

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**

**8236 SENATE COMMUNITY & REGIONAL AFFAIRS**

**S B**

**3 5 5**

**SENATE COMMITTEE REPORT**  
FIRST COMMITTEE OF REFERRAL

DATE: 3/10/94

FURTHER: Resources

Date of 5-Day Notice: 3/15/94  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: \_\_\_\_\_

CRA Committee considered SB 355

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

and recommends:

replace with \_\_\_\_\_ CS \_\_\_\_\_ ( )

same title  
 new title  
 technical title change  
(HB only)

attaches amendment(s)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**FISCAL NOTE INFORMATION**

Department	Date	Zero	Fiscal
DCRA	3/14/94	Ø	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

**DO PASS:**

Doreen A. Leman  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OTHER RECOMMENDATIONS:**

Adrian L. Taylor "No Rec"  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Carol E. Hill No Rec

Chair: Signature and Recommendation

# FISCAL NOTE

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO. SB355**

Revision Date: NA  
 Title: An act relating to errors in survey of land.  
 Sponsor: Senate & RA Committee  
 Requestor: \_\_\_\_\_

Dept. Affected: Natural Resources  
 BRU: Resource Development  
 Component: Land Development  
 COMPONENT SERIAL NO. 431

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
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**FUND SOURCE:**

(Thousands of Dollars)

1002 FEDERAL RECEIPTS	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF MATCH	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROG RECEIPTS	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 94) cost: \$ None

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Dennis Daigger/ Jerome Pape  
 Division: Land

Phone: 762-2692  
 Date: March 14, 1994

Approved by Commissioner: \_\_\_\_\_  
 Agency: Department of Natural Resources

Date: \_\_\_\_\_

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

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Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
 Title: "An Act relating to errors in surveys of land." BRU: \_\_\_\_\_  
 Component: \_\_\_\_\_  
 Sponsor: Senate Comm. and Regional Affairs Committee  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)

Prepared by: Remond Henderson *Remond Henderson* Director Phone: 465-4708  
 Division: Administrative Services Date: 1/14/94  
 Approved for the Commissioner by: Bruce Geraghty *BG* Deputy Commissioner Date: 3-14-94  
 Agency: Community & Regional Affairs

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# Municipality of Anchorage



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
(907) 343-4545

TOM FINK  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

March 25, 1994

Senator Steve Rieger  
Attn: Ann  
Alaska State Senate  
State Capitol, Room 516  
Juneau, Alaska 99801

RE: Amendments to Senate Bill 355

Dear Senator Rieger:

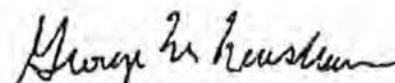
I have not had an opportunity to review the proposed amendments to SB 355 which were faxed to me on March 23. I believe that the amendment suggested to page 4 of SB 355 which changes Section 09.45.855(4) addresses the concerns I had concerning the ability of the Superior Court to fashion an equitable replat.

In addition, there seemed to be some concerns expressed regarding the "grandfather rights" of property owners who might be adversely affected by the replat order from the Superior Court. I would propose the following language to address that concern:

Any property parcel which was, prior to the final order of the Superior Court on the replat, qualified for development or use for a particular purpose, shall not, by reason of such final order, become non-qualified.

The Municipality of Anchorage appreciates your work on this legislation and we would support its passage, as you have suggested amending it.

Very truly yours,

  
George M. Newsham  
Assistant Municipal Attorney

GMN:lmc

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 355

Page 4, line 13:

Delete "[SHALL]"

Insert "shall"

Page 4, line 14:

Delete "shall"

Page 4, line 18:

Delete "shall"

Page 4, line 22:

Delete "shall"

Page 4, lines 28 - 29:

Delete "may not, except as provided in AS 09.45.845 or with the consent of the owner, alter"

Insert "to the extent reasonably practicable, attempt to minimize disruption to"

Submitted by: Assemblymembers Abney and Bell

Prepared by: Department of Law

For reading: September 14, 1993

CLERK'S OFFICE

APPROVED

Date: 11-9-93 ANCHORAGE, ALASKA  
AO NO. 93-156

AN ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE AMENDING CHAPTER 19.10 OF THE ANCHORAGE MUNICIPAL CODE REGARDING SPECIAL ASSESSMENT DISTRICTS, ADDING SURVEYING AS A PURPOSE FOR WHICH SPECIAL ASSESSMENT DISTRICTS ARE AUTHORIZED.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1: That AMC 19.10.020 is amended to read as follows:

19.10.020 Special assessment districts--Authorized improvements.

A special assessment district for a public improvement including, without limitation, for any one or more of the following improvements may be initiated:

- A. Streets, roads, parkways, street lighting, curbs and gutters, driveways, curb cuts and sidewalks;
- B. Storm sewers or drains;
- C. Sanitary sewers;
- D. Parks, recreation areas and open space;
- E. Off-street parking facilities;
- F. Changes in channels of streams or watercourses;
- G. Bridges, culverts, bulkheads, embankments and dikes for streams or watercourses;
- H. Water supply system including water mains, water connections and fire hydrants;
- I. Fallout or disaster shelters;
- J. Street, road, parkway and sidewalk drainage, oiling, sprinkling and snow removal;
- K. Placing overhead utility distribution lines, as defined in section 19.60.010, underground;
- L. Natural gas lines[.];
- M. The re-survey and re-platting of manifestly inaccurate surveys of record.

Post-It™ brand fax transmittal memo 7671

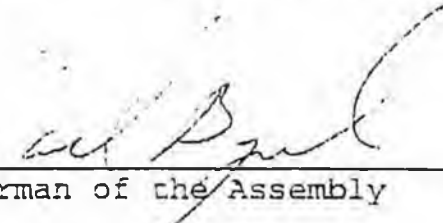
To: JAM	From: DEIRDRE	# of pages: 2
Co: ANCHORAGE	Co: ANCHORAGE	
Dept: LEGAL	Phone: 543-4211	
Fax: 465-2069	Fax: 465-2069	

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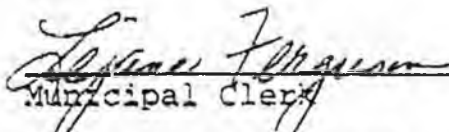
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Section 2: That this ordinance shall become effective immediately upon passage and approval.

PASSED AND APPROVED by the Anchorage Assembly this 9th day of November, 1993.

  
\_\_\_\_\_  
Chairman of the Assembly

ATTEST:

  
\_\_\_\_\_  
Municipal Clerk  
(legal\g:\assy\ao\survey.sbe/dp)



MUNICIPALITY OF ANCHORAGE  
MUNICIPAL ATTORNEY'S OFFICE

MEMORANDUM



rk

1993

DATE: July 1, 1993

TO: Assemblymembers Abney and Bell

THRU: Richard L. McVeigh, Municipal Attorney *RM*

THRU: Ann Waller Resch, Deputy Municipal Attorney *AR*

FROM: Scott A. Brandt-Erichsen, Assistant Municipal Attorney *SBE*

SUBJECT: Legislation to Address the Rabbit Creek Heights Rabbit Creek View Survey Defects

10-11000000, 11-11000000-1650

Attached are four separate draft pieces of legislation related to the Rabbit Creek Heights/Rabbit Creek View survey problem. There appear to be two alternative routes for funding a re-survey of the property, a special assessment or a service area levy. Prior to introduction of the legislation you will need to evaluate whether you wish to offer a service area funding mechanism or a special assessment district funding mechanism.

Regarding the attached legislation, the four items are as follows:

First, there is a draft bill to amend Section 9.45.800-.880 of the State Statutes to facilitate corrections to defective surveys. Without passage of this state legislation, any re-survey of the property or preparation of a replat would be of limited utility.

Second, one of the attached ordinances would create a service area placing the service area on the ballot for the April 19, 1994 regular municipal election. The service area would sunset after three years and would be used as a funding source for the re-survey and replat of Rabbit Creek View and Rabbit Creek Heights subdivisions. The service area method has the benefit of favorable federal tax treatment for the landowners, and requires approval only of a majority of those residing within the district. The service area method has the drawback that it requires a uniform mill rate. Thus owners of more valuable properties would bear a larger share of the cost burden under the service area model.

Third, two alternative proposed ordinances are designed to facilitate a special assessment district. The first, an amendment to Title 19 to allow special assessment districts for the re-survey and replat of improper or grossly inaccurate

Assemblymembers Abney and Bell

July 1, 1993

Page 2

surveys of record, would facilitate creation of a special assessment district in the Rabbit Creek View/Rabbit Creek Heights area. The accompanying ordinance creating the special assessment district would use a special assessment to fund the re-survey and replat preparation.

Distribution of costs in the assessment district ordinance is designated to be on a per lot basis with the same amount assessed to each lot. Assessment districts may be charged on some other bases such as costs on a zone basis, cost on a front foot basis, cost on a square foot basis or any other reasonable basis which results in assessment proportionate to the benefit received from and the burden imposed on the improvement or service. Costs paid pursuant to a special assessment do not receive the same favorable federal tax treatment as service area levies. Also, there may be a question raised as to whether a re-survey and replat would qualify as a "capital improvement" which may be financed in part by bond funds.

