



# 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: S12612 Date of Action: August 4th, 2021  
Name of Project or Subdivision: Turtle Hills Subdivision, Lots 1 and 2

### Appellant's Information:

Last Name: Penn First Name: Douglas  
Address: PO Box 391 City: Girdwood State: AK Zip: 99587  
Phone Number: [REDACTED] E-mail: [REDACTED]

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

### Applicant's Information: Same as Appellant

Last Name: Hendrickson First Name: Christina  
Address: PO Box 978 City: Girdwood State: AK Zip: 99587  
Phone Number: [REDACTED] E-mail: [REDACTED]

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 [REDACTED] Date 8/23/21

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

Date: \_\_\_\_\_ Cash: \_\_\_\_\_ Check: \_\_\_\_\_ Credit Card: \_\_\_\_\_ Receipt: \_\_\_\_\_ Total Paid: \_\_\_\_\_

Law Offices of  
**POPE & KATCHER**  
421 West First Avenue, Suite 220  
Anchorage, Alaska 99501

Douglas Pope  
Jonathon A. Katcher

Telephone (907) 272-8577  
Facsimile (907) 274-8040

August 18, 2021

Barbara Ann Jones  
Municipal Clerk  
Municipal Clerks Office  
632 W. 6<sup>th</sup> Ave., Suite 250  
Anchorage, AK 99501

**NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT  
OF PLATTING BOARD FINDINGS OF FACT AND DECISION IN S12612**

Dear Ms. Jones:

I represent Girdwood residents Doug Penn and Laurie Van Huis (hereinafter "the Penns"). Pursuant to AMC 21.03.050(A), please accept this as the Penns' notice of their appeal to the Board of Adjustment of the Platting Board's August 4, 2021, Findings of Fact and Decision on Preliminary Plat S12612. The Penns have filed or will timely file their appeal fee and cost bond.

The Penns request the Board of Adjustment to reverse the Platting Board's decision approving the Petitioner's subdivision application.

The Penns' causes for appeal are stated as follows, as well as in their May 22, 2021 Objection, which is incorporated by reference. The Platting Board's Findings of Fact and Decision must be overturned and reversed for reasons that include but are not limited to the following:

1. Procedural Error: The Platting Board committed procedural error and prejudiced the Penns' rights and interests by allowing Petitioner to present to the Board for the first time at the June 2, 2021, public hearing, without any notice to the Penns or the Public, the following baseless and factually and legally incorrect assertions. If the Penns had been given lawful and timely notice of Petitioner's last minute incorrect assertions then the Penns could have developed and presented evidence to the Board to refute these erroneous and baseless assertions.

- It was procedural error to allow Petitioner to untimely and without required notice to assert that if she is not

granted her requested variances then her proposed rear lot would be landlocked. And this assertion is incorrect because Petitioner can without undue hardship utilize her existing Alyeska Highway access that she shares with Remainder Lot 15 to create a flag pole access to her proposed rear lot; and

- It was procedural error to allow Petitioner to untimely and without required notice assert that the Municipality is requiring her to access her lots by the adjacent PUE. There is no evidence in the record to support this assertion. And this assertion is directly contrary to the position of the Planning Department, which is not requiring, and would not require, Petitioner to use the PUE to access her lots. Moreover, the Planning Department would have approved Petitioner's request to utilize her existing Alyeska Highway access that she shares with Remainder Lot 15 to create a flag pole access to her proposed rear lot had Petitioner requested it. And this flag pole approach would not have required the granting of any variances to Petitioner. The Board's allowing Petitioner to make this untimely and unsubstantiated assertion prevented the Petitioner from timely developing and presenting evidence that would have refuted Petitioner's erroneous assertion that the Municipality was requiring her to use the PUE to access her lots.

2. Error in Application of Law: The Board committed legal error by incorrectly applying the standard in AS 29.40.050(b)(3) which prohibits variances "sought solely to relieve pecuniary hardship or inconvenience." The Board committed legal error by incorrectly applying the standards in AMC 21.03.240(A), 240(B)(3), and 240(G)(3), which required Petitioner to meet her burden to prove that strict compliance with the law would create practical difficulty or unnecessary hardship that would render reasonable use of her land difficult or impossible because of some unique physical attribute of the property itself. It would not be a practical difficulty or an unnecessary hardship for Petitioner to utilize her existing Alyeska Highway access that she shares with Remainder Lot 15 to create a flag pole access to her proposed rear lot.

