

SB

79

CSSB 79 (C&RA)

"An Act Relating to Errors in Surveys of Land"

-Manifestly Defective Survey Problem-

Do Nothing
difficult/impossible
to transfer/develop
using conventional
financing methods.

Affected Land Owners hold a meeting.
Majority votes to pursue ordinance change
and for assessment district.

MUNICIPALITY OR BOROUGH

Governing body passes resolution supporting
action and assessment district is formed to
cover all land owners in the affected area.

Consultant is hired to gather facts. Corners
are recovered; improvements located.
Surveyor develops equitable replat for
consideration of the court.

Complaint: Filed w/court describing
properties, facts about properties, and
problems; proposed plat is submitted
to court.

Notice of Action is posted on the properties.

Answer: Interested parties now have
opportunity to address court.

Judgment: Court may accept, modify,
direct surveyor to modify proposed replat.

Replat is recorded.

Land is more easily transferred, financed
and insured.

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. 79

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.

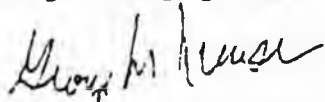
The proposed legislation is codified with the slide statute since there was an already approved method for quieting title to property in groups of parcels rather than by individual parcel litigation. It provided the most convenient method of legislative coordination.

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 affected 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

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 *TK*
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



Pacific Rim Title Insurance Agency, Inc.

307 E. Northern Lights Blvd., Anchorage, Alaska 99503 • (907) 274-2562 Fax (907) 258-4656

TO: Senator Steve Rieger

*Attn: Ann Ringstad
Fax # 465-2069*

FROM: Jeff Blake
Pacific Rim Title Insurance Agency, Inc.

RE: CSSB 79 (C&RA) - Defective Land Surveys

Thank you for the opportunity to review the above referenced legislation.

This legislation and its companion bill in the house, CSHB 175 (C&RA), address a serious problem and give a positive approach for a permanent solution.

As a title examiner in Anchorage, I welcome the possible solution and as a representative to the state association (Alaska Land Title Association, President 1995), I can point out to our membership that this legislation can aid in solving problems statewide.

Jeff Blake

KACHEMAK BAY TITLE AGENCY, INC.

3691 BEN WALTERS LANE #1

HOMER, ALASKA 99603

PHONE (907) 235-6196

FAX (907) 235-2420

April 24, 1995

Senator Steve Rieger
State Capitol
Juneau AK 99801

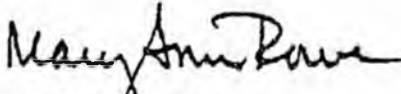
RE: SB 79

Dear Senator Rieger:

I am writing as the President of Kachemak Bay Title in Homer Alaska with regards to SB 79.

I feel that this bill would be very beneficial to the real estate and financial industry as it would be a positive approach to some serious legal problems not only on the Kenai Peninsula but throughout the State.

Sincerely



Mary Ann Rowe
President

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

04-18-82 11:40 FAX 301 333 1000 SENTEC INC. 2000

SENTEC

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

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

April 19, 1995

Senator Steve Rieger
State Capital
Juneau, AK 99801

Re: SB 79- An Act relating to errors in surveys of land

Dear Senator Rieger,

On April 17, 1995 I submitted a letter to your office in support of SB 79. In this letter I indicated two items that I felt needed clarification. Yesterday afternoon I spoke with Ann Ringstad with your office and reviewed my concerns. It appears that my questions are in fact answered in the content of the Bill.

With this I would like to offer my support to your bill. As I mentioned in my earlier letter I believe that this bill is necessary for the extreme case's where the implementation of existing Laws would create more problems than solutions.

Thank you for the opportunity to speak to this bill and I would be available for any questions you may have.

If you have any other questions please contact me.

Sincerely



Mike Home P.L.S

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

Senator Steve Reiger
State Capital
Juneau, AK 99801

Re: SB 79- An Act relating to errors in surveys of land

Dear Senator Reiger,

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 out lines 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



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 1

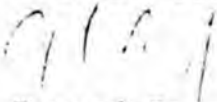
Mr. Paul R. Harrison

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

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

Yours truly,

STEWART TITLE COMPANY OF ALASKA, INC.


Howard Hancock
Advisory Title Officer

HH:oc



Anchorage Office, Region A
 222 W 3th Avenue, 164
 Anchorage AK 99513-7537

RECEIVED

JUN 15 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 Bethka, Valuation Branch, at 271-4657.

Sincerely,

Alice L. Patton
 Alice L. Patton
 Manager

Post-it Brand 1a. Transmittal memo 7571		# of pages = 9	
To	CON RILEY	From	Knox
Co.		Ca.	DPW
Dept.		Phone	786-8109
Fax	465-3871	Fax	512-5762



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?

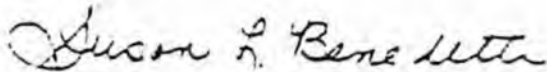
Can you ascertain at this time what percentage of lots would be affected by a replat and would only certain portions of the subdivisions be affected - i.e. say lots near the greenbelt, lots at the perimeter, etc.

