ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672
8515 HOUSE COMMUNITY & REGIONAL AFFAIRS

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Assemblymembers Abney and Bell
Department of Law
September 14, 1993

CLERK'S OFFICE
APPROVED
Date: 11-9-93

ANCHORAGE, ALASKA
AO NO. 93-

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

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. That AMC 19.10.101 is amended to read as follows:

19.10.101 Special assessment districts--Authorized improvements.

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

A. Streets, roads, parkways, street lighting, curbs and gutters, driveways, curb cuts and sidewalks;

B. Storm sewers or drains;

C. Sanitary sewers;

D. Parks, treatment of open space;

E. Off-street parking facilities;

F. Changes in channel of watercourse, bridges, culverts, embankments and other works for street purposes;

G. Water supply, including water mains, water connections and fire hydrants;

H. Fallout shelters;

I. Street, roadway and sidewalk drainage, dust sprinkling, snow removal;

K. Placing overhead utility distribution lines, as defined in chapter 21.90, underground;

L. Natural gas lines;

M. Other improvements of manifestly inaccurate survey and

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 by ... Attorney ...

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 y : 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 <u>all</u> property owners or by a court action that would bind <u>all</u> property owners to cause a replat.

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:ct

MUNICIPALITY OF ANCHORAGE
Memorandum

Date: January 24, 1991

To: Tom Knox

From: Larry Ison

Subj: Rabbit Creek Heights Subdivision Problems

To begin with, the legal description shown on sheet 1 does not close by 14.46 feet. The first two calls of the description are along the boundary of the Rabbit Creek View plat and the distances differ 0.47' and 0.08' between the legal description and the Rabbit Creek View plat. The two plats also differ at the most southeasterly leg along Rabbit Creek by 1° 27' 35" and 11.18 feet! Since the Rabbit Creek View plat does not close by 306.07 feet to 25.41 feet, I assume the plat of Rabbit Creek Heights is closer to being correct.

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

This plat is not a total mess, Block 2 works out pretty well on paper. I computed a misclosure of 0.46' for the exterior block boundary and the side lot lines inversed within about 10" for bearing and 0.02' for distance. I did check the square footage of two lots, one was good (Lot 17) and the other, Lot 10, Bk 2, I compute 3661 square feet less than what is shown on the plat.

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

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

2. Cul de sac "return radii" lengths are not provided and when I tried to hold the given arc lengths, I found the curves were either non-tangent or the radius was some really odd distance such as 37.58'. When I assumed a 50' radius for the "return radius" I generally found one side of the cul de sac seemed to work well but the other side didn't. I have problems with all but one or two of the cul de sacs fitting together.

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

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

5. This plat does not seem to tie to the north with the Rabbit Creek View plat very well. I have tried to tie in a few places. Computing the same point from three directions I have found some places where 12' is the least difference in the three positions! Other places are not as bad.

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

A few of the other problems are:

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

8. Curve 12, delta does not compute from bearings of tangents by about seven minutes.

9. Curve 15, length computes 33.12 feet longer than shown.

10. The distance of the lot line common to Lots 6,7 Block 6, appears to include the distance to the cul de sac radius point.

Some street intersections have positional differences of about 0.9 feet but generally the streets intersections fit together within a tenth. Using Lot/Block bearings and distances, positional differences of 3 feet to 10 feet are common throughout the plat. This plat is a computation mine field.

rchs

MUNICIPALITY OF ANCHORAGE
Memorandum

Date: December 6, 1991

To: Tom Knox

From: Larry Ison

Subj: Rabbit Creek View Plat 70-133

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

1. The exterior boundary does not close by approximately 86.5 feet. I suspect the problem is along the creek/south boundary.

2. This plat's south boundary adjoins the boundary of Rabbit Creek Heights plat 70-131. Near Carl Street, the two plats have two legs that disagree by approximately 11 feet in distance and as much as 1° 47' 13" in bearing. As of this date I have not computed the exterior boundary of Rabbit Creek Heights closure.

3. South boundary near Lot 5, Bk 3, the distance is shown as 239.14, the plat of Rabbit Creek Heights shows 269.14 along the same line. The distance scales closer to 269.14'. I have not checked the exterior closure using 269.14 as of this date. One common thing I noticed while checking the computations of this plat, distances between two points will scale close to what I get inversing between points that are a part of what appears to be a good traverses.

4. Tract A, the north and east boundary dimensions have errors, the tangent lengths were not subtracted, thus the distances shown are 20.01 feet too long.