3. Findings or Conclusions that were Not Supported by Evidence. There was no competent or admissible evidence to

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Municipal Clerk  
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support the Platting Board's Findings and Conclusions at p.3 #1 (sic, it should re stated as Finding #3) regarding the requested variance from AMC 21.09.070.f which requires a 60' wide cross section street on the PUE.

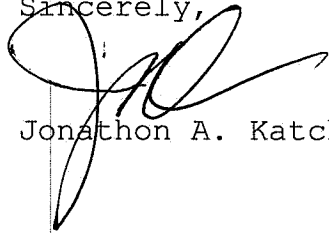
- There is no legal or factual basis for the finding and conclusion of Board member Cross at (1)(sic)(a)(i) that Petitioner's driveway "must access out onto the PUE." Petitioner's and Board member Cross' unsubstantiated assertions to that effect were not supported by any evidence. Petitioner does not need to use the PUE to access her lots. The fact that Petitioner's lots will abut the PUE does not require her to use the PUE to access the Alyeska Highway. She can use the existing access to the Alyeska Highway that she presently shares with Remainder Lot 15. And Petitioner first made this erroneous and unsubstantiated assertion regarding the allegedly mandatory PUE access at the June 2 hearing without notice to the Appellants or the Public;
- There is no legal or factual basis for the finding and conclusion of Board member Cross at (1)(sic)(a)(iii) that without Petitioner's proposed "temporary driveway" her proposed rear lot "becomes landlocked." The proposed rear lot will not be landlocked because Petitioner can access her rear lot by creating a flag pole to her existing Alyeska Highway access that she shares with Remainder Lot 15;
- There is no legal or factual basis for the finding and conclusion of Board member Cross at (1)(sic)(a)(iv) that "The Municipality is requiring them to access the PUE."; and
- The Platting Board failed to consider and address the fact that Petitioner's proposed noncompliant and unnecessary driveway would cross the heavily trafficked bike path adjacent to the 45 mph Alyeska Highway, thereby exacerbating the already unsafe conditions of the bike path and highway.

The Penns reserve their right to state additional causes on appeal as they may assert and develop in their appeal brief after review of the record on appeal.

Barbara Jones  
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Thank you for your attention to this matter. Feel free to contact me if you have any questions.

Sincerely,



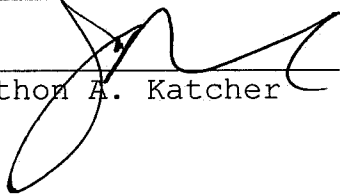
Jonathon A. Katcher

cc: Doug Penn and Laurie Van Huis

CERTIFICATE OF SERVICE:

I certify that this Notice of Appeal was served by email on:

Christina Hendrickson  
Christina.cope@gmail.com

  
\_\_\_\_\_  
Jonathon A. Katcher

# Municipality of Anchorage

CLERK'S OFFICE



65273                      C075                      1253                      1000234387                      8/23/21

Merchant ID:431

CLK OTHER    \$1,080.00  
CLK-Notice of Appeal Fee

Receipt Recipient: Penn.

Total Due:    \$1,080.00

Amount Tendered:                                      \$1,080.00

Change:    \$0.00

Payment Method:                      Credit Card

MOA CLERKS OFFICE  
632 W 6TH AVE STE 250  
ANCHORAGE, AK. 99501-223  
907-343-4312

## SALE

REF#: 00000001

Batch #: 302

08/23/21

08:56:38

AVS: Z

CVV2: M

APPR CODE: 08328D

Trace: 1

VISA

Manual CNP

\*\*\*\*\*5367

\*\*/\*\*

**AMOUNT                      \$1,130.00**

**APPROVED**

THANK YOU

CUSTOMER COPY

Keep receipt for your records

# Municipality of Anchorage



CLERK'S OFFICE

65273

C075

1254

1000234388

8/23/21

Merchant ID:431

CLK OTHER  
CLK-Cost Bond

\$50.00

Receipt Recipient: Penn

Total Due: \$50.00

Amount Tendered: \$50.00

Change: \$0.00

Payment Method: Credit Card

Keep receipt for your records