Please review the attached draft legislation and advise the Legal Department as to your preferred approach. Following receipt of your instructions, we will prepare the appropriate Assembly Memorandum to accompany the ordinance method selected. If we can be of other service in relation to this matter, please feel free to contact me at 343-4545.

cc: Larry D. Crawford  
Ken Canfield  
Ross Dunfee  
Mike Meehan

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Assemblymembers Abney and Bell  
July 1, 1993  
Page 2

surveys of record, would facilitate creation of a special assessment district in the Rabbit Creek View/Rabbit Creek Heights area. The accompanying ordinance creating the special assessment district would use a special assessment to fund the re-survey and replat preparation.

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Please review the attached draft legislation and advise the Legal Department as to your preferred approach. Following receipt of your instructions, we will prepare the appropriate Assembly Memorandum to accompany the ordinance method selected. If we can be of other service in relation to this matter, please feel free to contact me at 343-4545.

cc: Larry D. Crawford  
Ken Canfield  
Ross Dunfee  
Mike Meehan

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Submitted by:  
Prepared by: Department of Law  
For reading:

ANCHORAGE, ALASKA  
AO NO. 93-\_\_\_\_\_

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4 | AN ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE AMENDING CHAPTER 19.10 OF  
5 | THE ANCHORAGE MUNICIPAL CODE REGARDING SPECIAL ASSESSMENT DISTRICTS,  
6 | ADDING SURVEYING AS A PURPOSE FOR WHICH SPECIAL ASSESSMENT DISTRICTS  
7 | ARE AUTHORIZED.  
8 |

9 |  
10 | THE ANCHORAGE ASSEMBLY ORDAINS:

11 |  
12 | Section 1: That AMC 19.10.020 is amended to read as follows:

13 |  
14 | 19.10.020 Special assessment districts--Authorized  
15 | improvements.  
16 |

17 | A special assessment district for a public improvement  
18 | including, without limitation, for any one or more of the  
19 | following improvements may be initiated:

- 20 |  
21 | A. Streets, roads, parkways, street lighting, curbs and  
22 | gutters, driveways, curb cuts and sidewalks;  
23 |  
24 | B. Storm sewers or drains;  
25 |  
26 | C. Sanitary sewers;  
27 |  
28 | D. Parks, recreation areas and open space;  
29 |  
30 | E. Off-street parking facilities;  
31 |  
32 | F. Changes in channels of streams or watercourses;  
33 |  
34 | G. Bridges, culverts, bulkheads, embankments and dikes for  
35 | streams or watercourses;  
36 |  
37 | H. Water supply system including water mains, water  
38 | connections and fire hydrants;  
39 |  
40 | I. Fallout or disaster shelters;  
41 |  
42 | J. Street, road, parkway and sidewalk drainage, oiling,  
43 | sprinkling and snow removal;  
44 |  
45 | K. Placing overhead utility distribution lines, as defined  
46 | in section 19.60.010, underground;  
47 |  
48 | L. Natural gas lines[.];  
49 |  
50 | M. The re-survey and re-platting of manifestly inaccurate  
51 | surveys of record.  
52 |

1 Section 2: That this ordinance shall become effective 30 days  
2 following passage and approval and only if the State of Alaska amends  
3 AS 9.45.800-.880 to allow court directed re-plats to correct defective  
4 surveys within 2 years of passage of this ordinance.  
5  
6  
7

8  
9 PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_  
10 day of \_\_\_\_\_, 1993.  
11  
12  
13  
14

15 \_\_\_\_\_  
16 Chairman of the Assembly  
17

18 ATTEST:  
19  
20

21 \_\_\_\_\_  
22 Municipal Clerk  
23

24 [Legal\g:\assy\ao\survey.sbe/dp]  
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Submitted by: Assemblymembers Abney  
and Bell  
Prepared by: Department of Law  
For reading:

ANCHORAGE, ALASKA  
AO NO. 93-\_\_\_\_\_

1  
2  
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4  
5 AN ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE, CREATING SURVEY SPECIAL  
6 ASSESSMENT DISTRICT NO. 1S93 - RABBIT CREEK VIEW/RABBIT CREEK HEIGHTS  
7 AND DETERMINING TO PROCEED WITH PROPOSED RESURVEY THEREIN.  
8

9  
10 THE ANCHORAGE ASSEMBLY FINDS:

11  
12 Section 1: A petition for creation of a Special Assessment  
13  
14 District to provide a survey for public improvements has been received  
15  
16 by the Municipality and has been signed by sufficient and proper  
17  
18 petitioners. The petition is for the purpose of resurveying all roads  
19  
20 and easements in Rabbit Creek View Subdivision and Rabbit Creek Heights  
21  
22 Subdivision as shown on the attached map.

23  
24 Section 2: The aforementioned public improvements are necessary  
25  
26 and of benefit to the following described property:

27  
28 Special Assessment District No. 1S93  
29

30  
31  
32 All the lots in Rabbit Creek View and  
33  
34 Rabbit Creek Heights Subdivisions.  
35

36 Section 3: The improvements described in Section 1 are estimated  
37  
38 to cost \$\_\_\_\_\_.

39  
40 NOW THEREFORE, THE ANCHORAGE ASSEMBLY ORDAINS:

41  
42 Section 1: There is established Survey Special Assessment  
43  
44 District No. 1S93 comprised of the property described in Section 2 of  
45  
46 the above findings.

47  
48 Section 2: The Municipality shall proceed with the aforementioned  
49  
50 survey public improvement upon approval of the special assessment  
51  
52 district by property owners in the district who will bear more than 50%

1 of the cost of the district.

2  
3 Section 3: Costs assessed to benefitted parcels shall include, if  
4 applicable, costs for survey and preparation of documents and exhibits  
5 required for a re-plat, and project costs that are the lesser amount  
6  
7 of: (1) contract costs plus twenty percent (20%) for non-contract  
8  
9 costs, plus actual acquisition costs; or (2) the last approved estimate  
10  
11 plus ten percent (10%). Costs shall not include any property  
12  
13 acquisition.  
14  
15

16 Section 4: In the event the lowest acceptable bid exceeds the  
17  
18 last approved estimate by ten percent (10%) or more, no contract shall  
19  
20 be awarded unless, after notification of the increase in estimated  
21  
22 costs, the owners who would bear more than fifty percent (50%) of the  
23  
24 estimated costs of the improvement request that the contract be  
25  
26 awarded. Within the time allowed for the acceptance of the bid, should  
27  
28 owners of property bearing more than fifth percent (50%) of the cost of  
29  
30 the improvement fail to request award of the contract, or if objections  
31  
32 are filed, in writing, by owners of property which bear fifty percent  
33  
34 (50%) or more of the cost of the improvement, the project shall be  
35  
36 discontinued and the costs to date shall be borne by the Municipality.  
37  
38

39 Section 5: Assessments levied pursuant to this Ordinance shall be  
40  
41 calculated in accordance with AMC 19.65.020.D of the Anchorage  
42  
43 Municipal Code in effect at the time of adoption of this Ordinance.  
44

45 Section 6: The Mayor shall cause a proper account of all costs to  
46  
47 be kept of the survey and preparation for re-plat and after completion  
48  
49 of the improvement shall have an Assessment Roll prepared and presented  
50  
51 to the Assembly for the purpose of assessing the cost of the  
52



Submitted by:  
Prepared by: Department of Law  
For reading:

ANCHORAGE, ALASKA  
AO NO. 93- \_\_\_\_\_

1  
2  
3  
4 AN ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE CALLING FOR SUBMISSION OF  
5 A BALLOT PROPOSITION TO THE QUALIFIED VOTERS OF RABBIT CREEK VIEW AND  
6 RABBIT CREEK HEIGHTS SUBDIVISIONS CREATING A SURVEY SERVICE AREA AND  
7 PROVIDING THAT THE SERVICE AREA BE ADMINISTERED BY THE MUNICIPAL PUBLIC  
8 WORKS DEPARTMENT.  
9

---

10  
11 THE ANCHORAGE ASSEMBLY ORDAINS:

12  
13 Section 1: That the Assembly finds that:

- 14  
15 A. Charter Section 9.01 provides that a service area may be created,  
16 altered or abolished only with the approval of a majority of those  
17 voting on the question within the area affected.  
18  
19  
20  
21  
22  
23 B. The area affected by the proposed service area is Rabbit Creek  
24 View Subdivision and Rabbit Creek Heights Subdivision, identified  
25 on the map attached as Exhibit "A."  
26  
27  
28  
29  
30  
31 C. It is in the public interest to create a Limited Life Survey  
32 Service Area and provide that this new service be administered by  
33 the Municipal Public Works Department.  
34  
35  
36  
37

38  
39 Section 2: A ballot proposition substantially in the same form as  
40 described in Section 3 of this ordinance shall be placed on the ballot  
41 at the regular election of April 19, 1994. The Vote on the proposition  
42 shall be limited to the qualified voters residing within Rabbit Creek  
43 View Subdivision and Rabbit Creek Heights Subdivision as indicated on  
44 the map attached as Exhibit "A."  
45  
46  
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52

1 Section 3:

2  
3 CREATION OF A RABBIT CREEK VIEW/RABBIT  
4 CREEK HEIGHTS RESURVEY SERVICE AREA

5  
6 Shall a service area be created to fund the re-survey of  
7 Rabbit Creek View Subdivision and Rabbit Creek Heights  
8 Subdivision?  
9

10 Upon passage of the proposition, the service area will  
11 commence on January 1, 1995 and expire on December 31, 1997.  
12 The service area will be administered by the Municipal Public  
13 Works Department. The mill rate for the Service Area  
14 applicable to taxable property within the service area shall  
15 not exceed \_\_\_\_ mills in any calendar year.  
16

