

NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT

This appeal under AMC 21.30.030 must be perfected by the applicant, or any person adversely affected by the Planning and Zoning Commission's, Platting Board's, or Urban Design Commission's decision, no later than **20 days** after the date that the written *Findings of Fact and Decision* is approved, on the record, and becomes final. To perfect the appeal, the applicant 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.

CLERK'S OFFICE

General Identity of Action Being Appealed:

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

Appellant's Name and Address:

Last Name: First Name:
Address: City: State: Zip:
Phone Number:

Relationship to Action: Petitioner Agent of Petitioner Government Agency Other Person Adversely Affected

Provide Name and Address of Petitioner

Last Name: First Name:
Address: City: State: Zip:

NOTE: If you are not the petitioner or his/her agent, you must give notice to the petitioner by certified mail at his/her last known address within three days of filing this *Notice of Appeal to the Board of Adjustment*.

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

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

Date: 4-21-2014 Cash: _____ Check: Credit Card: _____ Receipt: 470403 Total Paid: \$1030.00

#24738

M.O.A.
2014 APR 21 PM 12:33

BEFORE THE MUNICIPALITY OF ANCHORAGE
BOARD OF ADJUSTMENT

CLERKS OFFICE

In Re:)
)
Platting Board Resolution No. 2014-006:)
A Resolution Approving the Subdivision)
of Thirty Lots and One Tract of Land into)
Three Tracts of Land with Vacation of a)
Portion of a 40-Foot Electrical Distribution)
Line Easement, for Eagle Bluff) **PB Resolution No. 2014-006**
Subdivision, Tract C (Plat No. 98-40),)
BLM Lots 85-88, 90-94, 104-116, and) **Case No. S-12031-2**
120-127; Generally Located West of)
Yellowstone Circle and North of Eagle)
River Loop Road, in Eagle River.)
)
LBJ, LIMITED LIABILITY COMPANY,)
)
Appellant.)
)
)
)
_____)

SPECIFICS OF APPEAL CERTIFICATION

LBJ, LIMITED LIABILITY COMPANY (“LBJLLC”), through its authorized representative Ashburn & Mason, P.C., hereby appeals Platting Board Resolution No. 2014-006. This notice of appeal perfects LBJLLC’s appeal to the Board of Adjustment, pursuant to AMC 21.30.030.

The specific grounds for this appeal are:

I. Combined Procedural Error and Error in Application of Law.

The Platting Board erred by improperly ignoring the explicit requirements of Title 21 in failing to require that petitioner enter into a subdivision agreement for required improvements and further, failed to provide any legal or factual findings as to

the adequacy of the existing development agreement to supplant the required Subdivision Agreement, including the following more specific errors:

- a. The failure to hold the School District to the provisions of Title 21, as explicitly required by AMC 21.01.040
- b. The failure to require that the plat be approved in accordance with all of the requirements of AMC chapters 21.75 through 21.87 (now recodified at 21.08) as required by AMC 21.15.100.A.
- c. The failure to require that the final plat be accompanied by a subdivision agreement as required by AMC 21.15.120.D and 21.08.060.
- d. The failure to make adequate findings under AMC 21.75.010.A and B that specifically addressed why a requirement of a subdivision agreement as well as a requirement to construct improvements to an urban standard under AMC 21.85.020 and .030 were not required.
- e. The failure to make any finding explaining why an existing development agreement served to supplement or replace the Code-required subdivision agreement, when the development agreement failed to address many if not most of the explicit requirements of a valid subdivision agreement.
- f. The failure to recognize that a development agreement does not satisfy the code requirements of a subdivision agreement, which, unlike a development agreement, has explicit financial and deadline requirements and consequences for nonperformance.


- g. The failure to require the School District to enter into a subdivision agreement as a condition of plat approval, just like a private developer.
- h. The failure to require a subdivision agreement and further the requirement that improvements be constructed to urban collector standards is also deficient as it fails to identify who is responsible for constructing the improvements. Both the School District and the Municipality have disavowed responsibility to undertake this work; however, both wish, under the guise of a development agreement, to get the final plat recorded.
- i. By not requiring a subdivision agreement as a condition to plat, the Platting Board will improperly allow the petitioner to record a final plat with no obligation to actually build any of the Code-required urban standard improvements.

II. Findings or Conclusions That Were Not Supported by Substantial Evidence.

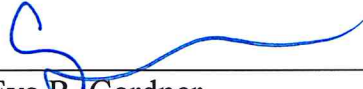
- a. The Platting Board made no findings that addressed its failure to require a subdivision agreement or performance guarantees to improve the public right-of-way to urban standards, as required by AMC 21.85. To the extent the Platting Board may have made an implied finding that a development agreement is an acceptable substitute for a subdivision agreement, substantial evidence does not exist in the record to support such a drastic departure from the clear requirements of Title 21.

For these reasons, LBJLLB requests that the Board of Adjustment vacate the Platting Board's approval of the plat and remand this matter to the Platting Board for a new determination, with approval of the plat conditioned on compliance with the Code, including provision of a subdivision agreement and performance guarantees.

DATED: 4-21-2014

By: 
Donald W. McClintock
Alaska Bar No. 8108061

DATED: 4-21-2014

By: 
Eva R. Gardner
Alaska Bar No. 1305017

MUNICIPALITY OF ANCHORAGE
PLATTING BOARD RESOLUTION NO. 2014-006

A RESOLUTION APPROVING THE SUBDIVISION OF THIRTY LOTS AND ONE TRACT OF LAND INTO THREE TRACTS OF LAND WITH VACATION OF A PORTION OF A 40-FOOT ELECTRICAL DISTRIBUTION LINE EASEMENT, FOR EAGLE BLUFF SUBDIVISION, TRACT C (PLAT NO. 98-40), BLM LOTS 85-88, 90-94, 104-116, AND 120-127; GENERALLY LOCATED WEST OF YELLOWSTONE CIRCLE AND NORTH OF EAGLE RIVER LOOP ROAD, IN EAGLE RIVER.