5. Nickleen Street from Jamie St. south to Francesca Drive, along the street centerline the distance is 2022.93 feet, along the west right of way of Nickleen St. the distance adds up to 2020.79 feet, 2.14 feet shorter than centerline.

6 Leo Circle and Lots 13, 14, 16 and 17, Block 37, this is a real quiz as to what is wrong/right. The exterior boundary of the lots as a block closes 0.01 feet. Setting the radius point of Leo Circle by a bearing bearing intersect, along lot lines 13/14 and 16/17, the distance to the S.T. at Nickleen computes out to 209.56 feet versus 186.70 feet shown. The distance from the radius point to lot corners 16/17, 16/13 computes to 50.00 feet, the distance to corner 13/14 computes as 59.92 feet versus 50.00 feet.

7. The lot line common to lots 13/16 Block 37, the bearing from the radius point set by BBI, of Leo Circle to the west corner of the lots computes to with a second however, the distance computes to 188.89 feet, 88.89 feet longer than the plat's distance.

8. Francesca Drive, the center line ties into the boundary within 0.02', however the north right of way computes out to between 27.40' and 28.06 feet from centerline, the south and north right of ways compute out to within a couple of hundredths of 60 feet. Going west from Nickleen to Carl, the north right of way does not close by 5.95 feet.

9. Francesca Drive, the south right of way going west from Nickleen to Carl, then southeast along the back property lines to a closing point at the southeast corner of Lot 5, Block 3, does not close by 6.49 feet. Inversing along the common property lines along the south side Francesca results in bearings differing from about 20 minutes to over 4 degrees and distances varying from about a 0.5 feet to as much as 12.24 feet along the line common to lots 4 5.

10. Sheet 2, east boundary and Genevieve Drive centerline, distance shown as 445.80 feet does not include the 30.10 feet for the north right of way of George Court, the distances should be shown as 475.90.

11. Sheet 2, exterior boundary, the bearing to the southwest of Lot 4, Block 6, shown as N 41° 35' W appears to have been transposed, the property line bearing is shown as N 14° 35 W. The boundary does not close by 216.50 feet using the shown bearing, using N 14° 35 W the boundary does not close by 10.94 feet.

12. The square footage for Lots 1 thru 4, Block 6 is from about 1350 to 2800 square feet greater than what I compute. The boundary and side lot inverses are with in seconds and a couple of hundredths.

13. Lot 3, Block 3, the lot closes within 0.01 but I compute the square footage as being 3812 square feet greater than shown.