17 ( ) YES  
18 ( ) NO  
19

20 Section 4: That a new section 27.30.xxx of the Anchorage

21  
22 Municipal Code is hereby enacted to read as follows:  
23

24 27.30.xxx Rabbit Creek View/Rabbit Creek Heights Resurvey Service  
25 Area.  
26

27 There is established, pursuant to Section 9.01 of the  
28 Anchorage Municipal Charter, a service area within the Municipality of  
29 Anchorage to be the Rabbit Creek View/Rabbit Creek Heights Re-Survey  
30 Service Area of the Municipality of Anchorage as outlined on the map  
31 following. The Rabbit Creek View/Rabbit Creek Heights Re-Survey  
32 Service Area shall include Rabbit Creek View Subdivision and Rabbit  
33 Creek Heights Subdivision.  
34

35 The Rabbit Creek View/Rabbit Creek Heights Re-Survey Service  
36 Area shall provide a re-survey of roads, easements, rights of way and  
37 lot lines within the service area. The mill rate for services provided  
38 in the service area shall not exceed \_\_\_\_ in any calendar year.  
39

40 Section 5: That Section 4 of this ordinance shall become  
41  
42 effective only upon certification of the regular election held April  
43  
44 19, 1994, and only if the proposition set forth in Section 3 is  
45  
46 approved by the voters. Section 4 shall be repealed on December 31,  
47  
48 1997. The remainder of this ordinance shall become effective upon  
49  
50 passage and approval.  
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PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_ day  
of \_\_\_\_\_, 1993.

\_\_\_\_\_  
Chairman of the Assembly

ATTEST:

\_\_\_\_\_  
Municipal Clerk

[Legal\g:\assy\ao\rcreek/dp]

AN ACT

Relating to establishment of land boundaries affected by defective surveys; and providing for an effective date.

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

• Section 1. PURPOSES. (a) This Act is enacted as an exercise of the police power of the state, for the purpose of serving the public welfare of the people of Alaska by

(1) making fully available for new constructions the entire area owned by each entity, either public or private, which purpose can only be served by a re-establishment of certainty as to the present location of land boundaries;

(2) facilitating the sale, mortgage or lease of land parcels in the state;

(3) confirming and establishing the exact areas available for public uses in streets and other public ways;

(4) minimizing the losses suffered by land owning entities, which have been caused by defective surveys;

(5) correcting existing public records, consisting of land plats, which are inaccurate, so that a substitute plat, judicially found to be in accordance with existing boundaries, and filed subsequent to judicial approval will accurately represent the existing land boundaries;

(6) permitting these ends to be accomplished in a single action in rem, brought with respect to a large area affected by a defective survey, rather than in numerous separate actions;

(7) safeguarding the due process of the remedial

procedure in rem, established by the provisions of this Act by allowing deviations from the rules of civil procedure wisely established by the Supreme Court of Alaska for all other actions and proceedings of a civil nature, legal, equitable or otherwise. It is expressly declared to be the purpose of the legislature to change these established rules to the extent, but only to the extent, authorized in this Act, and only in the conduct of the actions authorized in this Act.

(b) The legislature finds that the attainment of each of the objectives enumerated in this section will significantly promote the welfare of all people in the state.

• Section 2. AS 09.45 is amended to read as follows:

**Article 10. Earthslide and Survey Error Relief Act.**

**Sec. 09.45.800. Prerequisite earthslide changing land boundaries or manifest survey error.** If the boundaries of land, owned either by public or by private persons 1) have been moved by an act of God, consisting of an earthslide, so that they are in a location different from that at which, by solar survey, they were located before the earthslide, or 2) are manifestly inaccurate due to a defective survey of the land and the ownership status of the land precludes resurvey and re-plat without court interventions, an action in rem to recognize the boundaries as they presently exist and to quiet title within the boundaries in the persons judicially found entitled to title under AS 09.45.800 - 09.45.880, is authorized, maintainable by the persons and with the procedures in

AS 09.45.800 - 09.45.880 for the handling of the emergencies dealt with in this chapter.

For the purposes of this section, "manifest survey error" or "manifestly inaccurate" means a condition such that the survey and plat of the property are irreconcilable and cannot conform with the physical location of the property boundaries.

**Sec. 09.45.805. Parties.** (a) An action authorized by AS 09.45.800 - 09.45.880 may be commenced by

(1) a borough with the joinder of a city or cities included in the borough;

(2) a city not included within the boundaries of a borough, if the earthslide has affected land in the city, or land outside the city as to which outside land the city has statutory power to approve a land map;

(3) a school district which has statutory power to approve a land map; or

(4) any other entity or person, granted permission by the court to bring the action

(b) In an action authorized by AS 09.45.800 - 09.45.880 every person in actual and peaceable possession of, or having an estate or interest in any of the land affected by the action, whose possession or evidence of estate or interest is either recorded or known to the plaintiffs, must be designated in the complaint of the

action, and given notice in the manner required by AS 09.45.300 - 09.45.380 and the court rules of civil procedure.

(c) All unknown parties, including owners, claimants, heirs, devisees, legatees or assigns, may be described in the caption and complaint as "all persons claiming any interest in or lien upon, the real property herein described or any part of it."

**Sec. 09.45.810. Separate actions as to separate slide or survey areas.** An entity which is a permissible plaintiff under AS 09.45.305, may, in its discretion, bring a separate action under AS 09.45.300 - 09.45.380 with respect to each separate slide area or defective survey located within its boundaries and its decision regarding the desirability of the separate action, and regarding the area to be dealt with in each action is final.

**Sec. 09.45.815. Complaint.** The complaint shall substantially include

(1) a statement of the facts making the provisions in AS 09.45.300 - 09.45.380 applicable;

(2) a description of the entire real property sought to be affected by the action;

(3) a specification of the estate, title and interest owned, and in the actual possession of the plaintiff or plaintiffs in described parts of the entire real property sought to be affected by the action;

(4) a specification of the estate, title and interest, so far as they are known to the plaintiffs or either of them, and so far

as they are capable of being discovered by reasonably diligent search by the plaintiff or plaintiffs, in each separate part of the entire real property sought to be affected by the action;

(5) a specification of the street areas offered by the plaintiff, or plaintiffs, to be vacated 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 or by the act of God consisting of the earthslide;

(6) a proposed replatting of the entire real property sought to be affected by the action, embodying the land boundaries as fixed by the re-survey or by the act of God, except as these have been liberalized by judicially directed use of the vacated lands.

**Sec. 09.45.820. Publication and posting of notice.** The notice required by Rule 4(e)(4) of the court rules of civil procedure shall be published as provided in the rules and a copy of the notice shall be posted in a conspicuous place on each separate parcel of the entire real property described in the complaint within 20 days after the first publication of the notice.

**Sec. 09.45.825. Procedure applicable.** Except as otherwise provided in AS 09.45.800 - 09.45.880, the court rules of civil procedure shall apply to actions authorized by AS 09.45.800 - 09.45.880.

**Sec. 09.45.830. Jurisdiction.** Upon the completion of the service, publication and posting of the summons, as may be required by AS 09.45.800 - 09.45.880 and the court rules of civil procedure,

the court has complete jurisdiction over the parties plaintiff or plaintiffs and the entire real property described in the complaint as intended to be affected by the action and over the person of everyone having or claiming an estate, right, title or interest in or to, or lien upon, all or any part of the property and shall be considered to have obtained the possession and control of the property for the purposes of the action with complete jurisdiction to render the judgment provided for in AS 09.45.800 - 09.45.880.

**Sec. 09.45.835. Answer.** (a) An answer to the complaint must be served within 90 days after the first publication of the notice, or such further time not exceeding 30 days, as the court for good cause may grant.

(b) An answer must, in the event of earthslide

(1) specifically set out the particulars in which the claimant's estate, right, title, or interest in or to, or lien upon all or any part of the property is different from, or greater than, the interest of the claimant as it is described in the complaint;

(2) be confined to rights based on events occurring at the time of, or since the time of the act of God, consisting of the earthslide.

(c) An answer must, in the event of a defective survey

(1) specifically set out the particulars in which the claimant's estate, right, title, or interest in or to, or lien upon all or any part of the property is different from, or greater than, the interest of the claimant as it is described in the complaint;

(2) be confined to rights based upon events occurring at the time of, or since the time of the defective survey.

(d) To whatever extent, if at all, the answering party has rights against anyone whatsoever, based upon facts or events which occurred before the relevant event, either the defective survey or the earthslide, the claims shall remain unaffected by the action brought under AS 09.45.800 - 09.45.880 and shall be assertable subsequent to the conclusion of the action at any time and in any manner permitted by law, notwithstanding the judgment granted in this action, recognizing however the finality of this judgment as to the consequences, with respect to land boundaries, of the re-survey or of the earthslide.

**Sec. 09.45.840. Lis pendens.** A party to an action authorized by AS 09.45.800 - 09.45.880 may record a notice of the pendency of the action in the form and at the place and with the effects specified in AS 09.45.790.

**Sec. 09.45.845. Vacating of streets in whole or in part.** The vacating of streets in whole or in part by the voluntary action of a municipality, for the purpose of making it possible for the court to mitigate the hardships suffered by individuals because of the change in land boundaries caused by the defective survey or the act of God, consisting of an earthslide, can be accomplished by the offer of the municipality expressed in the complaint followed by the court's approval of it in the action authorized in AS 09.45.800 - 09.45.880, without other formalities. This provision is a

special emergency substitute for the provisions contained in AS 29.40.160.