(Case S-12031-2)

WHEREAS, a request has been received from the Anchorage School District, petitioner, and Lounsbury and Associates, representative, for approval of the subdivision of thirty lots and one tract of land into three tracts of lands with vacation of a portion of a 40-foot electrical distribution line easement, for Eagle Bluff Subdivision, Tract C (Plat 98-40), BLM Lots 85-88, 90-94, 104-116, and 120-127; generally located west of Yellowstone Circle and north of Eagle River Loop Road, in Eagle River; and

WHEREAS, public hearing notices were published, mailed, and posted, and a public hearing was held on February 5, 2014.

NOW, THEREFORE, BE IT RESOLVED by the Municipal Platting Board that:

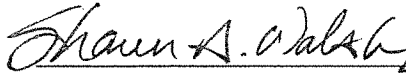
- A. The Board makes the following findings of fact:
1. Approval of this plat is the most efficient process possible for getting the project completed.
 2. Testimony by the Jose Vicente regarding the denuding of a vegetative buffer was not compelling enough to make the suggested changes to the conditions of approval.
 3. Drainage concerns will be addressed in the design phase and the intent is to move forward with the drainage improvements as well as bringing Yosemite Drive up to collector standards.
- B. The Board APPROVES the above mentioned plat and vacation by a vote of 7 aye to 0 nay subject to the following conditions:
1. Approval of the request to vacate a portion of the 40-foot electrical distribution line located in the northeast corner of Proposed Tract A subject to:
 - a. Submitting letters of non-objection from all affected utilities and recording a suitable plat within 18 months of approval.

2. Approval of the preliminary plat for 18 months subject to the following conditions:
 - a. Resolving utility easements.
 - b. Providing a SWPPP to WMS for review and approval prior to receiving a subdivision notice to proceed (NTP).
 - c. Resolving with Heritage Land Bank the naming of the subdivision.
 - d. Resolving with WMS the possible need for permanent storm water treatment.
 - e. Resolving easement locations with AWWU Planning across Tract B and Tract C.
 - f. Dedicating a 100-foot right-of-way for Yosemite Drive in the location of Intra-Governmental Permit, Book 2966, Page 666.
 - g. Resolving with Public Transportation the need to provide two far side ADA accessible bus stop boarding platforms with connecting sidewalks.
 - h. Including the following notes on the plat:
 - i. Property owners or utilities shall not raise, lower, or re-grade the property in a manner that will alter the drainage patterns from those shown on the approved grading and drainage plan without prior approval from Municipality of Anchorage Building Safety Office.
 - ii. Property owners or utilities shall not obstruct, impede or alter approved drainage facilities (e.g. swales, ditches) in any way that will adversely impact adjacent properties or rights- of-way.
 - i. Making the following drafting changes:
 - i. Correcting tract 8B label, mislabeled as 8A (2004-001).
 - ii. Showing the existing easements as depicted on the MOA grid maps.

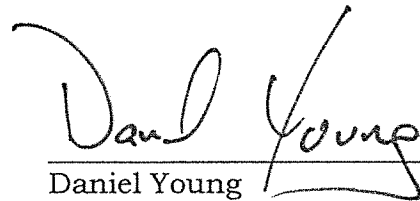
PASSED AND APPROVED by the Municipal Platting Board on the 5th day of February, 2014.

ADOPTED by the Anchorage Platting Board on the 2nd day of April, 2014. This written decision/resolution of the Platting Board is final and any party may appeal it

within twenty (20) days to the Board of Adjustment pursuant to the Anchorage
Municipal Code 21.30.030.



Jerry T. Weaver, Jr. *ACTING FOR*
Secretary



Daniel Young
Chair

(Case S-12031-2)

dw

CASH RECEIPT

470403

Municipality of Anchorage
 P.O. Box 196650 • Anchorage, AK 99519-6650



FINANCE DEPARTMENT

Date of Payment (MMDDYY)

4/21/2014

Received from Ashburn^E Mason, P.C.

Receiving Department Remarks LBJ, LLC

Notice of ~~Legal~~ Appeal to the Board of Adjustment

Amount of Payment

\$ 1130.00

Payment type (select only one)

- ACH #24738 MLP AWWU
 Cash/Check Credit Card Debit Card Other

Employee ID

61998

Coll. Dept ID

1020

Deposit ID

ACCOUNTING INFORMATION

LN#	\$ AMOUNT	FUND	ACCOUNT	DEPT ID	PROGRAM	CLASS	BDGT PERIOD	PROJECT/GRANT
	ACTIVITY ID		RES TYPE	RES CAT	OPEN ITEM			DESCRIPTION
1	1130.00 1080.00	101	9794	1020	0000	000	2014	102000 Notice of Appeal Fee
2	50.00	101	9499	1020	0000	000	2014	102000 Bond Cost
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RECEIPT 470403

Prepared by (please print):

Lisa Schleusner

Date prepared:

4/21/14

Phone no:

X4688

ASHBURN & MASON, P.C.
1227 WEST 9TH AVE

24738

April 21, 2014

Payable to: Municipality of Anchorage

Amount: \$1130.00

Client: LBJ, LLC

For: Appeal filing fee and Cost Bond

File No.: 10595.001

In TABS:

ASHBURN & MASON, P.C.
1227 WEST 9TH AVE

24738

PAYMENT
RECORD