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

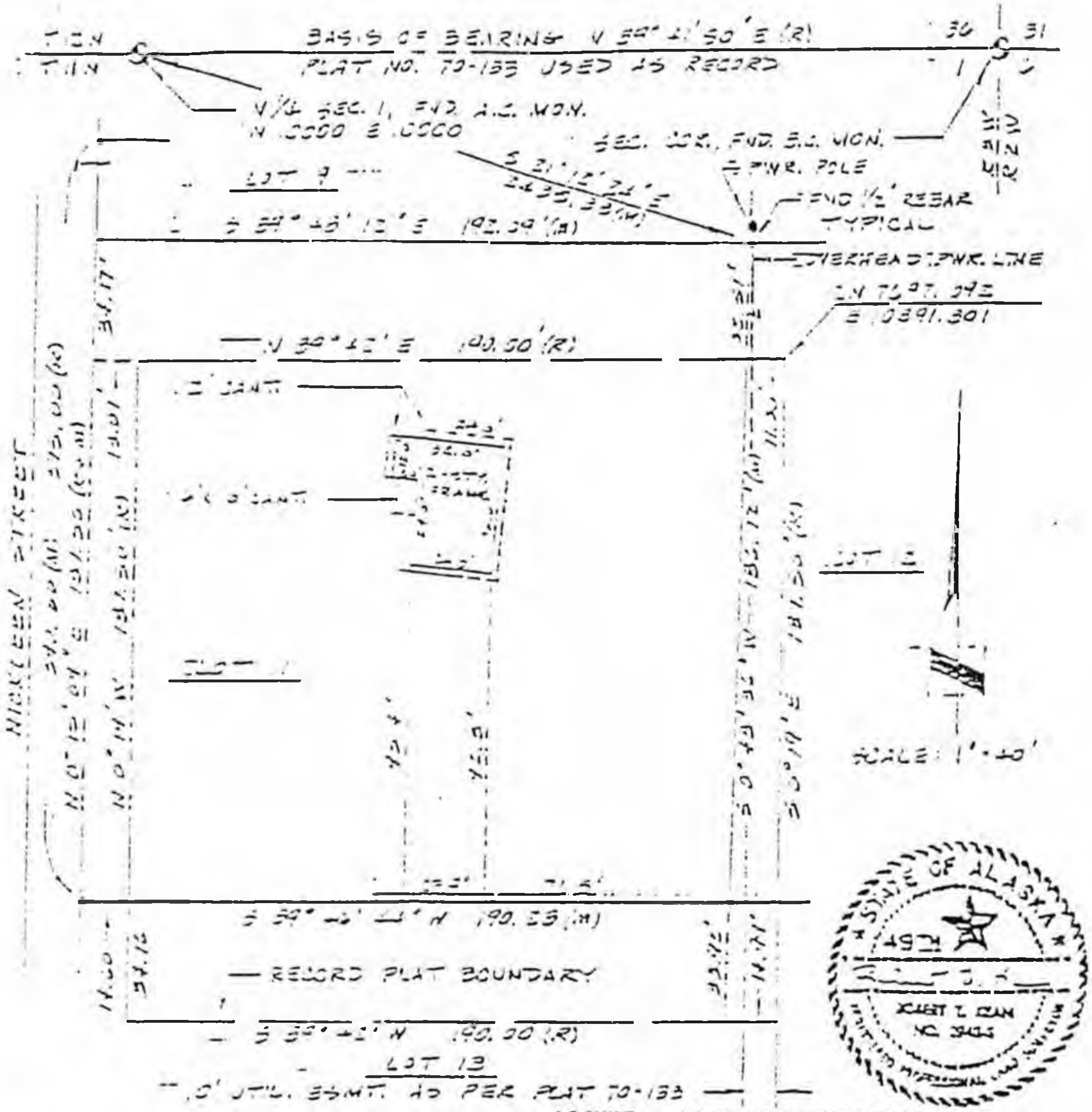
rdv

Rabbit Creek Heights and Rabbit Creek View Subdivisions:

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

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

By Bob Kean, Sur



AS-BUILT NO CORNERS SET THIS DATE

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

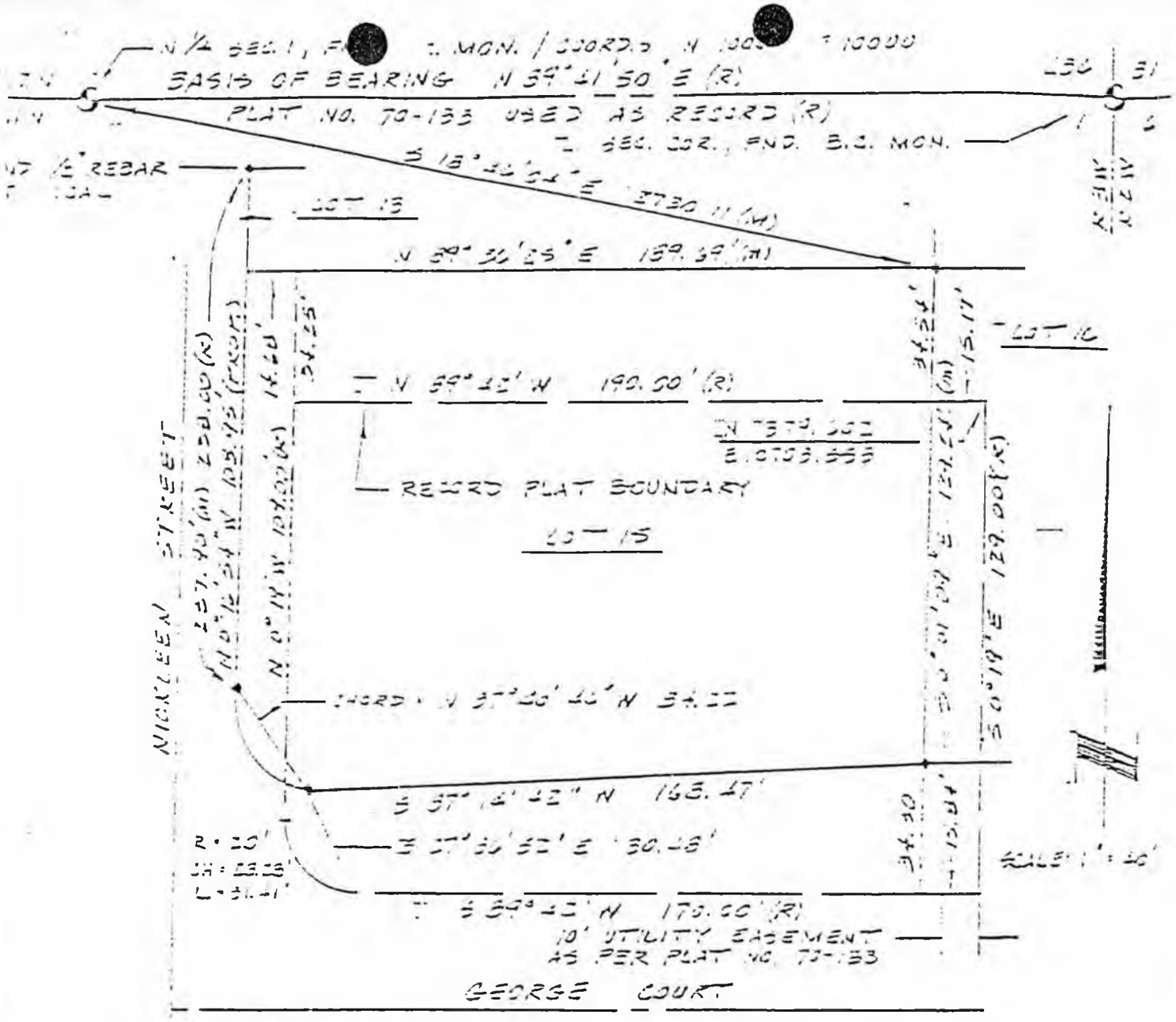
NOTE: This survey represents the location of existing record corners as located this date. It is apparent that a substantial discrepancy exists between those corners and their position as called for in the record plat # 70-133. Kean and Associates accepts no responsibility for corners set incorrectly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