**Sec. 09.45.850. Proof of facts.** In an action of the type authorized in AS 09.45.800 - 09.45.880, judgment shall not be given by default, but the court must require proof of the facts alleged in the complaint and other pleadings.

**Sec. 09.45.855. Scope of judgment.** The judgment shall

(1) determine the land boundaries of each parcel of land located within the entire area of real property sought to be affected by the action, whether owned publicly or privately after judicial equitable allocation of lands voluntarily vacated by a municipality under AS 09.45.845;

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

(3) approve and direct the proper filing of a new plat map covering the entire area of real property sought to be affected by the action, as a substitute for the plat maps previously filed, but either discovered to be inaccurate due to defective survey or rendered inaccurate by the act of God consisting of an earthslide.

**Sec. 09.45.860. Standards for judgment.** In reaching the conclusions called for by AS 09.45.855 the court shall give effect to the changes in land boundaries caused by the re-survey or by the earthslide, mitigated, however, so far as can equitably be done, by

allocating to contiguous lots parts of the land released by a municipality by its voluntary vacation of areas formerly constituting public ways, which vacatings of streets shall be approved in this judgment.

**Sec. 09.45.865. Effect of judgment.** The judgment shall be conclusive with respect to land boundaries upon every person who at the commencement of the action had or claimed an estate, right, title or interest in or to a part of the entire area of real property described in the complaint as intended to be affected by this action, and upon every person claiming under any such person by title subsequent to the commencement of the action.

**Sec. 09.45.870. Recording of judgment.** A certified copy of the judgment shall be recorded, at the expense of the plaintiff or plaintiffs in the action, in the office of the recorder of the recording district in which the affected land is situated.

**Sec. 09.45.875. Cumulative remedies.** The remedies provided for by AS 09.45.800 - 09.45.880 are cumulative and in addition to any other remedy provided by law for quieting or establishing title to real property or the boundaries of it.

**Sec. 09.45.880. Short title.** AS 09.45.800 - 09.45.880 may be cited as the Earthslide and Survey Error Relief Act.

• Section 3. DEVIATION FROM COURT PROCEDURE. This Act provides for deviations from the court Rules of Civil Procedure and therefore the Act must receive an affirmative vote of at least two-thirds of the full membership of each house in order to be

effective.

• Section 4. EFFECTIVE DATE. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

g:\assy\surveys.sbe/dp



**STEWART TITLE**  
COMPANY OF ALASKA

November 16, 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 platting, 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:bt

HUD

Anchorage Office, Region X  
222 W. 8th Avenue, #64  
Anchorage, AK 99513-7537

RECEIVED

JUN 27 1991

ENGINEERING DIVISION  
PUBLIC WORKS

26 1991

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

Dear Mr. Knox:

Subject: Rabbit Creek and Rabbit Creek Heights Subdivisions

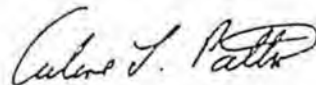
The Department of Housing and Urban Development (HUD) has become aware of the survey problems in the subject subdivisions. We have received information that lot corners as marked are not in the same position as shown on plats and that some surveyors are finding positional errors in the range of 20 to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




Arlene L. Patton  
Manager

# 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 28, 1984

Page 2

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 28, 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. 38, aff'd 121 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 Lahnum 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, 1984  
Page 4

If some of the drainage ditches are actually on private property and if some obstruction 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.

DGB/kjw

cc: Jerry Weaver  
    Platting Officer  
    Al Lahnum  
    Survey Section

Municipality  
of  
Anchorage



PHONE 6-650  
ANCHORAGE, ALASKA 99502-0650  
OFFICE 684-2111

DEPARTMENT OF HEALTH AND ENVIRONMENTAL PROTECTION

April 21, 1983

E. Lee Browning, Municipal Engineer  
Public Works Department  
Engineering Division  
3500 East Tudor 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 plats 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. Jerry Weaver of the Planning and Zoning Department. Mr. Stanley confirmed that several survey closure checks made by his office, on these subdivisions, did not close satisfactory. Mr. Stanley further indicated that several other subdivisions surveyed by the same registered surveyor (Mr. William Johnson, whose stamp #14825 appears on the subdivision plats) 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 plats. 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 21, 1983  
Page Two

lift 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 264-4720.

Sincerely,



Robert W. Robinson  
Environmental Engineering Manager

RWR/ljw

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

Planning Department  
Don Alspach, Manager of Zoning and Platting  
Jerry Weaver, Platting Officer

Health and Environmental Protection  
Lynn Lindquist  
John Kennedy  
Robert Pratt  
John W. Lynn

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 89L-12

A hearing was held on December 6, 1988 in the Frontier Building, Suite 722, Anchorage, Alaska. In attendance was Assistant Attorney General, Lawrence Delay, Esq. representing the State of Alaska, along with Ray Spiess, 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 Rathbun, who was and is the registrar for the Board of Professional Engineers and Land Surveyors for the State of Washington. Mr. Rathbun 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 plats 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 abided by any of the sanctions of the Washington State Board of Engineers and Surveyors.

The next witness was Ray Spiess, the investigator for the State of Alaska. Mr. Spiess started the investigation of Johnson in April 1987 in Alaska. Mr. Spiess 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 # LS 1482. His license will expire, unless revoked, on December 31, 1989.
2. On November 15, 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 plat. 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... (2) 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: (2) suspend a license for a specified period; (4) impose limitations or conditions on the professional practice of a licensee; (6) 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. Then Johnson may petition for reinstatement and must pass an appropriate examination for land surveyors within the State of Alaska.


Dated in Anchorage, Alaska this 3rd day of March, 1989.

  
\_\_\_\_\_  
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/Remands~~ the Proposed Decision to suspend the license of William E. Johnson for two years.

Dated at Juneau, Alaska, this 3rd day of March, 1989.

  
\_\_\_\_\_  
Chairman  
Board of Architects, Engineers, and  
Land Surveyors

0694h



# Alaska State Legislature

## SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Randy Phillips, Chair  
Senator Robin Taylor, Vice Chair  
Senator Loren Leman  
Senator Al Adams  
Senator Fred Zharoff

SESSION:  
State Capitol  
Juneau, Ak 99801-1182  
(907) 465-4989

INTERIM:  
P. O. Box 142  
Eagle River, Ak 99577  
(907) 694-4949

### **SB 355 - "An Act relating to errors in surveys of land."**

SB 355 would allow a party to enjoin all property owners of record, after proper petition to the court and resolution by the local government, to request a resurvey and replat of manifestly defective subdivision lines and subsequent changes in individual lots through Superior Court action.

When outside survey lines of a subdivision are grossly incorrect, it causes the inside lines of some or all of the individual lots to be incorrect as well. If this occurs, no one in the entire subdivision is afforded clear title, creating difficulties in title transfer.

Several officials of the Municipality of Anchorage have requested this legislation to help correct two "manifestly defective" subdivision surveys in the Anchorage area. 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.

The Board of Architects, Engineers and Land Surveyors, the Municipal League, the ASPLS, and the Municipality of Anchorage have been notified of this legislation. Further, the Division of Occupational Licensing and various land title companies can attest to the problems caused by manifestly defective subdivision surveys.

Submitted by: Assemblymembers Abney and Bell  
Prepared by: Department of Law  
For reading: September 14, 1993

CLERK'S OFFICE

APPROVED

Date: 11-9-93 ANCHORAGE, ALASKA  
AO NO. 93-156

AN ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE AMENDING CHAPTER 19.10 OF THE ANCHORAGE MUNICIPAL CODE REGARDING SPECIAL ASSESSMENT DISTRICTS, ADDING SURVEYING AS A PURPOSE FOR WHICH SPECIAL ASSESSMENT DISTRICTS ARE AUTHORIZED.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1: That AMC 19.10.020 is amended to read as follows.

19.10.020 Special assessment districts--Authorized improvements.

A special assessment district for a public improvement including, without limitation, for any one or more of the following improvements may be initiated:

- A. Streets, roads, parkways, street lighting, curbs and gutters, driveways, curb cuts and sidewalks;
- B. Storm sewers or drains;
- C. Sanitary sewers;
- D. Parks, recreation areas and open space;
- E. Off-street parking facilities;
- F. Changes in channels of streams or watercourses;
- G. Bridges, culverts, weirs, embankments and dikes for streams or watercourses;
- H. Water supply system including water mains, water connections and fire hydrants;
- I. Fallout or disaster shelters;
- J. Street, road, parkway and sidewalk drainage, oiling, sprinkling and snow removal;
- K. Placing overhead utility distribution lines, as defined in section 19.60.010, underground;
- L. Natural gas lines[.];
- M. The re-survey and re-platting of manifestly inaccurate surveys of record.

Post-it™ brand fax transmittal memo 7671

To: AM	From: D. H. H. H.
Co: City of Anchorage	Co: NAH Park
Dept: SKID	Phone: 543 4211
Fax #: 465-2069	Fax #

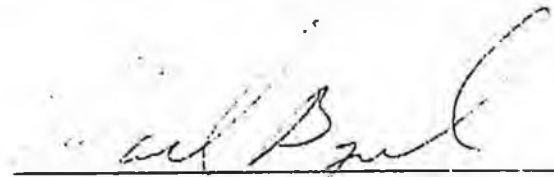
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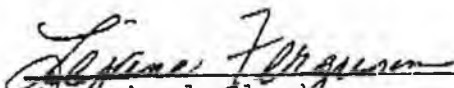
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Section 2: That this ordinance shall become effective immediately upon passage and approval.

