

HB

176

CS FOR HOUSE BILL NO. 176(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to errors in surveys of land and amending Alaska Rules of
2 Civil Procedure 4 and 12."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. MANIFESTLY DEFECTIVE SURVEYS. (a) An action in rem to determine
5 and recognize boundaries of and within a subdivision within a municipality as they presently
6 exist and to quiet title within the boundaries of the subdivision to the persons judicially found
7 entitled to title under this section may be maintained if the platted description or field location
8 of streets, tracts, and lots of or within a subdivision are manifestly defective due to a defective
9 survey so as to create sufficient uncertainty as to affect the quiet enjoyment and property
10 rights of the owners and an owner of land within the subdivision objects to the results of a
11 resurvey and preliminary plat.

12 (b) An action under (a) of this section may only be maintained

13 (1) by

14 (A) the municipality the subdivision is located within; or

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(B) a person granted permission by the court to bring the action; and
(2) if

(A) the municipality the subdivision is located within has
(i) by resolution supported an action under this section for the subdivision; and
(ii) established a special assessment district in the manner provided for capital improvements under AS 29.46.010 - 29.46.140 or under municipal ordinance; and

(B) a resurvey and preliminary plat has been completed by the assessment district and one or more property owners of or within the subdivision object to the results of the resurvey and filing of the preliminary plat.

(c) The complaint in an action under this section must include

- (1) a statement of facts showing how this section is applicable;
- (2) the current plat of the subdivision;
- (3) a description of the entire real property sought to be affected by the action, including a description of all improvements to the real property and any existing boundary evidence along with a description of the location of all general topographic features;
- (4) if the action is not brought by the municipality, a specification of the estate, title, and interest owned and in the actual possession of the person bringing the action in described parts of the entire real property affected by the defective survey;
- (5) a specification of the estate, title, and interest in and owners of each separate part of the entire real property affected by the defective survey so far as they are known to the person bringing the action, and so far as they are capable of being discovered by reasonably diligent search by the person bringing the action;
- (6) a specification of the street, public, or other areas offered, or that may be offered, for vacation in whole or in part for judicial equitable allocation to landowners for the mitigation of the losses inflicted upon the landowners by the defective survey;
- (7) the preliminary plat undertaken by the assessment district of the entire real property affected by the defective survey, embodying the land boundaries contained within the legal boundary of the defective survey.

(d) In addition to other notice required by applicable court rule, notice shall be

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1 published as provided in Alaska Rule of Civil Procedure 4(e), and a copy of the notice shall
2 be posted in a conspicuous place on each separate parcel of the entire real property described
3 in the complaint within 20 days after the first publication of the notice.

4 (e) An answer to the complaint must

5 (1) be served within 90 days after the first publication of the notice; the court
6 for good cause shown may allow up to an additional 180 days to answer;

7 (2) specifically set out in detail the way in which the answering party's estate,
8 right, title, or interest in or to, or lien on all or any part of the property is different from, or
9 greater than, the interest of the party as it is described in the complaint;

10 (3) be confined to rights based on events occurring at the time of, or since the
11 time of, the defective survey.

12 (f) A claim, right, or action that a party may have against a person based upon facts
13 or events that occurred before the action under this section, remains unaffected by the action
14 brought under this section and may be asserted at any time and in any manner permitted by
15 law. However, a judgment in an action under this section is final as to the consequences, with
16 respect to land boundaries, of the replat of the defective survey.

17 (g) A party to an action authorized by this section may record a notice of the
18 pendency of the action in the form and at the place and with the effects specified in
19 AS 09.45.940.

20 (h) The vacating of streets, public areas, and other areas in whole or in part by the
21 voluntary action of a municipality, for the purpose of making it possible for the court to
22 mitigate the hardships suffered by individuals because of the defective survey, can be
23 accomplished by the offer of the municipality expressed in the complaint followed by the
24 court's approval of it in the action authorized in this section, without other formalities. This
25 provision is a special substitute for the provisions contained in AS 29.40.120 - 29.40.160.

26 (i) In an action under this section, judgment may not be given by default, but the court
27 shall require proof of the facts alleged in the complaint and other pleadings.

28 (j) The judgment must

29 (1) determine the land boundaries of each parcel of land located within the
30 entire area of real property sought to be affected by the action, whether owned publicly or
31 privately after judicial equitable allocation of land voluntarily vacated by a municipality under

1 (h) of this section;

2 (2) determine the person or persons having estates, rights, titles, interests, and
3 claims in and to each parcel, whether legal or equitable, present or future, vested or
4 contingent, or whether they consist of mortgages or liens of any description;

5 (3) approve and direct the proper filing of a new plat covering the entire area
6 of real property sought to be affected by the action, as a substitute for the plats previously
7 filed, that were based upon the defective survey;

8 (4) to the extent reasonably practicable, attempt to minimize disruption to lines
9 or boundaries of parcels or lots that are not found to be materially incorrect;

10 (5) give effect to the changes in land boundaries reflected by the resurvey and
11 preliminary plat, mitigated so far as can equitably be done by allocating to contiguous lots
12 parts of the land released by the municipality under (h) of this section.

13 (k) A judgment under this section

14 (1) is conclusive with respect to land boundaries on each person who, at the
15 commencement of the action, had or claimed an estate, right, title, or interest in or to a part
16 of the entire area of real property described in the complaint as intended to be affected by this
17 action, and upon each person claiming under any such person by title subsequent to the
18 commencement of the action;

19 (2) may not solely, by reason of the judgment or its effect, make a parcel or
20 lot ineligible for a use or development for which it was eligible before the judgment.

21 (l) The court shall assess the cost of the action under this section and the replat to the
22 assessment district.

23 (m) The person bringing the action shall record a certified copy of the judgment at
24 the expense of the assessment district with the recorder for the recording district in which the
25 land is situated.

26 (n) This section does not affect the right of a person harmed by a defective survey to
27 recover damages for the defective survey or limit the liability of the person who performed
28 the defective survey.

29 (o) The remedy provided by this section is cumulative and in addition to any other
30 remedy provided by law for quieting or establishing title to real property or the boundaries
31 of it.

1 (p) In this section, "defective survey"

2 (1) means that the original monumentation set by the surveyor of record to
3 represent the property corners, or the distance and direction calls, on a plat of public record
4 are sufficiently and manifestly erroneous so as to create gross uncertainty and ambiguity as
5 to the

6 (A) position of property lines within a subdivision; or

7 (B) location of lots, streets, and tracts of a subdivision; and

8 (2) does not include Bureau of Land Management rectangular plats, United
9 States surveys, and state rectangular plats.

10 * Sec. 2. An action under sec. 1 of this Act that is commenced before December 31, 1998,
11 may proceed under the provisions of sec. 1 of this Act notwithstanding the repeal of that
12 section under sec. 4 of this Act.

13 * Sec. 3. Section 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 4
14 relating to service of process, and Alaska Rule of Civil Procedure 12, relating to answers in
15 civil actions.

16 * Sec. 4. Section 1 of this Act is repealed December 31, 1998.

9-LS0708C
Luckhaupt
4/18/95

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- 5 subdivision; and
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- 8 municipal ordinance; and
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- 18 (4) if the action is not brought by the municipality, a specification of the estate,
- 19 title, and interest owned and in the actual possession of the person bringing the action in
- 20 described parts of the entire real property affected by the defective survey;
- 21 (5) a specification of the estate, title, and interest in and owners of each
- 22 separate part of the entire real property affected by the defective survey so far as they are
- 23 known to the person bringing the action, and so far as they are capable of being discovered
- 24 by reasonably diligent search by the person bringing the action;
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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB176(CRA)

Revision Date: 11-Apr-95 Dept Affected: Natural Resources
 Title: An Act relating to errors in surveys of land. BRU: Resource Development
 Component: Land Development
 Sponsor: Reoesuntative Bunde
 Requestor: CRA Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

	FY96	FY97	FY98	FY99	FY00	FY01
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

	FY96	FY97	FY98	FY99	FY00	FY01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS

	FY96	FY97	FY98	FY99	FY00	FY01
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact anticipated for the Department of Natural Resources associated with implementation of this legislation.

In Anchorage, two subdivisions, Rabbit Creek View and Rabbit Heights were done by the same surveyor 25 years ago, who has had his license revoked. Boundaries of the plat don't close by hundreds of feet. These problems have manifested themselves to the point where lending institutions and title companies are electing not to service the lot owners in the area. Surveyors have also not elected to perform surveys and road and drainage improvement is stopped due to the uncertainty in determining the position of right-of-ways.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 11-Apr-95
 Approved by Commissioner: [Signature] Date: 4-11-95
 Agency: Natural Resources

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REPRESENTATIVE CON BUNDE
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HB 176

"An Act relating to errors in surveys of land."

When outside survey lines of a subdivision are "manifestly defective", the inside lines of some or all of the individual lots will be incorrect as well. When this occurs, no one in the subdivision is afforded clear title, creating difficulties in title transfer, mortgage insurance and financing. While it is true that a property owner can bring quiet title action against lots surrounding his or her own, it is not practical to solve multi-owner, multi-lot problems under a single quiet title action when the outside markers are so far off the mark.

SB 79 would allow a party to enjoin all property owners of record, (after proper petition to the court, resolution by a local government, and creation of a special assessment district,) to request a resurvey and replat of manifestly defective subdivision lines and subsequent changes in individual lots through Superior Court action.

The Municipality of Anchorage has requested this legislation to help correct two "manifestly defective" subdivision surveys containing 347 lots in the Anchorage area. Staked lot corners are not in the same position as shown on the plats, and in many cases, lot lines are 20 to 30 feet off from their noted position on the plats. The Municipality has exhausted all other aspects of law to correct this problem and finds that this legislation is the only practical solution to offer relief to assist property owners in correcting this defect. While the immediate reason for this legislation occurs in Anchorage, the changes would be available statewide for manifestly defective surveys.

SB 79 can only be utilized to resolve manifestly defective survey problems if specific circumstances with a boundary dispute cannot be resolved

with existing common law boundary resolution principles. SB 79 is crafted to allow for a vote of all the affected landowners to determine if a resurvey of the entire subdivision(s) should occur. A majority must concur to form a special assessment district; the Municipality must also pass a resolution supporting this action and formation of an assessment district. A complaint must be filed with the court with a statement of facts surrounding the survey area in question, i.e. persons with interest in the affected property, the type of interest they have, facts about the problem and the proposed replat, including an as-built survey showing current improvements and landmarks, with existing boundary evidence. Also included could be a listing of all property or properties that may be offered to compensate landowners for mitigation of losses. A certified statement by a competent authority citing that a majority of the affected landowners voted for the replat and voted to set up an assessment district to fund the replat must also be submitted to the court.

