputed issues or findings of fact" only "by unanimous vote." Also, the costs that the Municipality imposes on Appellants—i.e., an appeal fee of \$1,080 (regardless of the size or complexity of the appeal),

¹⁹³ Transcript of Platting Bd. Hearing 42 (Ex. 2).

¹⁹⁴ Transcript of Platting Bd. Hearing 5, 6 (Ex. 2).

¹⁹⁵ *Id.* at 45.

¹⁹⁶ See MOA, website (showing the Planning Board accepted Mr. Spinelli's comments on April 7, 2021), <http://www.muni.org/CityViewPortal/Planning/Status?planningId=17293> (S12599 Webpage).

the cost of transcribing the hearing, and \$1.70 per page for the record (including even the transcript that Appellants paid for)—constitute bias in favor of Mr. Spinelli and other developers. Residents affected by a proposed development typically lack developers’ financial resources to pay for the excessive, arbitrary fees that the Municipality imposes to appeal a Platting Board’s decision.

- d. No interest of the Municipality is served by failing to make the Platting Board’s proceedings more fair, such as by ensuring the financial and professional interests of the Platting Board members are not tied to those of developers. In fact, it would serve the interests of the Municipality to make the proceedings on applications to the Platting Board, including appeals to the Board of Adjustment, more fair and adequate by implementing, e.g., the following measures as they would impose no or, at most, minimal costs and administrative burdens on the Municipality:
- providing the public adequate time to review the Planning Department’s analysis of an application before the Platting Board and the records before the Planning Department and the other municipal agencies on the application, including the communications with the applicant;
 - providing the public an adequate opportunity before the hearing to present written questions to the applicant, the Planning Department, other municipal agencies, and the Platting Board and requiring written responses to those questions;
 - ensuring the Platting Board has enough time to consider the material submitted to and/or developed by the Planning Department, other municipal agencies, and interested persons regarding the application before deciding the application; and
 - not imposing costs to appeal Platting Board approvals of applications. The costs of at least non-frivolous appeals should be included in the cost of processing applications before the Platting Board. After all, developers are not charged for the time and resources municipal agencies spend assisting them in preparing (as opposed to reviewing) their applications, and developers are the persons seeking to change the status quo to financially profit on their investments. At a minimum, the Municipality should impose on appellants only the actual costs of preparing the matter for review by the Board of Adjustment.

2. The Platting Board’s approval of S12599 violated Appellants’ equal protection rights.¹⁹⁷

¹⁹⁷ See, e.g., *Planned Parenthood of The Great Nw. v. State*, 375 P.3d 1122, 1137-39 (Alaska 2016) (stating, “When equal protection claims are raised, the question is whether two groups of people who are treated differently are similarly situated and therefore are entitled to equal treatment under the constitution”; stating the following: (1) government action burdening a fundamental right “demands strict scrutiny”; (2) only compelling state interests “justify differentially burdening” a fundamental right; and (3) to survive strict scrutiny, the disparate treatment “must further a compelling state interest and be the least restrictive means available to accomplish the state’s purpose” (quoting *Schiel v. Union Oil Co. of Cal.*, 219 P.3d 1025, 1030 (Alaska 2009))); *Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209, 215 (D.C. Cir. 2013) (stating, “To prevail on an equal protection claim, the plaintiff must show that the government has treated it differently from a similarly situated party and that the government’s explanation for the differing treatment ‘does not satisfy the relevant level of scrutiny.’ *Settles v. U.S. Parole Comm’n*, 429 F.3d 1098, 1102 (D.C.Cir.2005). Here, the relevant level of scrutiny is rational basis because Interior’s action does not target a suspect class or burden a fundamental right.”).

- a. The interests of developers, such as Spinell Homes, and residents, such as Appellants, are different: the former use their property as an investment to make a profit; the latter use their property as a place to shelter themselves and their families. But to the extent they both own real estate affected by the Platting Board's decisions, they are similarly situated.
 - b. Through the Platting Board's pro-developer bias and the entrenchment of that bias in the appeal process, the Municipality better treats developers than residents: i.e., matters before the Platting Board where the interests of developers and residents conflict are more likely to be decided in favor of developers than residents.
 - c. The preferential treatment the Platting Board gives developers adversely affects residents' fundamental rights: to reside in their homes without risk to their lives or fear of dying, such as in an evacuation.
 - d. No grounds exist for the Municipality's preferential treatment of developers over residents. Even assuming the preferential treatment developers receive might increase the Municipality's revenues through additional property taxes, this is not the purpose of the pro-developer bias. As explained above, the bias is because of the alignment between developers' interests and the Platting Board members' financial and professional interests. Therefore, the Municipality's pro-developer bias lacks even a rational basis as it serves no legitimate state interest, let alone a compelling one.
 - e. Furthermore, the high, arbitrary fees charged to appeal Platting Board decisions reflect an intent to discourage residents' appeals. This too is not legitimate. And even if the purpose of the fees is to save municipal funds, the fees lack a rational basis as they are not based on the Board of Adjustment's actual costs. (The Anchorage Municipal Clerks' Office would not or could not explain how the fees were calculated.)
3. Had the Platting Board been comprised only of persons who work for environmental organizations and had it denied Mr. Spinelli's application, he would no doubt have opposed the decision for violating his constitutional rights. Yet even then, the Platting Board's decision would have affected only the monetary interests of Spinell Homes and Mission Hills, not—as with Appellants and their neighbors—Mr. Spinelli's and his family members' lives.

III. Conclusion

Because of the errors explained above, the Board of Adjustment should reverse the decision of the Platting Board in S12599.

Dated: June 8, 2021

Alan Birnbaum / Ruth Dukoff

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Certificate of Service

I, Alan Birnbaum, certify that on June 8, 2021, a correct copy of this document and the attachments were served on Mr. Spinelli and his representative, Tony Hoffman, by email (only this document and the transcript) and by overnight mail (this document and the attachments) at the following addresses:

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