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

I hereby certify that I have performed a Mortgagee's inspection of the following described property
LOT 11 BLOCK 4
RABBIT CREEK VIEW SUBD.
Anchorage Recording Precinct, Alaska, and that the improvements situated thereon are within the property lines and do not overlap or encroach on the property lying adjacent thereto, that no improvements on property lying adjacent thereto encroach on the premises in question and that there are no roadways, transmission lines or other visible easements on said property except as indicated hereon.
Dated at Anchorage, Alaska
this 5th day of [illegible] 19 85

ROBERT T. KEAN & ASSOCIATES
Surveyors

FIG 1



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

DATE: 5-20-85

SURVEY OF: LOT 15/BLK 1
RABBIT CREEK VIEW SUBD.

SURVEYED BY: KLEIN & ASSOC.
9310 HOMER DR. ANCHORAGE, AK

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

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

RECEIVED

JUN 27 1991

ENGINEERING DIVISION
PUBLIC WORKS

JUN 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 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 Betnka, Valuation Branch, at 271-4657.

Sincerely,

Arlene L. Patton
Manager

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 9
To Cou Binay	From Dave
Co.	Co. DOW
Dept.	Phone # 786-3109
Fax # 265-3871	Fax # 562-5762

Alaska Housing
FINANCE CORPORATION

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

May 22, 1991

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

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.

lsue\sb9140

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

Susan L. Benedetti
Mortgage Operations Officer

cc: Municipal Attorney's Office
Don Alspach

Isue\sb9140

Municipality of Anchorage

P O BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 786-8100

TOM FINK
MAYOR

DEPARTMENT OF PUBLIC WORKS
3500 East Tudor Road

June 10, 1991

Susan L. Benedetti
Mortgage Operations Officer
AHFC
P.O. Box 101020
Anchorage, Alaska 99511

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.

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	[illegible]	[illegible]			
SIGN	TJK	R			
DATE	6/10/91	6/10			
ATTACHMENTS:		YES			

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BEFORE THE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS

In the Matter of:

William E. Johnson,
Respondent

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED DECISION

Case No. AE 89L-12

A hearing was held on December 6, 1988 in the Frontier Building, Suite 702, Anchorage, Alaska. In attendance was Assistant Attorney General, Lawrence Delay, Esq. representing the State of Alaska, along with Ray 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 Ratnoun, who was and is the registrar for the Board of Professional Engineers and Land Surveyors for the State of Washington. Mr. Ratnoun 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 Jonnson 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. Jonnson 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. In November 13, 1985, the Washington State Board of Professional Engineers and Land Surveyors after a hearing, ordered the revocation of Jonnson's license to practice land surveying in the State of Washington for a period of five years and ordered Jonnson to pay a $5,000 fine caused by five acts of misconduct in the practice of land surveying.