The court may accept, modify, or direct the surveyor(s) to modify the proposed replat. The court assesses the special assessment district for the costs of the replat. Once the court has acted, the replat is recorded as the official record.

A subcommittee of the Alaska Society of Professional Land Surveyors (ASPLS) concluded that when a subdivision survey is "manifestly defective", it cannot be resolved on a piecemeal basis and unless all the land owners participate, it will never be resolved. A subcommittee of the ASPLS worked with the sponsor's office, the Municipality of Anchorage, the Department of Natural Resources and various affected entities to craft the language in SB 79.



REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES
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Alaska State Legislature
House of Representatives

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1 (907) 258-8168

MEMORANDUM

DATE: April 7, 1995

TO: Representative Ivan Ivan
Co-Chair Community and Regional Affairs Committee

FROM: Rep. Con Bunde
Co-Chair House HESS

RE: HB 176

This memo is a request to calendar HB 176 for a Community and Regional Affairs Committee hearing at your earliest possible convenience.

HB 176 is attached and a packet will be available in the near future. If you have any questions please call Patti Swenson, ext 6824.

Thank you for your cooperation and help with this legislation.

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

DATE: April 13, 1995
TO: George Newsham, Assistant Municipal Attorney
Thru: Lee Browning, PE, Municipal Engineer *LB*
FROM: Tom Knox, PLS, Municipal Surveyor *T.K.*
SUBJECT: Senate Bill 79/House Bill 176

As you know, I have been working for several years on the Rabbit Creek Heights Subdivision and Rabbit Creek View Subdivision survey problems. The current companion bills are the result of that work. The type and magnitude of survey problems affecting the property owners within these two subdivisions illustrate the need for this particular legislation. I have included highlighted examples of some of the problems which randomly affect both subdivisions.

It has become necessary to provide a legal mechanism for a majority of consenting owners of property within the boundaries of a defective survey to be able to correct their survey and record an accurate description of their properties. This legislation provides a mechanism which identifies the funding source, binds the property owners to a solution and provides the legal authority to ensure equitability and quiet title to all the property owners.

I wholly support passage of a bill which would accomplish this need.

Encl.

cc: Jim Fero, Director of Public Works

April 14, 1995

HOUSE BILL #176 - SENATE BILL #79

The bill should be passed. It has been written in such a way that the land owners have to say their boundaries are in such a state that this is the only law that will work to fix the boundary problems. This bill is also written so that to use this law, there must be major errors in a large area.

I am one of the trustees on three lots in a subdivision that this law would apply to. I am also a Registered Professional Land Surveyor in the State of Alaska. I have worked on the committee that helped write this legislation. I believe that this legislation has a lot going for it. It is a win -- win piece of legislation. The land owners affected have to vote to set up a special assessment district to pay for the problem and if they don't want to pay to fix the problem, they can vote down the special assessment district. This legislation also has a Sunset clause in it so that it can be revised or canceled. And the passing of this legislation will not do harm to anyone.

Under section 1 (2)(A)(ii) on the last draft that I have the special assessment district is established by AS 29.46.010 - 29.46.140 or under municipal ordinance. Up until this draft, the special assessment district was established by the land owners that may be affected. I would like to see that the land owners still remain in control of this special assessment district. They are the ones affected and they are also the ones that have to pay for it.

Yours truly

Bryan E. Cooper PLS

SENTEC

Surveying, Engineering and Planning
7801 E 36 th Ave, Suite A
Anchorage, Ak 99504

(907) 333-6881
Fax (907) 333-1085

April 17, 1995

Representative Con Bunde
State Capital
Juneau, AK 99801

Re: HB-176- An Act relating to errors in surveys of land

Dear Representative Bunde,

I am a registered Land Surveyor, located in Anchorage and wish to inform you that I support your bill. I was a member of the ASPLS committee formed to review and comment on the original version of the Bill. I am also the ASPLS legislative committee chair. This letter represents my own views and not necessarily those of ASPLS.

As surveyors we are well aware of the problems associated with defective surveys. In many cases the existing Laws and Regulations are sufficient to allow a problem survey or subdivision to be corrected. This bill is designed to assist in the situation where the implementation of existing Laws would create more problems than solutions. This bill is an improvement over the initial bill, as it is removed from the confusion of the Earth Slide relief Act and also this draft clearly outlines the steps and procedures necessary to implement the bill. There are several areas in this draft which still require clarification. The first is in regards to the recordation of the replat. It is assumed that the Court through a judgment will instruct the local platting authority to accept the plat and record it. Secondly there is some confusion over the definition of Municipality, as used in this bill

Thank you for the opportunity to speak to this bill.

If you have any other questions please contact me.

Sincerely



Mike Home P.L.S

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 68. [illegible]
 69. [illegible]
 70. [illegible]

11-0-93
 ACCEPTED
 CLERK'S OFFICE

Department of Law
 and
 Justice
 1993

Section 2: That this ordinance shall become effective immediately upon passage and approval.

PASSED AND APPROVED by the Anchorage Assembly this 9th day of November 1983

[Signature]
Chairman of the Assembly

ATTEST:

[Signature]
Municipal Clerk
Date of entry in register: 11/15/83

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STEWART TITLE
COMPANY OF ALASKA

November 15, 1992

Mr. Paul Richardson
Performance Real Estate

Re: Rabbit Creek Heights Rabbit Creek View

Dear Paul:

As discussed with you Thursday, I am writing to clarify our Company's position as to the survey boundary discrepancies of the above referenced subdivisions.

It is commonly known that when these two subdivisions were originally surveyed and platted the common boundary between the two contained errors in the bearings and distances and therefore creating encroachments, location, boundary and area discrepancies that spread throughout and affect all lots in these subdivisions. Many surveyors will not even perform as-built surveys because of this problem. Many lenders will not lend either.

An Alaska Owner's Policy of Title Insurance (insuring the buyer) contains a general exception as follows:

"Encroachments or questions of location, boundary and area, which an accurate survey may disclose...."

This exception means that the policy does not afford coverage relating to these problems in these subdivisions.

As far as possible solutions of this problem, it would require a comprehensive replat of both subdivisions. This would have to be accomplished by agreement between all property owners or by a court action that would bind all property owners to cause a replat.

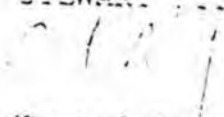
Page 2
Mr. Paul Richardson

Under today's municipal regulations for grading, the costs involved could be astronomical, however, this is the only appropriate solution to this dilemma.

Best of luck in your effort and please call if I may be of further assistance.

Yours truly,

STEWART TITLE COMPANY OF ALASKA, INC.


Howard Hancock
Advisory Title Officer

HH:cc

MUNICIPALITY OF ANCHORAGE
Memorandum

Date: January 24, 1991

To: Tom Knox

From: Larry Ison

Subj: Rabbit Creek Heights Subdivision Problems

To begin with, the legal description shown on sheet 1 does not close by 14.48 feet. The first two calls of the description are along the boundary of the Rabbit Creek View plat and the distances differ 0.47' and 0.38' between the legal description and the Rabbit Creek View plat. The two plats also differ at the most southeasterly leg along Rabbit Creek by 12.17' 33" and 11.18 feet. Since the Rabbit Creek View plat does not close by 106.37 feet to 13.41 feet, I assume the plat of Rabbit Creek Heights is closer to being correct.

The exterior boundary of the Rabbit Creek Heights plat has the same bearings and distances as the legal description. See attached drawing of exterior boundary.

This plat is not a total mess, Block 2 works out pretty well on paper. I computed a misclosure of ~~24~~ 0.48' for the exterior block boundary and the side lot lines inverted within about 10" for bearing and 0.00' for distance. I did check the square footage of two lots, one was good (Lot 17) and the other, Lot 10, Bk 2, I compute 3861 square feet less than what is shown on the plat.

The plat has recurring problems throughout. They are as follows:

1. Very few radii lengths given. For deltas near 90° at rounded lot corners there seems to be little problem.

2. Cul de sac 'return radii' lengths are not provided and when I tried to hold the given arc lengths, I found the curves were either non-tangent or the radius was some really odd distance such as 17.33'. When I assumed a 50' radius for the 'return radius' I generally found one side of the cul de sac seemed to work well but the other side didn't. I have problems with all but one or two of the cul de sacs fitting together.

3. Blocks with walkways in them do not work well. I suspect that the walkways may have been inserted as an after thought and not all the computations/numbers on the plat were properly changed to reflect the changes.

4. There are numerous places with distances not shown and a few places with out bearings. Trying to compute the value of the missing data on a plat with as many problems as this one, is not desirable.

5. This plat does not seem to tie to the north with the Rabbit Creek View plat very well. I have tried to tie in a few places. Computing the same point from three directions I have found some places where 11' is the least difference in the three positions. Other places are not as bad.

6. There are many places where the sum of the lot line distances varies from the total distance shown along a street centerline or block/subdivision boundary. For example, Diane Drive centerline between blocks 2 and 3, centerline distance = 1401.91 feet, the southwest boundary of block 3 lot summation = 1410 feet.

A few of the other problems are:

7. Curve 7, the radius does not agree with the other curve information.

8. Curve 11, delta does not compute from bearings of tangents by about seven minutes.

9. Curve 15, length computes 12.12 feet longer than shown.

10. The distance of the lot line common to lots 6, 7 Block 5, appears to include the distance to the center of the radius point.

