

**MUNICIPALITY OF ANCHORAGE  
BOARD OF ADJUSTMENT APPEAL NUMBER 2023-01 FROM  
ANCHORAGE PLATTING BOARD'S MAY 3, 2023 FINDINGS OF FACT AND DECISION IN CASE  
NUMBER S12713**

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**BOARD OF ADJUSTMENT FINDINGS AND CONCLUSIONS**

WHEREAS on January 23, 2023, Ms. Elaine Mills submitted an application for a preliminary plat to the Anchorage Planning Department, proposing to subdivide one lot into three.<sup>1</sup>

WHEREAS on April 19, 2023, the Platting Board held a public hearing on the application.<sup>2</sup>

WHEREAS on May 3, 2023, the Platting Board issued its written findings of fact and final decision, Resolution 2023-008, approving the Mills subdivision, subject to nine conditions (“Mills Subdivision”).<sup>3</sup>

WHEREAS Robert Brown, Bonnie Cudnohufsky, and Carol Ashlock (collectively “Appellants”) timely appealed the Platting Board’s May 3, 2023, decision to the Board of Adjustment.

WHEREAS on January 26, 2024, the Board of Adjustment deliberated and decided the appeal at a meeting open to the public and pursuant to Title 21.

NOW, THEREFORE, BE IT RESOLVED, the Board of Adjustment adopts the following Findings and Conclusions:

**FINDINGS**

1. Notice of the Board of Adjustment’s January 26, 2024 hearing was served on the parties in compliance with AMC 21.03.050.A.7.

2. As mandated by code, during the January 26, 2024 hearing, the Board of Adjustment considered the appeal on the basis of the record before the Platting Board, the notice of appeal, the briefs, and the law.<sup>4</sup>

3. An email, dated February 1, 2023, from Bill Falsey, on behalf Rob Brown, Dr. Gina Brown, and Bonnie Cudnohufsky, to David Whitfield, Municipal Platting Officer, with an attached

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<sup>1</sup> R.070-71.

<sup>2</sup> R.050-52.

<sup>3</sup> R.043-46.

<sup>4</sup> AMC 21.03.050A.11.

letter and supporting material was “as an official comment on the [Mills] subdivision” (the letter and supporting material collectively referred to as the “Falsey Letter”).<sup>5</sup> The Falsey Letter challenged the existence of a section line easement that the Mills Subdivision plat relied on to comply with street-width code requirements for Bonnielaine Road.<sup>6</sup>

4. The Board of Adjustment found that the Falsey Letter, a public comment, was omitted from the information submitted to the Platting Board, contrary to Anchorage Municipal Code.<sup>7</sup>

5. The Board of Adjustment found that omitting the Falsey Letter from the information submitted to the Platting Board was a procedural error.

6. The Board of Adjustment found that omitting the Falsey Letter from the information submitted to the Platting Board was a substantial procedural error requiring further public hearing.<sup>8</sup> The Board of Adjustment found the Platting Board lacked an opportunity to consider the Falsey Letter and whether the Mills Subdivision, specifically Bonnielaine Road, complied with street-width code requirements.

7. The Board of Adjustment did not address the second issue on appeal raised by Appellants — whether substantial evidence supported the Platting Board’s factual finding that a section line easement exists.

8. The Board of Adjustment found that the Platting Board’s factual findings and conditions for final plat approval addressing watercourse mapping, well and septic, trails, and setbacks and open space requirements was supported by substantial evidence.

9. The Board of Adjustment found, except for the street-width issue identified above, the Platting Board’s finding that the Mills Subdivision complied with code requirements was supported by substantial evidence.

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<sup>5</sup> R.011-017.

<sup>6</sup> R.011-017; R.043.

<sup>7</sup> AMC 21.03.020I (requiring public comments to be submitted to the Platting Board before a public hearing on the related application).

<sup>8</sup> AMC 21.03.050A.13.a.ii.

## CONCLUSIONS

1. Omitting the Falsey Letter from the information submitted to the Platting Board was a substantial procedural error.<sup>9</sup>

2. The Board of Adjustment should remand the case to the Platting Board for further consideration to determine whether the Mills Subdivision complied with street-width code requirements.

3. The Board of Adjustment does not conclude whether there is or is not a section line easement along Bonnielaine Road.<sup>10</sup>

4. The Platting Board's finding that the Mills Subdivision complies with watercourse mapping, well and septic, trails, and setbacks and open space code requirements was supported by substantial evidence.

5. The Platting Board's finding that the Mills Subdivision complied with code requirements, except for the street-width issue noted above, was supported by substantial evidence.

## DECISION

1. This appeal was heard in accordance with AMC 21.30.050.

2. Notice of the Board of Adjustment's January 26, 2024 hearing of the issues on appeal complied with AMC 21.30.050A.7.

3. The meeting at which the Board of Adjustment decided this appeal was held in accordance with AMC 21.30.050A.10.

4. The Board of Adjustment remands the case to the Platting Board for further consideration to determine whether the Mills Subdivision complies with street-width code requirements. On remand the Platting Board must consider: the Falsey Letter; the conflicting evidence regarding the section line easement's validity; and whether Bonnielaine Road complies with street-width code requirements.

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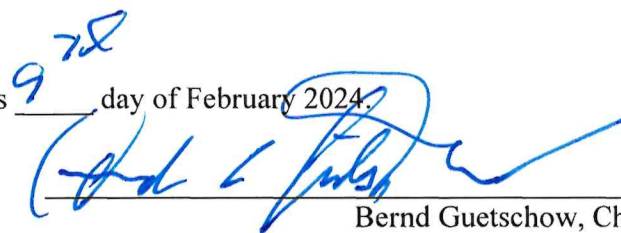
<sup>9</sup> AMC 21.03.050A.13.a.ii.

<sup>10</sup> See AS 09.45.010 (quiet title action).

5. Except for the street-width issue identified above, in all other respects the Platting Board's decision was supported by substantial evidence and is affirmed.

6. Pursuant to AMC 21.03.050A.13.d. because the Board of Adjustment has remanded the case to the Platting Board, this decision is not a final decision with respect to any issues involved in the appeal. This decision will be a final decision once the Platting Board issues a decision on whether the plat complies with street-width requirements and when, following service of the Platting Board's decision, no appeal is perfected within the period specified in AMC 21.03.050A.4.<sup>11</sup> The parties have 30 days from the expiration of that period to appeal the final Board of Adjustment decision to the superior court.

ADOPTED by the Board of Adjustment this 9<sup>th</sup> day of February 2024.



Bernd Guetschow, Chair  
on his own behalf and on behalf  
of Board of Adjustment Members  
Carl Propes and Michael Rose

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<sup>11</sup> AMC 21.03.050A.13.d.