Issue\sb9140

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

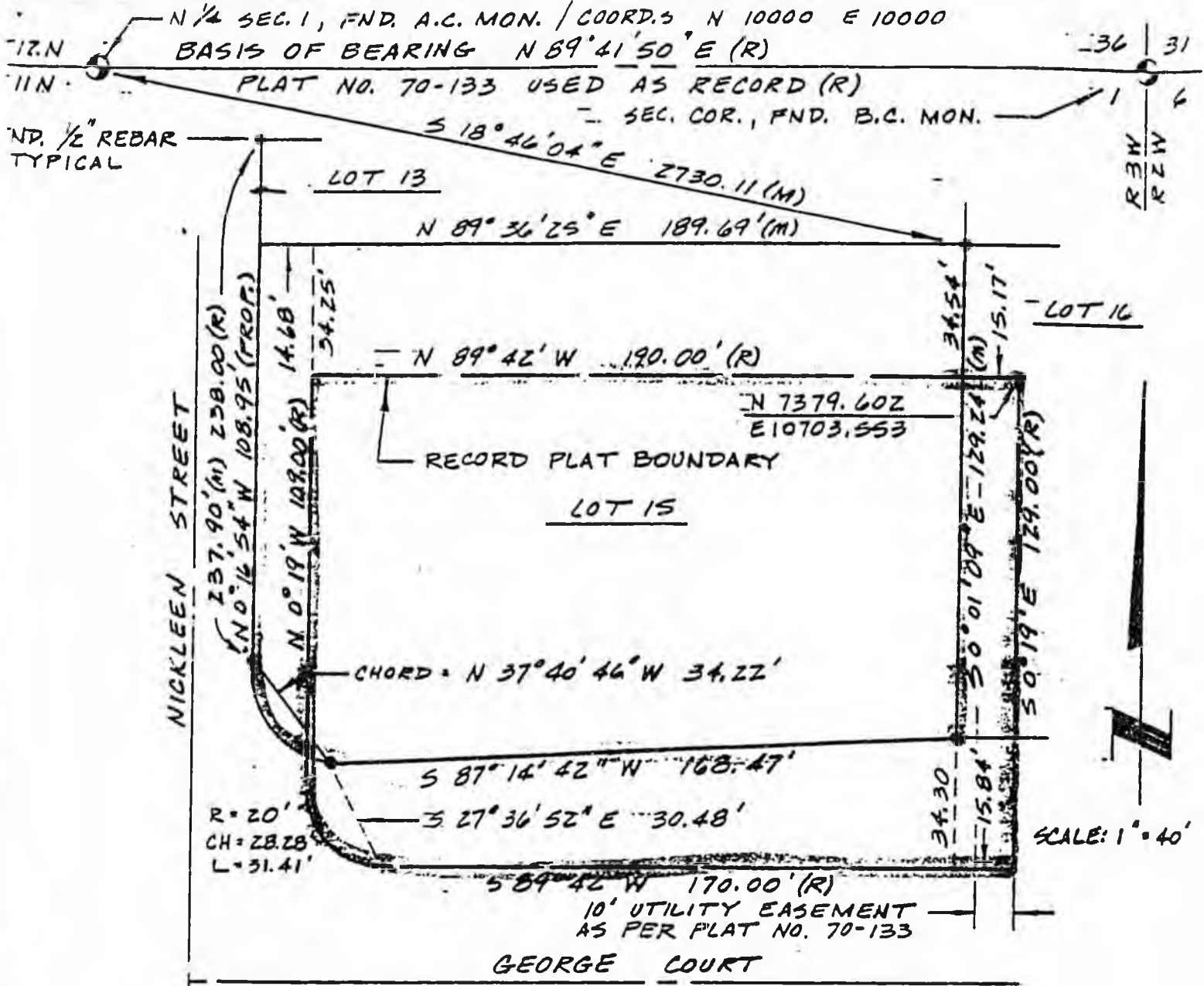
We sincerely appreciate any information or suggestions you are able to provide. Please contact us if we can be of assistance in this matter.

Sincerely,



Susan L. Benedetti
Mortgage Operations Officer

cc: Municipal Attorney's Office
Don Alspach



- NOTE:
- 1) ~~_____~~
 - 2) ~~_____~~
 - 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 4:
RABBIT CREEK VIEW SUBD.

SURVEYED BY: KEAN + ASSO:
6510 HOMER DR. ANCHORAGE, AK.