Some street intersections have positional differences of about 0.9 feet but generally the street intersections fit together within a tenth. Using lot/block bearings and distances, positional differences of 3 feet or so are common throughout the plat. This plat is a computation

10/11

MUNICIPALITY OF ANCHORAGE
Memorandum

Date: December 6, 1991

To: Tom Knox

From: Larry Ison

Subject: Rabbit Creek View Plat 70-133

I have checked computations on the Rabbit Creek View plat 70-133 and observed the following problems:

1. The exterior boundary does not close by approximately 33.5 feet. I suspect the problem is along the creek/south boundary.
2. This plat's south boundary adjoins the boundary of Rabbit Creek Heights plat 70-131. Near Carl Street, the two plats have two legs that disagree by approximately 11 feet in distance and as much as $1^{\circ} 47' 13''$ in bearing. As of this date I have not computed the exterior boundary of Rabbit Creek Heights closure.
3. South boundary near lot 3, Bx 3, the distance is shown as 139.14, the plat of Rabbit Creek Heights shows 139.14 along the same line. The distance scales closer to 139.14'. I have not checked the exterior closure using 139.14 as of this date. One common thing I noticed while checking the computations of this plat, distances between two points will scale close to what I get inverting between points that are a part of what appears to be a good traverses.
4. Tract A, the north and east boundary dimensions have errors, the tangent lengths were not subtracted, thus the distances shown are 10.31 feet too long.
5. Mickleen Street from Jamie St. south to Francasca Drive, along the street centerline the distance is 1022.93 feet, along the west right of way of Mickleen St. the distance adds up to 1020.79 feet, 2.14 feet shorter than centerline.
6. Leo Circle and lots 13, 14, 16 and 17, Block 37, this is a real quizz as to what is wrong/right. The exterior boundary of the lots as a block closes 0.31 feet. Setting the radius point of Leo Circle by a bearing bearing intersects, along lot lines 13/14 and 16/17, the distance to the S.I. at Mickleen computes out to 209.56 feet versus 186.70 feet shown. The distance from the radius point to lot corners 16/17, 16/13 computes to 50.00 feet, the distance to corner 13/14 computes as 59.92 feet versus 50.00 feet.
7. The lot line common to lots 13/16 Block 37, the bearing from the radius point set by 381, of Leo Circle to the west corner of the lots computes to with a second however, the distance computes to 138.39 feet, 59.39 feet longer than the plat's distance.

8. Francesca Drive, the center line ties into the boundary within 0.02', however the north right of way computes out to between 17.40' and 18.06 feet from centerline, the south and north right of ways compute out to within a couple of hundredths of 50 feet. Going west from Nickleen to Carl, the north right of way does not close by 3.98 feet.
9. Francesca Drive, the south right of way going west from Nickleen to Carl, then southeast along the back property lines to a closing point at the southeast corner of lot 3, Block 3, does not close by 3.49 feet. Inversing along the common property lines along the south side Francesca results in bearings differing from about 20 minutes to over 4 degrees and distances varying from about a 0.3 feet to as much as 12.24 feet along the line common to lots 4 & 5.
10. Sheet 2, east boundary and Genevieve Drive centerline, distance shown as 418.80 feet does not include the 30.10 feet for the north right of way of George Court, the distances should be shown as 448.90.
11. Sheet 2, exterior boundary, the bearing to the southwest of lot 4, Block 3, shown as N 41° 28' W appears to have been transposed, the property line bearing is shown as N 11° 28' W. The boundary does not close by 116.50 feet using the shown bearing, using N 41° 28' W the boundary does not close by 10.94 feet.
12. The square footage for lots 1 thru 4, Block 3 is from about 1250 to 1800 square feet greater than what I compute. The boundary and side lot inversions are within seconds and a couple of hundredths.
13. Lot 3, Block 3, the lot closes within 0.01 but I compute the square footage as being 1012 square feet greater than shown.

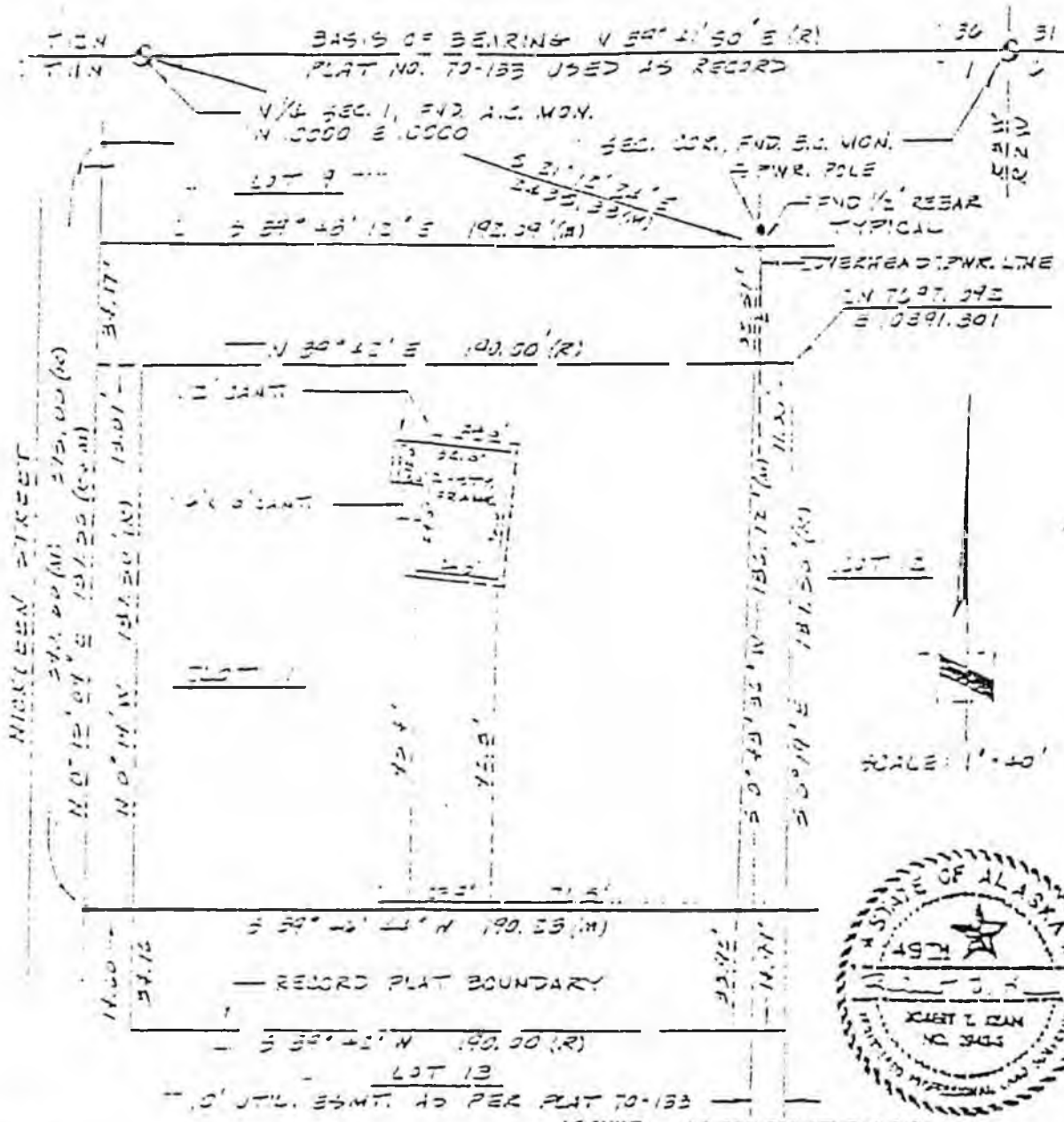
The errors in this list appear to be of a random nature.

Rabbit Creek Heights and Rabbit Creek View Subdivisions:

In Anchorage two subdivisions, Rabbit Creek Heights and Rabbit Creek View, have a notorious reputation for multiple plat and survey problems. These problems have manifested themselves to the point where lending institutions and title companies are electing not to service the lot owners in the area. Many surveyors have elected not to perform surveys in the area and progress in terms of road and drainage improvement is stopped due to the uncertainty in determining the position of the right-of-ways. Some septic system approval is ongoing as long as the lot owner can produce an as-built showing sufficient area free of conflicting boundary conditions. The survey shown in Figure 1 is an example of an as-built conducted solely for the purpose of septic system approval in Rabbit Creek View Subdivision. It shows the relationship between the subdivision lot established from original exterior monumentation and the position of the lot based on the rebar marking the corners of the lot. The difference is then depicted. If the area free of conflict is of sufficient size for system approval then Anchorage Health and Human Services (AHS) will pass the system.

It is purported that some of these lots are up to 100' feet off and some lots extend or exist entirely or partially outside of the boundaries of the subdivision. Subdivisions that are grossly in error need to be resolved as a whole. There first has to be legislation in place to force the landowner to accept the amended plat and alternate positions of his or her land. There has to be a means to pay for the survey, planning, and title work. The next step is to determine what is wrong by retracement, as-built surveys, and use of precision aerial photography. A pool of money has to be available to purchase land to provide the needed flexibility in areas of gross error. One person has to have the freedom and responsibility (subject to review) for sorting out conflicting information and distributing excesses and deficiencies fairly. And most importantly the property owners, lending institutions and title companies have to accept the results without prejudice. The end product should be clear title, an accurate plat, and visible property monuments accurately set according to the regular

By Bob Kean, Esq.



NOTES:

- (R) = RECORD PLAT NO. 70-133
- (M) = MEASURED THIS SURVEY

NOTE: This survey represents the location of existing record corners as located this date. It is apparent that a substantial discrepancy exists between those corners and their position as called for in the record plat 70-133. Kean and Associates assume no responsibility for corners set incorrectly by the original surveyor, or problems arising therefrom.

EASEMENTS OF RECORD, OTHER THAN THOSE SHOWN ON THE RECORDED PLAT ARE NOT SHOWN HEREON.

AS-BUILT NO CORNERS SET THIS DATE.

I, Surveyor hereby state I have performed a Verification in accordance with the following recorded property:

LOT 13 BLOCK 4 RABBIT CREEK VIEW SUBD.

Admiralty Recording Project, Alaska, and that the improvements situated thereon are within the property lines and do not overlap or encroach on the property lines adjacent thereto, that no improvements on property lines adjacent thereto encroach on the premises in question and that there are no roadway, transmission lines or other public easements on said property except as indicated hereon.