PASSED AND APPROVED by the Anchorage Assembly this 9th day of November, 1993.

  
\_\_\_\_\_  
Chairman of the Assembly

ATTEST:

  
\_\_\_\_\_  
Municipal Clerk  
(Legal\g:\assy\ao\survey.sbe/dp)



**STEWART TITLE**  
COMPANY OF ALASKA

November 16, 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.

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Page 2

Mr. Paul Richardson

Under today's municipal regulations for platting, 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:bt



Anchorage Office, Region X  
222 W. 8th Avenue, #64  
Anchorage, AK 99513-7537

RECEIVED

JUN 27 1991

JUN 26 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,

*Arlene L. Patton*  
Arlene L. Patton  
Manager

Post-It™ brand fax transmittal memo 7671		# of pages • 9	
To <i>CON RILEY</i>	From <i>Ross</i>		
Co.	Co. <i>DPW</i>		
Dept.	Phone # <i>786-8109</i>		
Fax # <i>465-3871</i>	Fax # <i>512-5762</i>		

# Municipality of Anchorage



P. O. BOX 196650  
ANCHORAGE, ALASKA 99519 6650  
(907) 786-8160

TOM FINK,  
MAYOR

DEPARTMENT OF PUBLIC WORKS  
(3500 East Tudor Road)

June 10, 1991

Susan L. Benedetti  
Mortgage Operations Officer  
ANFC  
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/gfc  
/28

cc: Tom Knox, Municipal Surveyor

COORD. STAMP / INITIAL / MAIL WHEN SIGNED				
OFFICE	<i>Muni Eng.</i>	<i>Muni Eng.</i>		
SIGN	<i>TK</i>	<i>R</i>		
DATE	<i>6/10/91</i>	<i>6/10</i>		
ATTACHMENTS:	<input checked="" type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	#:	



*Tom K - prepare a response to this  
my sig.  
K.*

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 subdivision.

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?

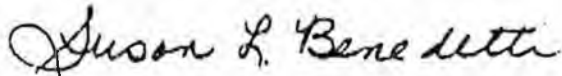
Can you ascertain at this time what percentage of lots would be affected by a replat and would only certain portions of the subdivisions be affected - i.e. say lots near the greenbelt, lots at the perimeter, etc.

1sue\s9140

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  
Dor Alspach

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 89L-12

A hearing was held on December 6, 1988 in the Frontier Building, Suite 722, Anchorage, Alaska. In attendance was Assistant Attorney General, Lawrence Delay, Esq. representing the State of Alaska, along with Ray Spiess, 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 Rathbun, who was and is the registrar for the Board of Professional Engineers and Land Surveyors for the State of Washington. Mr. Rathbun 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 plats 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 abided by any of the sanctions of the Washington State Board of Engineers and Surveyors.

The next witness was Ray Spiess, the investigator for the State of Alaska. Mr. Spiess started the investigation of Johnson in April 1987 in Alaska. Mr. Spiess 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 # LS 1482. His license will expire, unless revoked, on December 31, 1989.
2. On November 15, 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 plat. 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

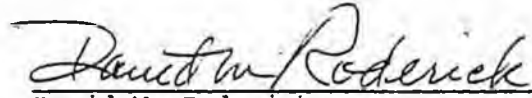
1. AS 08.48.111(2) states that "the Board may suspend, refuse to renew, or revoke the certificate of or reprimand a registrant or corporation who is found guilty of...(2) gross negligence, incompetence, or misconduct in the practice of architecture, engineering, or land surveying;"
2. AS 08.01.075(a) a board may take the following disciplinary actions singly or in combination: (2) suspend a license for a specified period; (4) impose limitations or conditions on the professional practice of a licensee; (6) 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. Then Johnson may petition for reinstatement and must pass an appropriate examination for land surveyors within the State of Alaska.

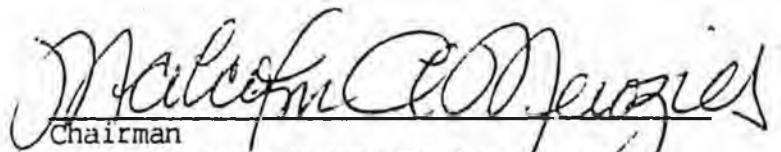
Dated in Anchorage, Alaska this 3<sup>rd</sup> day of March, 1989.

  
\_\_\_\_\_  
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/Remands~~ the Proposed Decision to suspend the license of William E. Johnson for two years.

Dated at Juneau, Alaska, this 3<sup>rd</sup> day of March, 1989.

  
\_\_\_\_\_  
Chairman  
Board of Architects, Engineers, and  
Land Surveyors

0694h

Municipality  
of  
Anchorage



PHONE 6-650  
ANCHORAGE ALASKA 99502-0650  
0870 264-4111

DEPARTMENT OF HEALTH AND ENVIRONMENTAL PROTECTION

April 21, 1983

E. Lee Browning, Municipal Engineer  
Public Works Department  
Engineering Division  
3500 East Tudor Road  
Anchorage, Alaska 99507

Subj - 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 plats 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. Jerry Weaver of the Planning and Zoning Department. Mr. Stanley confirmed that several survey closure checks made by his office, on these subdivisions, did not close satisfactory. Mr. Stanley further indicated that several other subdivisions surveyed by the same registered surveyor (Mr. William Johnson, whose stamp #14825 appears on the subdivision plats) 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 plats. 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 21, 1983  
Page Two

lift 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 264-4720.

Sincerely,



Robert W. Robinson  
Environmental Engineering Manager

RWR/ljw

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

Planning Department  
Don Alspach, Manager of Zoning and Platting  
Jerry Weaver, Platting Officer

Health and Environmental Protection  
Lynn Lindquist  
John Kennedy  
Robert Pratt  
John W. Lynn

8-LS1729J  
Luckhaupt  
3/1/94

SENATE BILL NO.  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Introduced:  
Referred:

A BILL  
FOR AN ACT ENTITLED

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

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

3 \* Section 1. AS 09.45.800 is amended to read:

4           Sec. 09.45.800.   DEFECTIVE SURVEY OR [PREREQUISITE]  
5           EARTHSLIDE CHANGING LAND BOUNDARIES. If the boundaries of land, owned  
6           either by public or by private persons (1) have been moved by an act of God,  
7           consisting of an earthslide, so that they are in a location different from that at which,  
8           by solar survey, they were located before the earthslide, or (2) are manifestly  
9           inaccurate due to a defective survey of a subdivision and the ownership status of  
10           the land precludes resurvey and replat without the intervention of the court. an  
11           action in rem to recognize the boundaries as they presently exist and to quiet title  
12           within the boundaries in the persons judicially found entitled to title under  
13           AS 09.45.800 - 09.45.880, is authorized, maintainable by the persons and with the  
14           procedures in AS 09.45.800 - 09.45.880 for the handling of the circumstances

1 [EMERGENCIES] dealt with in AS 09.45.800 - 09.45.880 [THIS CHAPTER].

2 \* Sec. 2. AS 09.45.800 is amended by adding a new subsection to read:

3 (b) Notwithstanding (a) of this section, an action may not be commenced under  
4 (a)(2) of this section for a subdivision located within a municipality until the governing  
5 body of the municipality in which the subdivision is located has passed a resolution  
6 supporting the action.

7 \* Sec. 3. AS 09.45.805(a) is amended to read:

8 (a) An action authorized by AS 09.45.800 - 09.45.880 may be commenced by

9 (1) a borough with the joinder of a city or cities included in the  
10 borough;

11 (2) a city not included within the boundaries of a borough [,] if the  
12 earthslide or survey error has affected land in the city, or land outside the city as to  
13 which outside land the city has statutory power to approve a land map;

14 (3) a school district that [WHICH] has statutory power to approve a  
15 land map; or

16 (4) any other entity or person, granted permission by the court to bring  
17 the action.

18 \* Sec. 4. AS 09.45.810 is amended to read:

19 Sec. 09.45.810. SEPARATE ACTIONS AS TO SEPARATE SLIDE OR  
20 SURVEY AREAS. An entity that [WHICH] is a permissible plaintiff under  
21 AS 09.45.805, may, in its discretion, bring a separate action under AS 09.45.800 -  
22 09.45.880 with respect to each separate slide area or defective survey located within  
23 its boundaries, and its decision regarding the desirability of the separate action, and  
24 regarding the area to be dealt with in each action, is final.

25 \* Sec. 5. AS 09.45.815 is amended to read:

26 Sec. 09.45.815. COMPLAINT. The complaint must [SHALL] substantially  
27 include

28 (1) a statement of the facts making the provisions in AS 09.45.800 -  
29 09.45.880 applicable;

30 (2) a description of the entire real property sought to be affected by the  
31 action;

1 (3) a specification of the estate, title, and interest owned, and in the  
2 actual possession of the plaintiff or plaintiffs in described parts of the entire real  
3 property sought to be affected by the action;

4 (4) a specification of the estate, title, and interest, so far as they are  
5 known to the plaintiffs or either of them, and so far as they are capable of being  
6 discovered by reasonably diligent search by the plaintiff or plaintiffs, in each separate  
7 part of the entire real property sought to be affected by the action;

8 (5) a specification of the street areas offered by the plaintiff, or  
9 plaintiffs, to be vacated in whole or in part for judicial equitable allocation to  
10 landowners for the mitigation of the losses inflicted upon the landowners by the  
11 defective survey or by the act of God consisting of the earthslide;

12 (6) a proposed replatting of the entire real property sought to be  
13 affected by the action, embodying the land boundaries as fixed by the resurvey or the  
14 act of God, except as these have been liberalized by judicially directed use of the  
15 vacated lands.