3. The misconduct proven at the hearing, consisted of continuing to do engineering and surveying for a client after Jonnson 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, Jonnson did not tell his client and continued to work on the project. Jonnson, 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 Jonnson was guilty of misconduct, suspended his license for a period of five years from November 1985, and fined him $5,000.

4. Jonnson, 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: (3) 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 theBoard of Professinal 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 2nd 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 21st day of March, 1989.

Malcolm C. Douglas
Chairman
Board of Architects, Engineers, and
Land Surveyors

0694n

Municipality of Anchorage

MEMORANDUM

CONFIDENTIAL
LAWYER - CLIENT COMMUNICATIO

DATE: October 15, 1985

TO: Robbie Robinson, Manager, Environmental Health Division
THRU: Patty Ginsburg, Special Assistant to the Director
FROM: Ronald L. Baird, Assistant Municipal Attorney

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

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

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

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

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

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

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

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

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

RLB:slk


Cain
Street
ALTA
Court
Cain
Street
MICHIGAN
Street
MICHIGAN
Street
BELLEVILLE
Street
Ridge Trail
Ridge Way Drive
Ridge Way Drive

Municipality of Anchorage

MEMORANDUM

JUL 26 1985

DATE: July 25, 1985

TO: Mike Marsh, Municipal Attorney

FROM: Robert W. Robinson, Division Manager, Environmental Health
THRU: Jewel Jones, Director, Department of Health and Human Services
SUBJECT: On site sewer/well permits for Rabbit Creek Heights/View Subdivision

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

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

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

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

Robert W. Robinson
Division Manager

Concur:

Jewel Jones
Director
Department of Health and
Human Services

RWR:pan

Attached: 1

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

DATE: June 6, 1985

TO: Environmental Engineering Manager, Robert W. Robinson

FROM: DPW, Engineering Division, Municipal Surveyor,
Ed Tucker, L.S.

SUBJECT: Rabbit Creek View Heights Subdivisions

Per our meeting on May 3, 1985 at your office on subject subdivisions and their M.S. regarding acceptable plot plans or as-built surveys, I offer the following:

1. Although you or I and our respective agencies may refuse to hire or contract with Mr. William E. Johnson, until his license is suspended or revoked, we probably cannot refuse to accept his seal on work performed for private citizens. We should scrutinize it closely, however. This is probably a moot point, as I seriously doubt that he will risk showing up in these parts voluntarily.

2. Until a complete retracement of subject subdivisions is accomplished, there can be no certainty as to the location of the errors or whether they fall in one area or are distributed proportionally throughout. Therefore, ties to perimeter boundaries when in conflict with corners found on individual interior lots merely add to the confusion, as one must decide which perimeter boundary to use. Each (north, south, east, or west) boundary may place the location in a totally new and conflicting place. When existing original corners can be found, I would recommend that they be accepted in place. This satisfies the legal tenant that the buyer bought and the seller sold in good faith, based upon those corners. Also, State Statute Section 09.25.040 (1) through (5) spells out the order of importance and "rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it." Basically, it says that monuments (found corners) are paramount.

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

ET/cjh
E/sw:et38

cc: Municipal Surveyor

Mike —

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

Cathy

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?

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.

This general rule is reflected in Alaska by A.S. § 09.35.040(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 111 F. 716 (9th Cir. 1901). Since the written descriptions are intended to describe the conditions on the ground, if they are incorrect, the written descriptions should be changed to accurately reflect the existing boundaries. It would be against all logic to try to change actual boundary lines to match the incorrect descriptions.

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

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

Recommendation:

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

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

DGB/kpw

cc: Jerry Weaver
Platting Officer
Al Lannum
Survey Section

Municipality of Anchorage

April 21, 1980

E. Lee Browning, Municipal Engineer
Public Works Department
Engineering Division
1360 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 [illegible]ent. Mr. Stanley confirmed that several survey closur[illegible] made by his office, on these subdivisions, did no[illegible] satisfactory. Mr. Stanley further indicated that several other subdivisions surveyed by the same registered surveyor Mr. William Johnson, whose stamp #14805 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, 1981
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 541-4721.

Sincerely,

Robert W. Robinson
Environmental Engineering Manager

RWR:lyv

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

5-24-83 9:30 AM Ed. T.