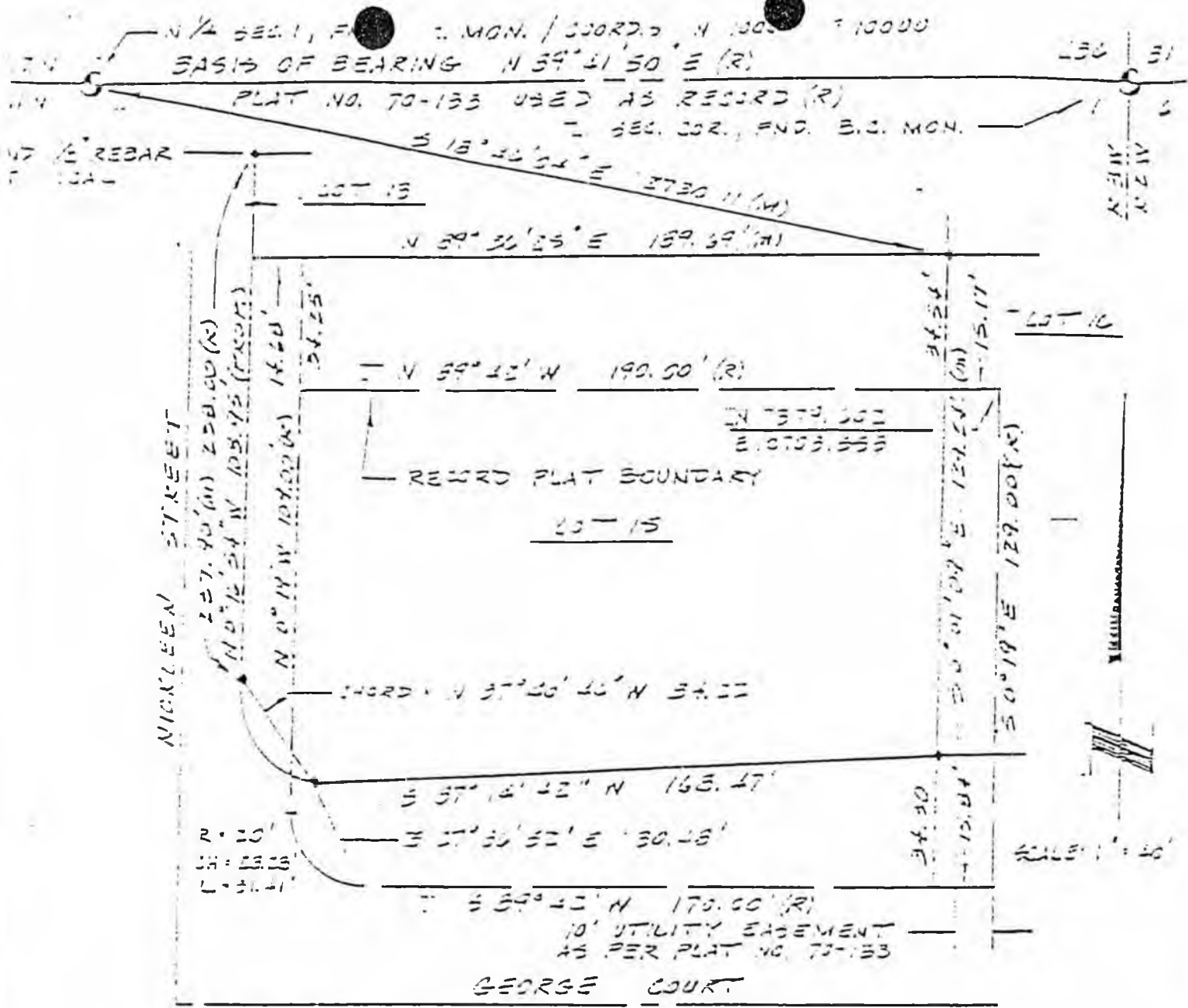
Dated at Admiralty, Alaska

this 1st day of _____ 1955

ROBERT T. KEAN & ASSOCIATES
Surveyors



FIG 1



- KEY:
- 1) (R) = RECORD DATA (PLAT NO. 70-133)
 - 2) (M) = MEASURED THIS SURVEY
 - 3) (PROP) = PROPORTIONED DISTANCE
 - 4) EASEMENTS OF RECORD OTHER THAN THOSE SHOWN ON THE RECORDED PLAT ARE NOT SHOWN HEREON.



DATE: 5-20-85

SURVEY OF: LOT 15/BL 1
 RABBIT CREEK VIEW SUBD
 SURVEYED BY: KEAN - ASSOC.
 6510 HOMER DR. ANCHORAGE, AK

NOTE: This survey represents the location of existing corners as located this date. It is apparent that a substantial discrepancy exists between those corners and the position as called for in the record plat 70-133. Kean and Associates accepts no responsibility for corners set incorrectly by the original surveyor, or problems arising therefrom.



Anchorage Office, Region A
 222 W 3th Avenue, #64
 Anchorage, AK 99513-7537

RECEIVED

JUN 25 1991

JUN 27 1991

Thomas W. Knox, RLS
 Municipal Surveyor
 Municipality of Anchorage
 P.O. Box 196650
 Anchorage, AK 99519-6650

ENGINEERING DIVISION
 PUBLIC WORKS

Dear Mr. Knox:

Subject: Rabbit Creek and Rabbit Creek Heights Subdivisions

The Department of Housing and Urban Development (HUD) has become aware of the survey problems in the subject subdivisions. We have received information that lot corners as staked are not in the same position as shown on plats and that some surveyors are finding positional errors in the range of 20 to 30 feet.

In the past, HUD/FHA has insured properties in the Rabbit Creek and Rabbit Creek Heights Subdivisions, being unaware of the discrepancies in the lot plats and surveys. In the past year our Property Disposition Branch has received a number of homes in these subdivisions back in foreclosure and HUD sustains significant losses if the properties cannot be resold with mortgage insurance.

Please advise our office as to what steps are being taken by the Municipality to solve these problems. Until these problems can be resolved HUD will be unable to insure any homes in the Rabbit Creek and Rabbit Creek Heights areas.

If you have any questions regarding this matter, please contact Alice Betka, Valuation Branch, at 371-4657.

Sincerely,

Arlene L. Patton
 Arlene L. Patton
 Manager

Post-it brand fax transmittal memo 7671		# of pages » 9	
To	GEN RINAY	From	Rest
Co.		Co.	DPW
Dept.		Phone #	786-9109
Fax #	465-3871	Fax #	542-5762



520 East 34th Avenue
Anchorage, AK 99503
(907) 561-1900
P.O. Box 101020
Anchorage, AK 99510

May 22, 1991

RECEIVED
MAY 23 1991

Mr. Ross Dunfee
Municipal Engineer
Municipality of Anchorage
P.O. Box 196650
Anchorage, AK 99519-6650

OFFICE OF THE MUNICIPAL ENGINEER
MUNICIPALITY OF ANCHORAGE

RE: Rabbit Creek Heights and Rabbit Creek View Subdivisions

Dear Mr. Dunfee:

Mr. Knox's letter of April 10, 1991 (enclosed) to AHFC regarding the survey problems in the above referenced subdivisions reflects that the Municipality has no legal right or obligation to solve the problems. Further, it is stated that all homeowners in the subdivision would have to agree to a replat.

Alaska Housing Finance Corporation as well as other lenders, investors and relocation companies in the community are extremely concerned about the effect these survey problems will have on the availability of future mortgage financing in the area as well as the financial impact to current lot and home owners in these subdivisions.

In view of the serious nature of the survey deficiencies, AHFC is requesting your help in any way possible to assist in resolving this problem.

Is it possible for the Municipality to obtain a court order to replat?

Can you estimate when public water and sewer will be available to these subdivisions? And would the installation of these public utilities necessitate an accurate replat?

Will the Municipality issue building permits in these subdivisions?

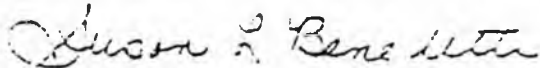
Can you ascertain at this time what percentage of lots would be affected by a replat and would only certain portions of the subdivisions be affected - i.e. say lots near the greenbelt, lots at the perimeter, etc.

Issue\sb9140

Mr. Thomas Knox
RE: Rabbit Creek Heights and
Rabbit Creek View Subdivisions
May 21, 1991
Page 2

We sincerely appreciate any information or suggestions you are able to provide. Please contact us if we can be of assistance in this matter.

Sincerely,



Susan L. Benedetti
Mortgage Operations Officer

cc: Municipal Attorney's Office
Don Alspach

Municipality of Anchorage



P. O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
907) 786-6160

TAM PINK
MAYOR

DEPARTMENT OF PUBLIC WORKS
3500 East Tudor Road

June 10, 1991

Susan L. Benedetti
Mortgage Operations Officer
AHFC
P.O. Box 101020
Anchorage, Alaska 99510

RE: RABBIT CREEK VIEW AND RABBIT CREEK HEIGHTS SUBDIVISIONS

Dear Ms. Benedetti:

The Municipality understands the dilemma faced by the lending institutions, investors and lot owners of property situated in the above named subdivisions. It is however, a problem affecting the rights of private parties who have a direct financial interest in the lots. The Municipality's interest lies only in those areas dedicated to public uses. These are identifiable even though they do not agree with the plats on file at the District Recorder's office.

My staff conducted research on surveying and boundary law issues pertaining to erroneous plats. The courts have recognized that the actual survey is substance and the plat is merely a picture. Where the plat and the actual survey are in conflict, the actual survey, as laid out on the ground, will control and the plat will be considered as surplusage. In a conveyance that refers to a plat, it is the lines actually surveyed on the ground that control the lots. Your problem is to properly identify the lot locations according to the original boundary. This can be accomplished by having a location survey performed for each lot that you have an interest in or by vacating the existing plats and resubdividing.

If a majority of property owners wish Municipal assistance to vacate and resubdivide the properties, then property owners are required to come into Public Works at 3500 Tudor Road and initiate a special assessment district. Contact Mark Sollenberger (786-8208) in special assessments to obtain the details of such a program.

According to the Municipal Attorney's office, Title 21 Municipal Land Use Regulations does not contain any language which would permit the Municipality to require erroneous plats to be resubdivided or to bring this type of matter before the courts. The state statutes do not address this situation either.

Susan L. Benedetti:
June 10, 1991
Page 2

According to AWWU, the utility is forbidden to service this area with water and sewer facilities by Municipal Ordinance. The Hillside Wastewater Management Plan would have to be amended along with the ordinance before AWWU would consider utility extensions in this area.

The two plat areas are outside of the Building Safety Service Area and therefore are not required to obtain a building permit. If such a permit were required then we would require a builder to supply us with a plot plan showing the location of the proposed building on the lot. Since the lot corners have been staked in these two subdivisions builders would be able to meet our requirements.