16 \* Sec. 6. AS 09.45.835(b) is amended to read:

17 (b) An answer must

18 (1) specifically set out the particulars in which the claimant's estate,  
19 right, title, or interest in or to, or lien upon all or any part of the property is different  
20 from, or greater than, the interest of the claimant as it is described in the complaint;

21 (2) be confined to rights based on events occurring at the time of, or  
22 since the time of the

23 (A) act of God, consisting of the earthslide; or

24 (B) defective survey.

25 \* Sec. 7. AS 09.45.835(c) is amended to read:

26 (c) To whatever extent, if at all, the answering party has rights against anyone  
27 whatsoever, based upon facts or events that [WHICH] occurred before the defective  
28 survey or the earthslide, the claims shall remain unaffected by the action brought  
29 under AS 09.45.800 - 09.45.880 and shall be assertable subsequent to the conclusion  
30 of the action at any time and in any manner permitted by law, notwithstanding the  
31 judgment granted in this action, recognizing, however, the finality of this judgment as

1 to the consequences, with respect to land boundaries, of the resurvey or the earthslide.

2 \* Sec. 8. AS 09.45.845 is amended to read:

3 Sec. 09.45.845. VACATING OF STREETS IN WHOLE OR IN PART. The  
4 vacating of streets in whole or in part by the voluntary action of a municipality, for  
5 the purpose of making it possible for the court to mitigate the hardships suffered by  
6 individuals because of the change in land boundaries caused by the act of God,  
7 consisting of an earthslide, or the defective survey, can be accomplished by the offer  
8 of the municipality expressed in the complaint followed by the court's approval of it  
9 in the action authorized in AS 09.45.800 - 09.45.880, without other formalities. This  
10 provision is a special [EMERGENCY] substitute for the provisions contained in  
11 AS 29.40.120 - 29.40.160.

12 \* Sec. 9. AS 09.45.855 is amended to read:

13 Sec. 09.45.855. SCOPE OF JUDGMENT. The judgment [SHALL]

14 (1) shall determine the land boundaries of each parcel of land located  
15 within the entire area of real property sought to be affected by the action, whether  
16 owned publicly or privately after judicial equitable allocation of lands voluntarily  
17 vacated by a municipality under AS 09.45.845;

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

22 (3) shall approve and direct the proper filing of a new plat map  
23 covering the entire area of real property sought to be affected by the action, as a  
24 substitute for the plat maps previously filed, but

25 (A) rendered inaccurate by the act of God consisting of an  
26 earthslide; or

27 (B) discovered to be inaccurate due to a defective survey;

28 (4) may not, except as provided in AS 09.45.845 or with the consent  
29 of the owner, alter lines or boundaries of parcels or lots that are not found to be  
30 materially incorrect.

31 \* Sec. 10. AS 09.45.860 is amended to read:

1           Sec. 09.45.360. STANDARDS FOR JUDGMENT. In reaching the conclusions  
2 called for by AS 09.45.355, the court shall give effect to the changes in land  
3 boundaries caused by the earthslide or reflected in the resurvey, mitigated, however,  
4 so far as can equitably be done, by allocating to contiguous lots parts of the land  
5 released by a municipality by its voluntary vacation of areas formerly constituting  
6 public ways, which vacatings of streets shall be approved in this judgment.

7 \* Sec. 11. AS 09.45 is amended by adding a new section to read:

8           Sec. 09.45.372. ASSESSMENT OF COST OF RESURVEY. The court shall  
9 assess the cost of a resurvey under AS 09.45.800 - 09.45.880 for a defective survey  
10 to the owners of the parcels or lots within the subdivision in proportion to the  
11 percentage of ownership of the entire subdivision.

12 \* Sec. 12. AS 09.45 is amended by adding a new section to read:

13           Sec. 09.45.378. DEFINITION. In AS 09.45.800 - 09.45.880, "defective survey"  
14 means a survey that cannot be reconciled with the plat of the property, does not  
15 conform with the physical location of the property boundaries, and which is manifestly  
16 defective for a subdivision.

17 \* Sec. 13. AS 09.45.880 is amended to read:

18           Sec. 09.45.880. SHORT TITLE. AS 09.45.800 - 09.45.880 may be cited as  
19 the Earthslide and Defective Survey Relief Act.

**SB**

**372**

# SENATE COMMITTEE REPORT

## FIRST COMMITTEE OF REFERRAL

DATE: 3/30/94

FURTHER: JUDICIARY  
FINANCE

Date of 5-Day Notice: 4/7/94  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: \_\_\_\_\_

The Community and Regional Affairs Committee considered SENATE BILL NO. 372

"An Act relating to community local options for control of alcoholic beverages; relating to the control of alcoholic beverages; relating to the definition of 'alcoholic beverage'; and providing for an effective date."

and recommends:

replace with \_\_\_\_\_ CS \_\_\_\_\_ ( )

same title  
 new title  
 technical title change  
(HB only)

attaches amendment(s)

adopts \_\_\_\_\_ Letter of intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

### FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DOR	3/31/94	φ	
DIV of Elections	4/7/94		#1.06

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS?

Ed Adams  
\_\_\_\_\_  
T. J. Zharoff  
\_\_\_\_\_  
John L. Steiner  
\_\_\_\_\_  
John A. Hines  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ed Adams No Rec  
\_\_\_\_\_  
Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 372

Revision Date: \_\_\_\_\_ Department Affected: Office of the Governor

Title: AN ACT RELATING TO COMMUNITY LOCAL

OPTIONS FOR CONTROL OF ALCOHOLIC BEVERAGES. BRU: Division of Elections

Component: Elections

Sponsor: Judiciary by Request

Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 21

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	1.06	1.06	1.06	1.06	1.06	1.06
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS,	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL</b>	<b>1.06</b>	<b>1.06</b>	<b>1.06</b>	<b>1.06</b>	<b>1.06</b>	<b>1.06</b>

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	1.06	1.06	1.06	1.06	1.06	1.06
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>1.06</b>	<b>1.06</b>	<b>1.06</b>	<b>1.06</b>	<b>1.06</b>	<b>1.06</b>

POSITIONS:

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

Estimate of current year (FY94) impact: 0

ANALYSIS: (Attach a separate page if necessary.) PLEASE SEE ATTACHED FOR FISCAL DOCUMENTATION:

Prepared by: Joseph L. Swanson, Director  
Division: Division of Elections

Phone: 465-4611  
Date: APRIL 7, 1994

Approved by Commissioner: John B. Coghill, Lieutenant Governor  
Agency: Office of the Governor

Date: APRIL 7, 1994

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COST FOR BY-MAIL ELECTIONS FOR SB372

The following is a cost estimate for a by-mail local option election in unincorporated areas. Cost estimates are based on 100 voters, as we order ballots in pads of 25 and allowing for additional registration.

Personnel:	Estimated Cost:
Absentee Voting Official available in the city 15 days before the election. (Flat fee of \$50.00 for each city)	Total \$50.00
1 hour for person to post 40/10 Posters (Total \$8.00 Per Hour)	Total \$40.00
District Absentee Review Board... 1 City	Total \$40.00
State Review Board (four board members) \$12.50 Per Hour	Total \$50.00
Total Cost for Personnel:	<u>Total \$180.00</u>

Outreach/Advertising:	Estimated Cost:
2 - 40/10 Posters per city (Approx. \$2.00 per poster)	Total \$ 4.00
Printing Advance Flyer (approx. 100 voters) (.15 a copy x 100)	Total \$15.00
Newspaper, radio or RATNET advertisement (Newspaper Display Ad is 4" x 4" at \$112.00 ea.)	Total \$560.00
General Instructions to voters to be included with the ballot. (Based on 100 card at \$1.00 ea.)	Total \$100.00
Total Cost for Advertising:	<u>Total \$679.00</u>

Cost for by-mail elections

Ballots:

Ballots for all registered voters (Ballots ordered in pad of 25, 100 at \$.74 ea)	Total \$74.00
Ballots for each regional offices to act as absentee voting officials. 25 ballots for each election, which can be distributed, 5 to each area. (\$.74 x 25)	Total \$18.50
Sample ballots for all elections (Approx. 25 at \$1.00 ea)	Total- \$25.00
Total cost for ballots:	<u>Total \$117.50</u>

Postage:

Postage for mailing Advance Flyer (mail first class, \$.29 x 100) or to number of registered voters at time sent	Total \$29.00
Mailing ballots to all registered voters, (based on 500 x \$.29) Mailed first class	Total \$29.00
Shipping charged for sending ballots and materia's to the city. (Alaska Airlines Goldstreak) \$25.00 a box	Total \$ 25.00
Total Cost for Postage/shipping	<u>Total \$83.00</u>
Grand Total	\$1059.50 or \$1.06

**OFFICE OF THE GOVERNOR**

DIVISION OF ELECTIONS  
P.O. BOX AF  
JUNEAU, ALASKA 99811-0105  
PHONE (907) 465-4611

Position Statement  
SB 372

The division of elections supports this bill. The bill consolidates and clarifies language relating to liquor option elections conducted by this division. We believe it makes the language more understandable both to those who are conducting the election and to the voters. The bill also places some reasonable limitations, discussed below, on the number of elections that may be conducted in each place on the same question.