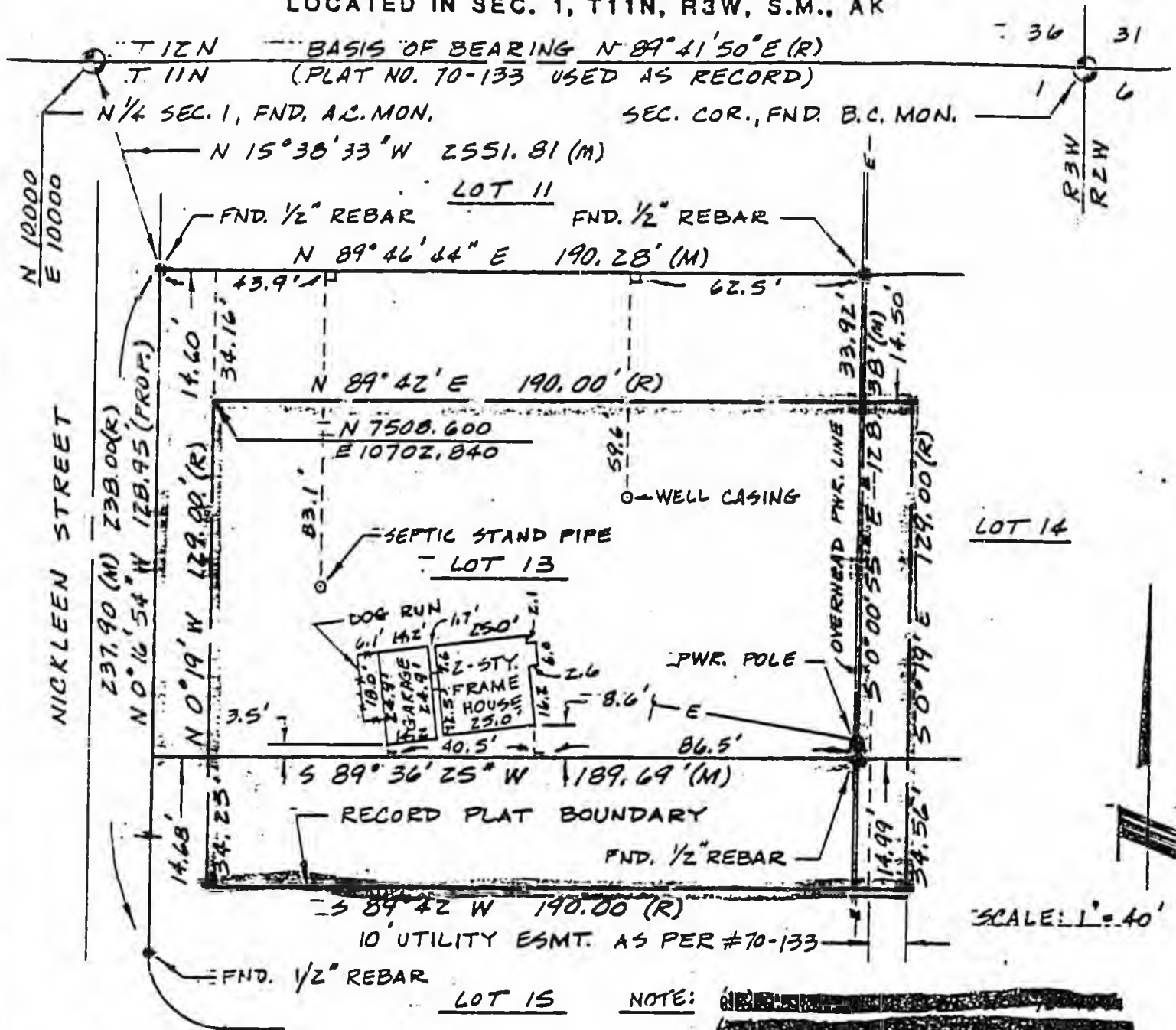
NOTE: This survey represents the location of existing record corners as located this date. ~~_____~~

~~_____~~ Kean and Associates accepts no responsibility for corners set incorrectly by the original surveyor, or problems arising there from.

RABBIT CREEK VIEW SUBDIVISION

LOT 13 / BLOCK 4

LOCATED IN SEC. 1, T11N, R3W, S.M., AK



NOTE: This survey represents the location of existing record corners as located this date. ~~It does not represent the location of corners set by the original surveyor.~~
 Kean and Associates accepts no responsibility for corners set incorrectly by the original surveyor, or claims arising there from.

NOTE: ~~EXISTING CORNERS~~
 (PROP.) = PROPORTIONED DISTANCE
 AS-BUILT NO CORNERS SET THIS DATE



MENTS OF RECORD, OTHER TH
 E SHOWN ON THE RECORDED
 ARE NOT SHOWN HEREON.

I hereby certify that I have performed a Mortgagee's inspection of the following described property:
LOT 13 BLOCK 4
RABBIT CREEK VIEW SUBD.
 Anchorage Recording Precinct, Alaska, and that the improvements situated thereon are within the property lines and do not overlap or encroach on the property lying adjacent thereto, that no improvements on property lying adjacent thereto encroach on the premises in question and that there are no roadways, transmission lines or other visible easements on said property except as indicated hereon.
 Dated at Anchorage, Alaska
 this _____ day of _____, 19____
 ROBERT T. KEAN & ASSOCIATES
 Surveyors

Revision Date: April 11, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to errors in survey of land BRU: none
 Component: none
 Sponsor: Senator Rieger
 Requestor: Senate CRA COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE: _____

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Date: 4/11/95
 Division: Division of Administrative Services Date: 4/11/95
 Approved by Commissioner: *Mike Dorn* Date: 4/11/95
 Agency: Community & Regional Affairs

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: SB 79
(S) Publish Date: 4-20-95

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: Senator Rieger
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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