We know the approximate magnitude of error through reports given to us by land surveyors. Since these plats are in a limited road service area, which is maintained by the residents of the subdivisions, the Municipality does not have any experience with problems associated with plat to lot errors. It would be difficult to guess at how many lots would need to be involved with a resubdivision. It would be prudent to resubdivide all the lots in each subdivision in order to insure that all errors would be corrected.

You have requested the Municipality's assistance in any way possible. For years the Municipality has responded to whomever has requested this help in the only way we are legally able to help. That is through the special assessment district process. To date none of the interested parties have come forward and initiated the process. If you have any further questions you may contact me at 786-8109.

Sincerely,

Ross Dunfee, P.E.
Municipal Engineer

RBD/TK/gic
/28

cc: Tom Knox, Municipal Surveyor

COORD. STAMP / INITIAL / MAIL WHEN SIGNED			
OFFICE	ADVISOR	MUNICIPAL	
SIGN	TKK	R	
DATE	6/10/91	6/10	
ATTACHMENTS:	YES		

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BEFORE THE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS

In the Matter of:

William E. Johnson,
Respondent

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND PROPOSED DECISION

Case No. AE 591-10

A hearing was held on December 6, 1988 in the Frontier Building, Suite 702, Anchorage, Alaska. In attendance was Assistant Attorney General, Lawrence Delay, Esq. representing the State of Alaska, along with Ray Spless, Investigator. Mr. William E. Johnson, the Respondent, did not attend the hearing, nor did he respond in any way.

The hearing was conducted in the most part, by telephone. The first witness was an Alan Rabinov, who was and is the registrar for the Board of Professional Engineers and Land Surveyors for the State of Washington. Mr. Rabinov had served as the board's secretary, and also the supervisor of the staff of investigators. He was responsible for the record keeping for the Washington State Board. He was sworn and testified that William Johnson was charged in Washington with misconduct in June of 1984 by a Mr. Imakura. The State of Washington investigated the complaint and found that Johnson had committed a number of technical errors as a land surveyor, that Johnson performed work which was useless work, that the work performed by Johnson was to develop a plan of engineering needed to develop a mobile home project. Johnson, who was not a licensed engineer in the State of Washington, developed road plans and overall site plans for the project. The facts were that a substantial part of the site was undevelopable because of floodplain limitation. When Johnson found out about the floodplain problem, he did not tell the client, but continued to work as if the floodplain problem did not exist.

Two years later the mobile home project was changed to residential lots. The short plat development had a technical error in it caused by Johnson, and Johnson also ignored a water easement, which lost one lot to development. There were only four lots, and therefore, the loss of one was a substantial engineering fault. Johnson did the staking on the final project before the preliminary plat had been approved, and thus, a lot of changes had to be made after the preliminary plat was approved.

The Washington State Board had a hearing on October 26, 1985 and Johnson did not appear. The Board found that Johnson practiced engineering in four separate ways for which he was not licensed. Secondly, that he was guilty of misconduct or malpractice in at least five instances as a surveyor and revoked his license, put him on suspension of license for five years, and charged him a \$5,000 fine, and required him to pass the surveyor's license exam when and if he reapplied in Washington. Since then Johnson has not avoided by any of the sanctions of the Washington State Board of Engineers and Surveyors.

The next witness was Ray Spless, the investigator for the State of Alaska. Mr. Spless started the investigation of Johnson in April 1987 in Alaska. Mr. Spless filed for the record in this hearing a certified copy of the statement of charges in the State of Washington and a certified copy of the Board Finding of Fact and Conclusions of Law and the Board Order in the Washington case.

Findings of Fact

1. William E. Johnson is currently registered as a land surveyor in the State of Alaska, holding license # 18 1480. His license will expire, unless revoked, on December 31, 1989.
2. In November 18, 1985, the Washington State Board of Professional Engineers and Land Surveyors after a hearing, ordered the revocation of Johnson's license to practice land surveying in the State of Washington for a period of five years and ordered Johnson to pay a \$5,000 fine caused by five acts of misconduct in the practice of land surveying.
3. The misconduct proved at the hearing, consisted of continuing to do engineering and surveying for a client after Johnson had been notified that the project on which he was working consisted of undevelopable land. The land in question was below the flood plain for the area. After being alerted to the flood plain problem, Johnson did not tell his client and continued to work on the project. Johnson, two years later, working on the same project, ignored a waterline easement and lost a lot from the plot. The Washington State Board found that Johnson was guilty of misconduct, suspended his license for a period of five years from November 1985, and fined him \$5,000.
4. Johnson, to this date, has never paid the fine, nor fulfilled any other conditions for the State of Washington potential renewal of license.

Conclusions of Law

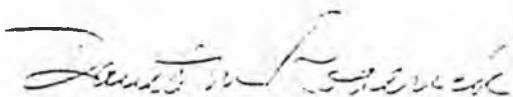
1. AS 08.48.111(2) states that "the Board may suspend, refuse to renew, or revoke the certificate of or reprimand a registrant or corporation who is found guilty of... (3) gross negligence, incompetence, or misconduct in the practice of architecture, engineering, or land surveying."
2. AS 08.01.075(a) a board may take the following disciplinary actions singly or in combination: (1) suspend a license for a specified period; (4) impose limitations or conditions on the professional practice of a licensee; (5) impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of the licensee;
3. 12 AAC 36.310 a person who, after a hearing under the Administrative Procedures Act (AS 44.62) is found to have violated a provision of AS 08.48 or this chapter is subject to the disciplinary penalties listed in AS 08.01.075, including public notice of the violation and penalty in appropriate publications.

Proposed Decision

Johnson, having been found guilty of misconduct in the practice of land surveying by the Washington State Board of Professional Engineers and Land Surveyors is subject to appropriate discipline within the State of Alaska by the Alaska Board of Registration for Architects, Engineers and Land Surveyors. The Alaska Board has ample authority to discipline William Johnson in any appropriate manner based on the Order of the Board of Professional Engineers and Land Surveyors in the State of Washington.

It is recommended as requested by the Division of Occupational Licensing, that Johnson's license within the State of Alaska be subject to two year's suspension from the date of the Board's recommended order. That Johnson may petition for reinstatement and must pass an appropriate examination for land surveyors within the State of Alaska.

Dated in Anchorage, Alaska this 2nd day of March, 1969.



David M. Roderick
Administrative Hearing Officer

BOARD ACTION ON PROPOSED DECISION

The Alaska Board of Architects, Engineers and Land Surveyors has reviewed the recommendation of the Hearing Officer, and hereby ~~Adopts, Rejects, Modifies, or~~ Adopts the Proposed Decision to suspend the license of William E. Johnson for two years.

Dated at Fairbanks, Alaska, this 3rd day of March, 1969.



Chairman
Board of Architects, Engineers, and
Land Surveyors

16946

Municipality of Anchorage

MEMORANDUM

CONFIDENTIAL
LAWYER-CLIENT COMMUNICATION

DATE: October 15, 1985

TO: Robbie Robinson, Manager, Environmental Health Division

THRU: Patty Ginsburg, Special Assistant to the Director

FROM: Ronald L. Baird, Assistant Municipal Attorney *R.L.B.*

SUBJECT: Opinion request of July 25, 1985 Re: Rabbit Creek Heights/View Subdivision

Your request for opinion of the above-referenced data directed to Mike Marsh has been referred to me as the Assistant Municipal Attorney dealing with land matters. The issue which you raise is which of several possible potential surveys of these subdivisions should be used for purposes of issuing on-site sewer and well permits.

It is my understanding that plats for these subdivisions were recorded in 1970. Both plats contain significant survey errors to the extent that conflicting descriptions can be given for the same lot based on either the monuments in place or the information on the survey plat and that described lot areas overlap.

It is clear that accurate descriptions of the physical location of well and septic systems can be reasonably required in connection with your permitting activities pursuant to AMC 15.55 and 15.65. Correct location of water wells and septic systems is probably critical to the safe and efficient operation of well and septic systems which is one goal of these two sections. Since we now know that the survey information in the two described subdivisions is inaccurate, the Municipality can lawfully insist upon an accurate survey before granting permits for water wells or septic systems under these two sections of the Municipal Code.

I have been unable to find any provision in ordinance or statute creating a public duty of the Municipality to survey private lands. The platting regulations appear to contemplate that any survey work done would be at the expense and direction of the subdivider. See AMC 21.75 and 21.80. While it might be argued that the Municipality incurred liability by negligently approving erroneous plats for these two subdivisions, the statute of limitations for any claims arising from such negligence is two years and has probably long since run. See A.S. § 09.10.070. Even if the statute had not run, a Municipally sponsored and financed survey would not necessarily eliminate the Municipality's exposure to claims arising from the erroneous approval of the plats.

Any new survey conducted by the Municipality or any private party will not resolve the potentially conflicting property rights of homeowners within these subdivisions. Many of these homeowners