Section 16 contains a description of the question and other information which would be placed on a ballot, depending on the option being voted upon. This language combines the various liquor options into one section of Title 4 compared to the current four sections. The division of elections believes this makes the election process more understandable to everyone.

Further, subsection (d) requires some clarifying language to include on the ballot which, we believe, will make the question more understandable to the voter. The division of elections likely would ask the Alcohol Beverage Control Board to supply the appropriate explanations of the authority of specified licensees to sell alcoholic beverages. This language should be readable and understandable to lay persons.

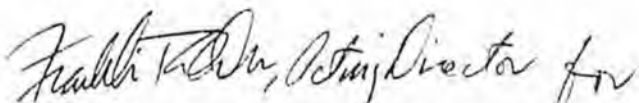
Section 17 contains a descriptions of the question, which would be placed on the ballot, if the issue is the change or removal of current local liquor options. This language should help make it clear to the voters what the issue is before them. The division supports this language.


Section 23 provides that the lieutenant governor shall conduct

Mr. Joseph L. Swanson, Director  
April 11, 1994  
Page 2

elections under Title 15 if a petition is signed by 35% or more of the registered voters in an established village. The division of elections particularly supports the language in subsection (f) which clarifies that elections cannot be held more than once in a 12-month period either to remove or reduce an existing option. Also, an election will not be held until an option has been in force for 12 months. This language will prevent numerous elections in one place where the voters are relatively evenly divided on the issue.

The bill also contains language requiring the lieutenant governor to notify the Alcoholic Beverage Control Board of the results of an election in which the voters vote to prohibit, change, or remove a local option. This language makes a lot of sense, since the Board must take licensing actions to enforce the voter's decisions.

  
\_\_\_\_\_  
Joseph L. Swanson, Director

  
\_\_\_\_\_  
Date

# FISCAL NOTE

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO. SB 372**

Revision Date:	Dept. Affected: <u>Revenue</u>
Title: <u>Alcoholic Beverages: Local Option and Miscellaneous</u>	BRU: <u>Alcoholic Beverage Control Board</u>
Sponsor: <u>Senate Judiciary by Request</u>	Component: _____
Requestor: <u>Senate Community &amp; Regional Affairs Committee</u>	COMPONENT SERIAL NO. <u>0100</u>

**Expenditures/Revenues:** (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE: *1005	0.0	0.0	0.0	0.0	0.0	0.0
----------------------------	-----	-----	-----	-----	-----	-----

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) impact: \$ 0.0

**ANALYSIS:** (Attach a separate page if necessary.)

\*Possible revenue increase from penalties under AS 04.11.270(b)(2) for late filing of renewal applications.

Prepared by:	Director, Patrick L. Sharrock	Phone: (907) 277-8638
Division:	Alcoholic Beverage Control Board	Date: March 31, 1994
Approved by Commissioner:	Darrel J. Rexwinkel	Date: _____
Agency:	Department of Revenue	

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# Alaska State Legislature

## SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Randy Phillips, Chair  
Senator Robin Taylor, Vice Chair  
Senator Loren Leman  
Senator Al Adams  
Senator Fred Zurloff

SESSION:  
State Capitol  
Juneau, Ak 99801-1182  
(907) 465-4989

INTERIM:  
P. O. Box 142  
Eagle River, Ak 99577  
(907) 694-4949

### AGENDA

April 12, 1994  
9:00 AM

Butrovich Room  
Room 205

1. Call to Order (time and members present)
2. SB 372 - Alcoholic Beverages: Local Option & Misc.
  - (a) Sponsor - Senate Judiciary Committee By Request
  - (b) Teresa Williams - Dept of Law - On Teleconference from Anchorage LIO needs to testify first due to court appearance.
  - (c) Patrick L. Sharrock - Director, Alcohol Beverage Control Board
3. Adjourn



A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 372

Page 11, after line 30:

Insert new bill sections to read:

"\* Sec. 15. AS 04.11.400(g) is amended to read:

(g) The board may approve the issuance or transfer of ownership of a beverage dispensary [OR RESTAURANT OR EATING PLACE] license without regard to (a) of this section if it appears that the issuance or transfer will encourage the tourist trade by encouraging the construction or improvement of

(1) a hotel, motel, resort, or similar business relating to the tourist trade with a dining facility or having kitchen facilities in a majority of its rental rooms and at least a minimum number of rental rooms required according to the population of the established village, incorporated city, unified municipality, or population area established under (a) of this section in which the facility will be located, as follows:

- (A) 10 rental rooms if the population is less than 1,501;
- (B) 20 rental rooms if the population is between 1,501 and 2,500;
- (C) 25 rental rooms if the population is between 2,501 and 5,000;
- (D) 30 rental rooms if the population is between 5,001 and 15,000;
- (E) 35 rental rooms if the population is between 15,001 and 25,000;
- (F) 40 rental rooms if the population is between 25,001 and 50,000; and
- (G) 50 rental rooms if the population is greater than 50,000;

or

(2) an airport terminal.

\* Sec. 16. AS 04.11.400(j) is amended to read:

(j) The board shall [MAY] approve the issuance or transfer of ownership of a restaurant or eating place license in a municipality without regard to (a) of this section unless [IF] the board finds that issuance or transfer of the license is not in the public interest [NECESSARY FOR THE PUBLIC CONVENIENCE]."

Renumber the following bill sections accordingly.

Page 28, line 31, after "AS 04.11.190":

Insert "04.11.4 (h),"



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y. State Capitol  
Juneau, Alaska 99811  
(907) 465-1991

February 27, 1985

MEMORANDUM

TO: Representative Roger Jenkins  
ATTN: Snirley Armstrong  
FROM: Rob Waldman, Legislative Analyst  
RE: Liquor Licensing Requirements in Five Western States  
Legislative Request 85-193

You requested that this agency provide you with the following information for California, Idaho, Montana, Oregon, and Washington:

- the state population requirements for granting alcoholic beverage licenses;
- the number of liquor licenses per capita (ratio of population to number of licenses); and
- classes of licenses in these states.

A discussion of the licensing requirements and procedures of each state follows the summary table below. Data on Alaska has been included for comparison purposes.

State	Full Service		Beer/Wine		TOTAL NUMBER OF LICENSES	Actual Population Per License
	Number of Licenses	Population to License	Number of Licenses	Population to License		
Alaska	1,314	1,500:1	285	1,500:1	1,599	313
California		2,000:1		no limit	70,000	314
Idaho	808	1,500:1	4,400	no limit	5,208	192
Oregon	1,350	2,000:1	4,400	no limit	5,350	495
Montana	1,426	variable	518	variable	1,944	414
Washington	2,580	1,500:1	6,000	no limit	8,580	504

7206 0110

Representative Jenkins  
February 27, 1985  
Page Two

## CALIFORNIA

Jay Stroh, Director of the Alcoholic Beverage Control Department (ABC) provided the following data:

In California, retail licensing of alcoholic beverages is dependent upon two factors: the type of beverage sold, and the location of consumption. Beverages are defined as beer, wine and hard liquor (spirits). Full service is the term used to refer to the combined sale of hard liquor, beer and wine. Consumption of an alcoholic beverage can be: on-premises, termed on-sale; off-premises, termed off-sale; and a combination of both, termed on and off-sale. The seven classes of retail licenses are:

- off-sale full service
- on-sale full service
- on-sale club
- on-sale beer
- on-sale beer and wine
- off-sale beer
- off-sale wine

### On-Sale Full Service

On-sale full service is offered at bonafide restaurants, bars and night-clubs.<sup>1</sup> The state maintains a population quota system which regulates the number of licenses available by county. The population to license ratio for on-sale full service establishments is 2,000:1.<sup>2</sup>

New Licenses are purchased through a county lottery system in which each applicant deposits \$6,000. If an applicant wins, the \$6,000 is used as the license fee. All other applicants are charged a \$50 lottery fee and \$5,950 is returned. A new license holder cannot sell a license for two years, and then, for no more than \$6,000. After 5 years, the owner can sell the license for the market value.

---

<sup>1</sup>Bonafide restaurants must serve full hot meals, not limited to hamburgers, sandwiches, soups or salads.

<sup>2</sup>The population to license ratio was set at 1,000:1 in 1955. Due to pressure from church groups and the liquor industry, the ratio was raised. Church groups intended to limit consumption, and the liquor industry wanted to limit competition. Existing licenses were grandfathered, but no new licenses were issued until the population showed a sufficient increase.

Representative Jenkins  
February 27, 1985  
Page Three

The club license is the one exception to the on-sale full service population quota. Full service licenses are issued to all private fraternal clubs which meet California requirements for eligibility. Sale and consumption is strictly limited to members of the organization. Organizations receiving club licenses are subject to the license sale restrictions affecting other full service establishments.

#### On-Sale Beer and Wine

California has no limit on the number of licenses issued to establishments selling beer and wine for consumption on the premises. Annual license fees are \$200 for beer and \$300 for beer and wine. At the request of municipalities, the ABC will restrict issuance of licenses in areas in which crime levels are 20 percent above normal or in which specific ordinances restricting sale and consumption are in effect, such as within the proximity of a church or school.