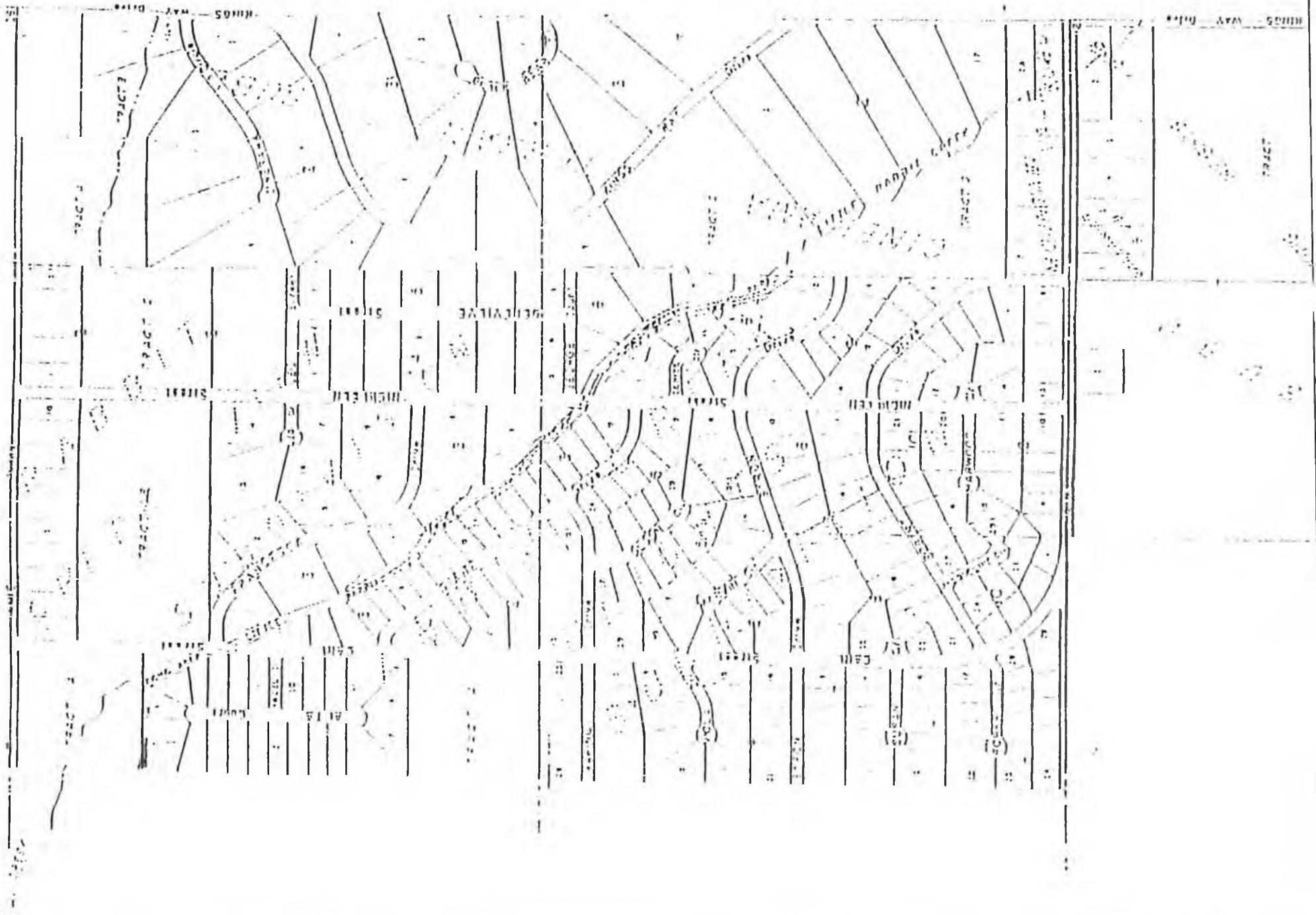
October 15, 1985
Page 1

undoubtedly purchased property described by reference to the erroneous surveys and have owned the property pursuant to deeds utilizing these surveys for more than seven years. There is a high probability, under such circumstances, that rights to the real property have vested by virtue of adverse possession. See A.S. § 09.25.050. Frankly, given the circumstances you have described, the potential of conflicting claims among property owners within the subdivisions creates a real mess.

The solutions for the homeowners will undoubtedly involve significant expense to them. First, if all property owners within the subdivision, together with any holders of liens or encumbrances of any of the lots within property and the Municipality of Anchorage can all consent to a replat of the subdivision, then, that replat would be binding on all parties, and would certainly be a sound basis for the issue of well and septic permits. The difficulty with this procedure is that it would require the consent and cooperation of all property and lien holders. Second, the property owners could individually or collectively bring actions in the Superior Court to quiet title to their individual lots, A.S. § 09.45.010 or actions to establish boundaries, A.S. § 09.45.020 or some combination thereof. A judicial determination entered at the conclusion of such an action would finally and forever resolve issues as to lot boundaries. Third, some combination of a replat and law suit might be possible if there are "hold-outs" from participating in a replat process. Such hold-outs could be made defendants in a quiet title action brought by the other homeowners.

In summary, I believe you may lawfully insist on an accurate survey as a condition to issuance of well and septic permits pursuant to the above-referenced sections of the Anchorage Municipal Code. Given the known inaccuracies of the survey on which the existing subdivisions are based, and the grossness of errors, you need not accept as-built surveys which are based upon either the lot corners set in the field or the filed survey information. Finally, a simple resurvey of the subdivisions will not resolve questions regarding the location of the lots which will be binding on parties and therefore will not be a more accurate basis upon which to issue well and septic permits. The choice of remedy of the land owner as to how to resolve this issue is something for them to pursue among themselves with the advice of a common or individual legal counsel.

RLA:sik



Municipality of Anchorage

MEMORANDUM

JUL 26 1985

DATE July 25, 1985

TO: Mike Marsh, Municipal Attorney

FROM: Robert W. Robinson, Division Manager, Environmental Health

RE: Jewel Jones, Director, Department of Health and Human Services


SUBJECT: On site sewer/well permits for Rabbit Creek Heights, View Subdivision

Approximately two years ago this department became aware of certain inconsistencies in surveys for the above subdivisions. In some cases the plotted survey varied from the actual survey as much as 40 to 50 feet. When this discrepancy was discovered, I immediately began requiring a new as-built survey prior to granting an on site sewer/well permit. Permits were then written for the lot area encompassed in the new survey.

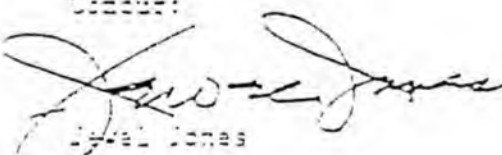
Recently we discussed this practice with the Municipal Surveyor, Ed Tucker. As you can see from the attached copy of his memo, he disagrees with our approach.

I would appreciate a legal opinion on our responsibilities in this regard and a recommendation of what survey should be used. If existing corners can be found it would be no problem to design a system within said boundaries. However, in cases where no corner markers can be found, which survey is to be used?

We are suspending issuance of permits in these subdivisions until a legal opinion is advanced.


Robert W. Robinson
Division Manager

Concur:


Jewel Jones
Director
Department of Health and
Human Services

RWR:pan

Attached: 1

*Wanted to make sure
9/15/85*

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

JUN 6 1965

RECEIVED

DATE: June 6, 1965

TO: Environmental Engineering Manager, Robert W. Robinson

FROM: DEU, Engineering Division, Municipal Surveyor,
Ed Wickes, S.S.

SUBJECT: RABBIT CREEK VIEW HEIGHTS SUBDIVISIONS

Re: our meeting on May 3, 1965 at your office on subject subdivisions and their view regarding acceptable plot plans or as-built surveys. I offer the following:

1. Although you or I and our respective agencies may refuse to hire or contract with Mr. William E. Johnson, until his license is suspended or revoked, we probably cannot refuse to accept his seal on work performed for private citizens. We should scrutinize it closely, however. This is probably a moot point, as I seriously doubt that he will risk showing up in these parts voluntarily.
2. Until a complete re-creation of subject subdivisions is accomplished, there can be no certainty as to the location of the errors or whether they fall in one area or are distributed proportionally throughout. Therefore, ties to perimeter boundaries when in conflict with corners found on individual interior lots merely add to the confusion, as one must decide which perimeter boundary to use. Each (north, south, east, or west) boundary may place the location in a totally new and conflicting place. When existing original corners can be found, I would recommend that they be accepted in place. This satisfies the legal tenant that the buyer bought and the seller sold in good faith, based upon those corners. Also, State Statute Section 09.25.040 (1) through (6) spells out the order of importance and "rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it." Basically, it says that monuments (found corners) are paramount.

Hopefully, this will help rather than confuse the continuing saga of the infamous Rabbit Creek Heights/View Subdivisions.

EW/cjk
E/w/ac38

cc: Municipal Engineer

Mike

This problem continues to resurface, and it is compounding itself with each lot that is sold and developed. In the last several days there have been numerous calls wanting to know why the unsuspecting owner, having purchased a lot in a Municipal approved and recorded subdivision must now spend several thousand dollars having the lot resurveyed. Yesterday, there was a permit requested for an "on-site" sewer permit, and the recent survey showed the lot corners to be approximately 40' off. These people now indicate that they are in the process of initiating a class action suit against the Municipality, Public Works, Municipal Engineer, and the Municipal Surveyor. Thought you should know.

Patty

RECEIVED

MAY 27 1985

OFFICE OF THE MUNICIPAL ENGINEER
MUNICIPALITY OF ANCHORAGE

Municipality of Anchorage

MEMORANDUM

DATE: November 28, 1984

TO: Lon Mesloh, Street Maintenance Division, Public Works

FROM: David G. Berry, Assistant Municipal Attorney

SUBJECT: Rabbit Creek Heights & Rabbit Creek View Subdivision

Problem Background:

In 1970 subdivision plats were filed for Rabbit Creek View Subdivision and Rabbit Creek Heights Subdivision, located in a relatively remote area of south Anchorage in the foothills above Turnagain Arm. Sometime subsequent to 1970, it was discovered by property owners that the various lots and blocks as laid out and staked on the ground did not match the recorded plats. It became apparent that the surveyor, William E. Johnson, had made a number of significant errors in surveying and drafting the plats.

The two affected subdivisions are within the Rabbit Creek Limited Road Service Area. In the summer of 1984, a contractor for the Street Maintenance Division was clearing or upgrading drainage ditches along the roads in the subdivisions and was apparently stopped by a property owner who claimed a ditch was encroaching on her private property. Street Maintenance Division requested the Survey Section check to determine if the road rights-of-way were correctly located. The Survey Section began a survey of the rights-of-way, and before long discovered substantial (as much as 28 feet) discrepancies between the platted lots and rights-of-way and the actual ground locations of existing monuments and corner stakes. Because of the discrepancies, the survey crew terminated their survey. The Street Maintenance Division did not complete the drainage ditch clearing and apparently because of this, there is now a drainage problem causing hazardous glaciation across a roadway.

Discussion:

It is apparent from the above that the plats filed for the affected subdivisions do not accurately reflect the various lot lines as originally laid out by the surveyor. The problem to be resolved then is which takes precedence - the lot lines and rights-of-way as set forth in the recorded plat, or the lot lines and rights-of-way as laid out and staked on the ground?

November 11, 1934

Page 1

A plat, or plat map, is in fact a representation in map form of how a tract of land is divided into lots, blocks, etc. The plat map itself does not "create" the boundary lines which are shown on it. The purpose of the plat is to show in written, documented form what exists on the ground. Procedurally, the surveyor or subdivider initially lays out, or stakes, the pertinent boundary lines on the ground and then drafts a plat map to show what has been done. A plat map is in fact a form of written description of property. Where there is a discrepancy between the actual boundary line as laid out and the written description of it, the location of the actual line will normally prevail.

As noted in 12 Am Jur, Boundaries, § 67:

... Monuments are the best evidence of the lines and corners actually made by a survey, and when ascertained, are satisfactory and conclusive evidence of the location of the lines as originally run whether they correspond with a plat and field notes of survey or not.

And at § 71:

Although monuments set at the time of an original survey on the ground and named or referred to in the plat are the best evidence of the true line, if there are none such, then stakes actually set by the surveyor to indicate corners of lots or blocks or the lines of streets . . . are the next best evidence.

...
In the event of a subsequent controversy, the question becomes not whether the stakes were located with absolute accuracy, but whether they were planted by authority and whether the lots were purchased and taken possession of in reliance upon them. If such was the case, the rule appears to be well established that they must govern notwithstanding any errors in locating them.

November 18, 1984
Page 3

This general rule is reflected in Alaska by A.S. § 09.25.040(2) which provides:

(2) When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount.

Thus the corner stakes of a lot, if placed by the surveyor and if intended to show the corners of the lot, will prevail over the written description or recorded map description. Price v. McIntosh, 2 Ak.Fed. 18, aff'd 111 F. 716 (9th Cir. 1903). Since the written descriptions are intended to describe the conditions on the ground, if they are incorrect, the written descriptions should be changed to accurately reflect the existing boundaries. It would be against all logic to try to change actual boundary lines to match the incorrect descriptions.

The above would indicate that, regardless of the descriptions and measurements on the recorded plat, the various lots, blocks and rights-of-way are as shown by the actual monuments and staking on the ground. Al Lannum of the Survey Section of Public Works advises me that, to the best of his recollection, the survey work done last summer found that the roads were within the staked rights-of-way. If that is the case, then in my opinion we may properly treat the staked rights-of-way as correct. If a property owner objects, we need only to confirm that we are within the staked rights-of-way.

Even if the roads were constructed on private property, if they have been in existence for more than ten years, the public may have obtained prescriptive rights to the roads and ditches. To prevail in this instance would require information as to when the questioned roads were first constructed. I have checked with several sources, but to date have been unable to locate any records relating to the construction of these roads.

Recommendation:

In my opinion we have the right to rely on the existing ground staking to show that the roads are within the publicly dedicated rights-of-way. If a property owner wishes to challenge the location of the rights-of-way, we will defend based upon what I have stated above.

November 28, 1944
Page 4

If some of the drainage ditches are actually on private property and if some construction in the ditch is causing a road hazard, we should contact the property owner and demand that he correct the hazardous condition or allow us to do so. In any event, we should not ignore the hazardous condition, but should take immediate steps to remedy it.

DGS/kjw

cc: Jerry Weaver
Planning Officer
Al Lannum
Survey Section

Municipality
of
Anchorage



ANCHORAGE, ALASKA
APRIL 21, 1960

April 21, 1960

E. Lee Browning, Municipal Engineer
Public Works Department
Engineering Division
1800 East Fisher Road
Anchorage, Alaska 99507

Subject: Rabbit Creek Heights Subdivision, and;
Rabbit Creek View Subdivision

It was recently brought to our attention that many of the lot lines, lot corners, streets, right-of-ways, etc., as shown on the subdivision plans for the Rabbit Creek Heights subdivision and Rabbit Creek View subdivision may be incorrect.

In an attempt to confirm this information, this office contacted the Municipal Surveyor, Mr. Jack Stanley, and Mr. Larry Weaver of the Planning and zoning Dept. etc. Mr. Stanley confirmed that several survey errors made by his office, on these subdivisions, are not satisfactory. Mr. Stanley further indicated that several other subdivisions surveyed by the same registered surveyor Mr. William Johnson, whose stamp reads appears on the subdivision plans, are also in error. Numerous other professional surveyors have refused to conduct as-built surveys in these areas, due to the discrepancies in the original surveys and the related subdivision plans. According to Mr. Weaver, Mr. Johnson received a registered letter but did not respond, and the matter has since been turned over to the Municipal attorney.

In view of the confirmed fact that there are many known discrepancies on the lot lines, lot corners, streets, right-of-ways, etc., in the Rabbit Creek Heights Subdivision and Rabbit Creek View Subdivision; this department will discontinue the issuance of on-site water and sewer permits or health authority approvals for bank financing in both subdivisions. We will

E. Lee Browning, Municipal Engineer
April 11, 1970
Page Two

With this discontinuance at such time, that we have some form of acceptable assurance that lot lines and configurations are correctly shown on an approved subdivision plat.

If there are any further questions, please call this office at 141-4711.

Sincerely,



Robert W. Robinson
Environmental Engineering Manager

RWR:lpw

cc: Public Works Department
Bob Canale, Permit Office
John Bishop, Building Division
Jack Stanley, Municipal Surveyor
Frank Hiber, Construction Engineer
Michael Kerr, Zoning Enforcement Officer

Planning Department

Don Alspaugh, Manager of Zoning and Planning
Jerry Weaver, Planning Officer

Health and Environmental Protection

Lynn Haddock
John Kennedy
Robert Pratt
John W. Lynn



5-24-83 7:30 am Ed. T.
MUNICIPALITY OF ANCHORAGE RECEIVED

ASSEMBLY MEMORANDUM

OCT 27 1983

No. AM 155-83

Municipal Attorney
DM

Meeting Date: November 22, 1983

From: Jerry Wertsbaugher, Municipal Attorney

Subject: Rabbit Creek Heights and Rabbit Creek View Subdivisions

A. FACTUAL BACKGROUND

In June and December 1970, a state licensed professional surveyor named William E. Johnson, now reportedly working in Wasilla, Alaska, filed plats with the Greater Anchorage Area Borough for the Rabbit Creek Heights and Rabbit Creek View Subdivisions. The subdivisions, as platted, contain approximately three hundred forty-six (346) lots.

The owners of the subdivided tracts were George S. Wilson, William R. Wilson, Alta C. Wilson and the National Bank of Anchorage. Much of the property has since been sold to a variety of individuals. Between 1970 and 1981, approximately 72 structures have been placed in the two subdivisions. (Municipal tax records 1983). The assessed value of the buildings range from \$3,000.00 to \$134,000.00. (Municipal tax records 1983). The assessed value of the underlying lots range from \$7,700.00 to \$26,000.00. Most single lots are valued at \$8,000.00-\$9,000.00. (Municipal tax records 1983).

The subdividers currently retain title collectively to Rabbit Creek View, Block 1, Tract B, (valued at \$141,000.00). William R. Wilson owns Block 4, Lots 1, 2, 3, 5; and Block 2, Lot 6 valued at \$203,000.00, including improvements to Block 2, Lot 6. Alta Wilson holds title to Rabbit Creek View, Tract A, valued at \$152,000.00 including a structure on the property. Other relatives of the Wilsons own additional lots. (Municipal tax records 1983).

In the fall of 1982 and spring of 1983, several lot owners within the subdivisions discovered that their platted property lines did not correspond to known monuments. The facts were reported to the Municipal Engineer. The Municipal Engineer informed the Public Works, Planning and Health Departments of the existence of the alleged survey errors.

Prior to unification, individuals in the City Engineer's Office became aware of problems associated with survey work done by Mr. Johnson in various areas of the Municipality and efforts

The Municipal Health Department, upon request, issues certificates of compliance with the well and sewer ordinances prior to new construction or transfers.² As a result of reports of widespread lot line discrepancies, the Municipal Health Department began to require certified plat plans prior to issuing certificates. These individual plat plans cost approximately three to four thousand dollars (\$3,000.00-\$4,000.00) each, according to Municipal Health officials.

Some of the lot owners in Rabbit Creek Heights and Rabbit Creek View want the Municipality to pay for an entire new survey, replat and resubdivision of both subdivisions. While the cost of such a project is difficult to estimate, the Municipal Surveyor's Office suggests that the survey and replat alone would cost between \$50,000.00 and \$100,000.00. This amount does not include such contingencies as might occur from total or partial losses of one or more lots or buildings as a result of the resubdivision. Damages resulting from a resubdivision could be enormous in the event that valuable improvements must be abandoned or removed.

B. CAUSE OF THE PROBLEM

The cause of the problem is the survey conducted by William E. Johnson. Mr. Johnson performed a survey and drafted and filed a plat with the Greater Anchorage Area Borough which allegedly does not correspond to known monuments. The Wilsons, presumably with warranties of good title, then sold the lots to individuals who presumably purchased title insurance. The discrepancies appear to be significant and may affect all 346 lots in the subdivision.

C. THE MUNICIPALITY IS AN INAPPROPRIATE AGENCY TO ACCOMPLISH A RESUBDIVISION

Under existing law, the Municipality has no power to compel agreement to a new plat and is forbidden from accepting

were made to encourage the State to revoke his license. The State took no action.

²The Municipal Health Department furnishes compliance certificates for water wells and septic systems as a courtesy to financial

a replat unless all affected property owners consent. It would thus be useless to expend municipal funds for a replat unless and until all lot owners (including security interests) agreed in advance in writing to abide by the results and sign the replat. It is highly unlikely that such concurrence could be obtained given the fact that some lot owners could be severely damaged by the replatting action. If the Municipality were to volunteer to fund individual lot surveys as requested by some lot owners, the final costs could exceed one million dollars at \$1,000,00 per survey. Moreover, individual lot surveys may merely exacerbate the problem (see below). It is unlikely that the Municipality could bring a legal action, on behalf of some lot owners, for a judicial determination of lot lines. To demonstrate standing to litigate, the Municipality would be required to hold an adverse interest in each lot. State enabling legislation would be necessary to confer standing upon the Municipality or other parties having an interest in an accurate plat of the subdivision (see "Possible Remedies" below).

D. LEGAL RESPONSIBILITY FOR THE ALLEGEDLY DEFECTIVE SURVEY FILED IN 1970

The subdividers acting through William E. Johnson, filed the plats in 1970 under the laws of the Greater Anchorage Area Borough. Subdivision regulations then in effect were much less exacting than current municipal law. In fact, the "interim subdivision regulations" as they were known, did not require approvals from any particular department. Plats were accepted unless there were objections from "public agencies." Nor did the regulations compel any department to conduct inspections or compel production of survey notes and calculations of the surveyor to insure that internal dimensions and boundaries of the plat were accurately drawn. Finally, no Borough agency was funded to provide inspectors to do field checks to determine if monumentation was accurate. Under these circumstances, it is very clear that the Municipality is not legally responsible for the errors of the subdividers or their surveyor. The possible liability of the

institutions. This practice is not required under municipal law. The Legal Department has advised that the practice may be terminated.

subdividers, their surveyor, title insurance companies and others is a matter upon which municipal officials should not speculate.