#### Off-Sale Full Service

Off-sale full service may be offered at liquor stores, supermarkets, and small businesses such as gas stations which have minimum food inventories of \$5,000. A population quota system is in effect; the population to license ratio is 2,500:1. The number of on-sale licenses within a county has no effect upon the number of off-sale licenses issued. Retail outlets in business prior to 1955 received licenses through the grandfather clause. New licenses are sold through a lottery system and cannot be issued until the number of old licenses balance with the population (as with on-sale licensing). Restrictions on the sale of licenses are the same as for on-sale.

#### Off-Sale Beer and Wine

Off-sale beer and wine license numbers are not limited by population quotas and are sold to all retailers who apply. The only restrictions are those which apply to on-sale beer and wine licenses. Annual license fees are \$100 for each class.

#### Statistics

The ABC was able to provide the total number of liquor licenses in California, 70,000. This figure includes wholesale distributors, wineries, distilleries, breweries, and retail sales. However, they consider the number of wholesale licenses to be only a small fraction and insignificant with respect to the number of retail licenses. Based on a population of 22,000,000, the actual population to license ratio is 314:1.

IDAHO

Barbara Gwartney, Administrator of the Alcohol Beverage Control, Department of Law Enforcement (ABC), provided the following:

For the purpose of liquor licensing, Idaho distinguishes between the type of alcoholic beverage sold (hard liquor, beer and wine), but not the location of consumption. In other words, all classes of licenses allow sales of alcoholic beverages for both on and off-premises consumption.

Full Service

Full service licenses are issued to bars, hotels and restaurants. Idaho issues no more than one license for each 1,500 people in each incorporated municipality.

Special full service licenses which are not subject to the 1,500:1 quota system are:

- golf courses which occupy 40 or more acres and have at least 9 holes;
- ski resorts which have overnight facilities for 100 persons, occupy at least 10 acres, are regularly operated and have a bonafide chairlift;
- lake resorts which have at least 200 feet of lake frontage and accommodate 50 persons overnight;
- equestrian facilities which seat at least 6,000 persons and are bonafide rodeo grounds;
- convention centers which have at least 120 sleeping rooms, one meeting room for 350 persons and total floor space of 3,000 square feet. In addition, there must not be any other convention centers in the community with a liquor license supplied under this class; and
- fraternal clubs which are operated in at least 36 states, have been in existence for 20 years, have 50 or more members, are non-profit, have permanent club quarters, and members pay annual dues of at least \$6.

To purchase a license (full service or special), an applicant must submit the license fee as a deposit. As licenses become available, the state sells them according to the order of application. When a full service license is sold, the state must receive 10 percent of the purchase price.

Beer and Wine

These classes of licenses are not subject to population quotas. They are provided to all businesses that apply. When a license is sold, the state must receive a \$20 fee for transferring the title.

Statistics

The following table presents license fee, number of licenses issued, and population to license ratio for all license classes. Ratios are based upon a current state population of 1,000,000.

<u>Class of License</u>	<u>Population Requirement</u>	<u>Annual Fee</u>	<u>Number of Licenses</u>	<u>Population/License Ratio</u>
Full Service	<1,000	\$750		
(includes special licenses)	1,000-3,000	500	808	1,238:1
	>3,000	300		
Beer	N/A	50	3,500	286:1
Wine	N/A	100	<u>900</u>	<u>1,111:1</u>
Total			5,208	192:1

OREGON

Charles Kurtz, Assistant Director of Licenses-Liquor Control Commission (LCC), provided the following information:

Full Service Licenses

In Oregon, retail licensing is dependent upon the type of alcoholic beverage sold (hard liquor--full service, beer and wine), but not on the location of consumption. Seven classes of licenses are issued, and only full service licenses are regulated by population.

Full Service

Class A licenses--for full service at bars, clubs, restaurants and hotels--is regulated by a 2,000:1 population to license ratio. This ratio was adopted in 1951. Prior to that date, no sale and consumption of alcohol by the glass was permitted in Oregon. According to LCC, the 2,000:1 ratio may be too low because currently, many establishments are going out of business due to competition.

Representative Jenkins  
February 27, 1985  
Page Six

Licenses are not considered to be personal property and cannot be sold. They are transferred with the establishment, and the LCC reviews all sales to determine if the selling prices exceed the fair market values of the businesses involved. At the present time, the LCC is not issuing any new licenses; licenses have been returned during the past year.

Special full service licenses which are not subject to the 2,000:1 ratio are:

- Class B--full service at restaurants without lounges; and
- Class C--private clubs, full service for members only.

#### Beer and Wine Licenses

A population quota system is not utilized for licensing the sale of beer and wine in Oregon. Licenses can be purchased by all applicants. Three classes of licenses are issued:

- Restaurants--must serve full meals, and can offer for sale fortified wines;
- Taverns--must serve hamburgers, sandwiches, soups or salads; and
- Public carriers--can sell beer and wine only for on-premises consumption.

#### Statistics

The following table presents annual fees, number of licenses, and population to license ratio for each license class. The ratios are based upon a current state population of 2,650,000.

<u>Class of Licenses</u>	<u>Annual Fee</u>	<u>Number of Licenses</u>	<u>Population/ License Ratio</u>
A	\$400		
B	100-300	1,350	1,963:1
C	300		
Restaurant (beer/wine)	200		
Tavern (beer/wine)	200	4,000	663:1
Public Carrier (beer/wine)	200		
Total		5,350	495:1

MONTANA

Erma Paul, Assistant Director of the Liquor Division, Department of Revenue, provided the following information:

A population quota system based on a variable ratio (500:1 to 2,000:1) for municipalities is utilized for both full service and for beer and wine sales. Five classes of service are regulated:

- full service on-premises consumption;
- beer on-premises consumption;
- beer and wine on-premises consumption;
- full service off-premises consumption; and
- beer and wine off-premises consumption.

Full Service On Premise

The following table presents the number of full service licenses which are issued by community size. Community population refers to all persons living within five miles of a municipality.

<u>City Population</u>	<u>Number</u>
500 or less	2 retail
500 - 3,000	3 retail for first 1,000 population 1 retail for each additional 1,000
more than 3,000	5 retail for first 3,000 population 1 retail for each additional 1,500
Outside cities-- (beyond 5 miles)	1 retail for every 750 population

Special exceptions to the variable quota system are:

- Resorts which must meet code, be bonafide resorts, have value in excess of \$500,000 and be owned by only one individual or corporation.
- Airports operated by the municipality.
- Golf courses operated by the municipality.

Beer and Wine On Premise

The following table presents the number of licenses issued by community size.

<u>City Population</u>	<u>Number</u>
500 or less	1 retail
500 - 2,000	1 retail for each 500 population
more than 2,000	4 retail for first 2,000 population

Full Service Off-Premises

All liquor sold for off-premises consumption is distributed through state liquor stores.

Beer and Wine Off-Premises

Beer and wine can be sold at grocery stores providing there is a minimum food inventory of \$3,000.

Statistics

The following table presents fees, numbers of licenses and actual population to license ratio for each class. Ratios are based on a current population of 304,000.

<u>Class</u>	<u>Fee</u>	<u>Number</u>	<u>Ratio</u>
Full Service on Premises	\$20,000	1,416	569:1
Special Service Full Service	20,000	10	
Beer on and off Premises	400	280	2,871:1
Beer and Wine on and off Premises	400	<u>238</u>	3,378:1
Total		1,944	414:1

### WASHINGTON

Chuck Dalrymple, Assistant Supervisor of Licensing-Liquor Control Board (LCB), provided the following information.

In Washington, the LCB distinguishes between alcoholic beverage types, and the place of consumption. A population quota system is utilized only for licensing full service on premises retailers. Prior to 1948, it was not possible to get a drink by the glass. The population to license ratio adopted represents a compromise between factions composed of conservative church groups and the liquor industry, and liberal elements in western Washington, particularly in the Seattle and Tacoma area. The concept of the population to license ratio was originally borrowed from the Canadian provincial governments.

#### Full Service On Premises

Class H licenses allow the holder to provide full service at restaurants, hotels, clubs and convention centers in which the sale of food amounts to 40 percent of all sales, and where food is considered to be other than hamburgers, sandwiches, soups and salads. It is based upon a county population to license ratio of 1,500:1

Special full service licenses which are not subject to the quota system are Class H club licenses, which provide full service at bonafide fraternal clubs.

#### Full Service Off Premises

All full service sales for off premises consumption are through state liquor stores.

#### Beer and Wine on Premise

No quota system is utilized for licensing the sale of beer and wine for on or off-premise consumption. There are five classes of licenses issued:

- Class B for sale of beer on-premises
- Class C for sale of wine on-premises
- Class E for sale of beer off-premises
- Class F for sale of wine off-premises
- Combination of E and F for sale of both beer and wine off-premises

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### Statistics

The following table presents annual fees, number of licenses, and actual population to license ratio for each class. Ratios are based on a current population of 4,328,000.

<u>Class</u>	<u>Annual Fees</u>	<u>Population Limits</u>	<u>Number of Licenses</u>	<u>Population/ License Ratio</u>
H	\$2,000 \$1,200	>20,000 <20,000	2,200	1,967:1
H-Club	Same as H		380	11,389:1
B	\$600 \$300	>20,000 <20,000	1,000	4,328:1
C	Same as B			
B and C	\$1,200 \$600	>20,000 <20,000	1,700	2,546:1
E	\$ 75			
F	\$ 75		3,300	1,312:1
E and F	\$150			
Total			8,580	504:1

I hope you find this information useful. If you need additional information, please call.

RW