E. POSSIBLE REMEDIES

The continued practice of obtaining individual as-built or plot surveys from known monuments will enable some lot owners to gain a degree of temporary certainty as to the location of their individual lots. In the long run, however, individual lot surveys may have the effect of compounding the problems of an equitable map, since each lot surveyed will affect those on its borders, as well as outlying lots. This 'ripple' effect is not addressed by individually surveyed lots, and disputes at a later time are inevitable. The better solution would be a comprehensive map of both subdivisions imposed under judicial authority and conducted under specified standards of equity. As noted above, state-enabling legislation would be required to give Anchorage and other municipalities the power to proceed to regular properties and obtain a judicial decree imposing the map.

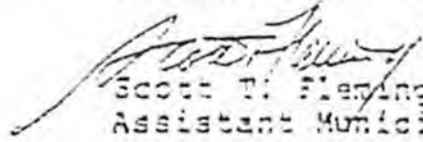
Many other states have special statutory proceedings for the ascertainment and settling of disputed boundaries. Some have provided for a summary proceeding before a court. Others have provided for commissions who are appointed upon the application of landowners. Such laws usually provide for the assessment of the cost of the work to the benefited property owners. The procedures must accord with the requirements of due process notice and the opportunity to be heard.

In 1966, the Alaska legislature passed a bill relating to the establishment of land boundaries affected by earthquakes. The law authorized legal actions by municipalities to redraw lot lines to correct boundaries affected by earthquakes. After notice to lot owners and an opportunity to be heard, the Superior Court was empowered to confirm the new map. While that law is not useful to resolving problems stemming from erroneous surveys, it does point the way to the ultimate solution. While such a law would not provide immediate relief to property owners, it is probably the only way to achieve a comprehensive solution. The Department of Law, if


Assembly Memorandum 82-


to be passed by the Assembly, could undertake the task of drafting a bill to be introduced to the legislature. While considerable resources will have to be devoted to drafting and lobbying this legislation and ultimately, in applying it to affected municipalities, it would at least provide a framework for dealing with similar problems in other areas known to be affected by faulty alleys.

RECOMMENDED BY:

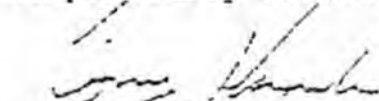

Scott T. Fleming
Assistant Municipal Attorney

CONCURRENCE:


Gerry Wertzbaugher
Municipal Attorney


Lee Browning
Municipal Engineer

Respectfully submitted,


Tony Karpis, Mayor

**WYMAN
& HAYES**
ENGINEERS / PLANNERS / SURVEYORS

0000.0

January 18, 1974

187000 THE 1974.7 187000

City of Anchorage
P. O. Box 400
Anchorage, Alaska 99510

ATTN: Jack Stanley
City Surveyor

Dear Jack:

It has come to my attention that the City of Anchorage is in the process of recommending censure of William Johnson, surveyor, on the grounds of improper plating procedures.

I would like to bring to your attention some problems this firm has encountered in the past year. These problems are on the ground as well as in the plats.

William Johnson surveyed and plated Winter Park Subdivision, in the Peters Creek area. The Borough recorded the plat and the owner retained this firm to locate and flag the street rights-of-way for clearing. In the process of accomplishing the work we discovered gross discrepancies between the plat and the ground survey.

The plat will not close, dimensions are missing and in error and the boundary is improperly delineated. The corners on the ground were as much as 30 feet in error and lot corners in some blocks were improperly marked or non-existent.

The above errors resulted in the entire subdivision being replatted and surveyed at considerable expense to the owner.

We had occasion to work in the portion of Hamilton Park replatted by Mr. Johnson near the New Seward Highway. The plat is in error and the ground dimensions differ by as much as 2 feet from the plat. The owner again had to spend considerable money to rectify the problems.

TRYCK
NYMAN
& HAYES

Mr. Jack Stanley
January 23, 1974
0600.0

- 2 -

This firm is now refusing all requests for work in subdivisions done by Mr. Johnson because of the potential liability involved and the possibility of court action by the owners.

It is my opinion that involvement of Tryck, Nyman & Hayes in this type of action is not in the best interests of the firm or the clients. Furthermore, I feel the public agencies responsible for enforcement of the laws of the State and local government should take appropriate action to protect the public from improper actions and inform Mr. Johnson that he must comply with the professional requirements as established and for which he is licensed.

Very truly yours,

TRYCK, NYMAN & HAYES



A. W. Johnson
Chief of Surveys

cc: [unclear]

Municipality of Anchorage



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4545

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

SENT VIA FAX

February 23, 1995

Senator Steven Rieger
State Capitol
Room 515
Juneau, Alaska 99801

RE: Senate Bill No. 74

Dear Senator Rieger:

The Municipality of Anchorage strongly endorses passage of this legislation. As you are aware, this legislation was introduced last year to try and alleviate a recurring problem which faces Alaskans across the state today. The need for the bill arose from the problems which grossly defective subdivision surveys have had on at least three subdivisions in the Greater Anchorage Area, as well as other problems in other areas in the state, including Ketchikan, Cordova and Nome.

Particularly with the areas in the Anchorage area, these problems are not amicable to the usual solutions of having the courts decide on a case-by-case basis, each property owners' specific interests. In each of the Anchorage area problem subdivisions, the defective surveys are so bad that each of the 150 lots in the subdivisions is impacted somehow by the survey errors. The impact on the effected property owners has now become severe. Title insurance companies are refusing to issue policies covering the properties. Banks and other lenders are likewise refusing to finance sales due to the uncertain nature of the property boundaries.

Under present law the only way to correct the problem is to have the original surveyor file a corrected plat within two years after the plat is filed. This of course raises two problems. The first is that only the original surveyor can correct the problem, so if that surveyor is no longer available (the case in most of the local and statewide problems discovered to date), there is no way to correct the problems under current law.

The second problem is that the statutory time frame also prevents the property owners from accomplishing a correction as well since many of these properties are sold sometime after the two year period after the plat is initially filed. This leaves the property owner with the only recourse to sue his neighbors for a quiet title

Senator Steven Rieger
Page 2
February 23, 1995

owner with the only recourse to sue his neighbors for a quiet title action if the neighbors cannot agree and file the appropriate deeds on their respective common boundaries.

This proposed legislation allows some manifestly defectively survey errors to be corrected by the superior courts under powers already granted in a quiet title action, except that rather than 150 quiet title actions, only one is necessary. It also allows the municipal government to undertake the action which individual owners might not be able to afford to bring. Clearly in our specific cases, few of the residents in these areas could afford undertaking to do the title research, since all affected parties must be named, or organize and manage such litigation.

The proposed legislation is codified with the slide statute since there was an already approved method for quieting title to property in groups of parcels rather than by individual parcel litigation. It provided the most convenient method of legislative coordination.

The Municipality of Anchorage actively supports this legislation. The Municipal Attorney's office provided assistance in drafting this legislation. It remains a priority for residents in our area. This problem is not however, solely one for Anchorage. Anecdotal evidence of this problem ranges from Cordova to Nome. The legislation provides guidance to the court as to the standards to be applied to the new subdivision to, as much as practical, take into account the features, structures and other improvements already made to the lots and to give that primary weight in setting out the new plat or subdivision. Many innocent people have invested substantial amounts into their properties and now are prevented from buying or selling properties in these areas due to survey errors that need a coordinated approach to solve.

We hope that the legislation passes during this session. The Municipality has already amended our Code to provide for a financing mechanism to be voted upon by the effected area residents as a preliminary step in the subdivision replatting in hopes of this legislation's passage.

If I can be of any assistance, please feel free to contact me.

Very truly yours,


George M. Newsham
Assistant Municipal Attorney

APR-29-94 FRI 15:30

ANCH AGO CGH

FAX NO. 9072798644

P. 02

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 29, 1994

Honorable Con Sunde
State Representative
Room 112
State Capitol
Juneau, Alaska 99801-1182

Re: Review of CSSB 355 (Res)

Dear Representative Sunde:

Your office has requested a legal review of CSSB 355 (Res), relating to errors in surveys of land. The legislation would amend AS 09.45.800 - 09.45.880, the Earthslide Relief Act, by allowing private or public landowners to bring a quiet title action to resolve alleged defects in surveyed property boundaries. An expedited review of the bill reveals no clear legal or constitutional difficulties, but the bill does pose one legal concern which may bear further consideration.

Concerns have apparently been raised that the bill might effect a "taking" of vested property rights. The United States and Alaska Constitutions prohibit the deprivation of property without due process of law. United States Const. amend. V; Alaska Const. art. I, sec. 7. Under Alaska law, due process is satisfied if the statutory procedures provide an opportunity to be heard in court at a meaningful time and in a meaningful manner. Keyes v. Humana Hosp. Alaska, Inc., 750 P.2d 343, 353 (Alaska 1988). Under the proposed amendment, a disputed boundary could be adjusted only after a judicial determination that the survey upon which the boundary is based is defective. Such a procedure would afford all affected landowners a full opportunity to be heard before any boundary adjustment. In addition, the quiet title action contemplated by the bill is designed to address the threshold question of ownership, rather than a deprivation of property where underlying ownership is unquestioned. Therefore, it does not appear that a taking claim could arise from the operation of the bill.

Section 13 of the bill raises a separate legal issue of some concern. That section defines the term "defective survey" as a survey that "cannot be reconciled with the plat of the property, does not conform with the physical location of the property boundaries, and is manifestly defective for a subdivision." The imprecision of the phrase "manifestly defective" appears to carry

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1394
PHONE: (907) 269-5100
FAX: (907) 278-3697

KEY BANK BUILDING
100 GUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4878
PHONE: (907) 481-2811
FAX: (907) 451-2848

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-3268

FRI 15:31

ANCH AGO CGM

FAX NO. 3072798644

P.03

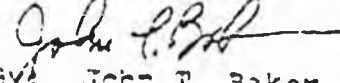
Honorable Con Sunda
State Representative

April 29, 1994
Page 2

the potential to authorize quiet title claims under an extremely broad range of circumstances. Please advise this office if you need additional assistance on this matter.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL


By: John P. Baker
Assistant Attorney General

JTB/nw

cc: Raga Eliz, Office of the Governor
Deborah Behr, Department of Law