MUNICIPALITY OF ANCHORAGE

RECEIVED
OCT 20 1982
Municipal Attorney

ASSEMBLY MEMORANDUM

No. AM 165-83

Meeting Date: November 22, 1983

From: Jerry Wertzbaugher, Municipal Attorney

Subject: Rabbit Creek Heights and Rabbit Creek View Subdivisions

A. FACTUAL BACKGROUND

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

The owners of the subdivided tracts were George S. Wilson, William R. Wilson, Alta C. Wilson and the National Bank of Anchorage. Much of the property has since been sold to a variety of individuals. Between 1970 and 1983, approximately 71 structures have been placed in the two subdivisions. (Municipal tax records 1983). The assessed value of the buildings range from $1,000.00 to $134,000.00. (Municipal tax records 1983). The assessed value of the underlying lots range from $7,700.00 to $26,000.00. Most single lots are valued at $8,000.00-$9,000.00. (Municipal tax records 1983).

The subdividers currently retain title collectively to Rabbit Creek View, Block 1, Tract B, (valued at $141,000.00). William R. Wilson owns Block 4, Lots 1, 2, 3, 5; and Block 2, Lot 6 valued at $200,000.00, including improvements to Block 2, Lot 6. Alta Wilson holds title to Rabbit Creek View, Tract A, valued at $152,000.00 including a structure on the property. Other relatives of the Wilsons own additional lots. (Municipal tax records 1983).

In the fall of 1982 and spring of 1983, several lot owners within the subdivisions discovered that their platted property lines did not correspond to known monuments. The facts were reported to the Municipal Engineer. The Municipal Engineer informed the Public Works, Planning and Health Departments of the existence of the alleged survey errors.[1]

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

The Municipal Health Department, upon request, issues certificates of compliance with the well and sewer ordinances prior to new construction or transfers.[2] As a result of reports of widespread lot line discrepancies, the Municipal Health Department began to require certified plot plans prior to issuing certificates. These individual plot plans cost approximately Three to Four Thousand Dollars ($3,000.00-$4,000.00) each, according to Municipal health officials.

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

B. CAUSE OF THE PROBLEM

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

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

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

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

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

a replat unless all affected property owners consent. It would thus be useless to expend municipal funds for a replat unless and until all lot owners (including security interests) agreed in advance in writing to abide by the results and sign the replat. It is highly unlikely that such concurrence could be obtained given the fact that some lot owners could be severely damaged by the replatting action. If the Municipality were to volunteer to fund individual lot surveys as requested by some lot owners, the final costs could exceed one million dollars at $1,000.00 per survey. Moreover, individual lot surveys may merely exacerbate the problem (see below). It is unlikely that the Municipality could bring a legal action, on behalf of some lot owners, for a judicial determination of lot lines. To demonstrate standing to litigate, the Municipality would be required to hold an adverse interest in each lot. State enabling legislation would be necessary to confer standing upon the Municipality or other parties having an interest in an accurate plat of the subdivision (see "Possible Remedies" below).

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

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

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

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

E. POSSIBLE REMEDIES

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

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

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

requested by the Assembly, could undertake the task of drafting a bill to be introduced to the legislature. While considerable resources would have to be devoted to drafting and lobbying this legislation and ultimately, in applying it to affected subdivisions, it would at least provide a framework for dealing with further problems in other areas unknown to be affected by faulty surveys.

RECOMMENDED BY:

Scott T. Fleming
Assistant Municipal Attorney

CONCURRENCE:

Jerry Wertzbaugher
Municipal Attorney

Lee Browning
Municipal Engineer

Respectfully submitted,

Tony Knowles, Mayor

YMAN
& HAYES
ENGINEERS / PLANNERS / SURVEYORS

0000.0

January 28, 1974

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

ATTN: Jack Stanley
City Surveyor

Dear Jack:

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

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

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

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

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

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

TYCK
NYMAN
& HAYES

Mr. Jack Stanley
January 23, 1974
0000.0

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

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

Very truly yours,

TRYCK, NYMAN & HAYES

[illegible]
Chief of Surveys

[illegible]

Municipality of Anchorage

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

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

SENT VIA FAX

February 23, 1995

Senator Steven Rieger
State Capitol
Room 516
Juneau, Alaska 99801

RE: Senate Bill No. 79

Dear Senator Rieger:

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

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

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

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

Senator Steven Rieger
Page 2
February 23, 1995

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

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

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

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

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

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

Very truly yours.

George M. Newsham
Assistant Municipal Attorney

g:\misc\gmn\rieger.ltr/jp

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

☑ 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 278-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4879
PHONE: (907) 451-2811
FAX: (907) 451-2846

☐ P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5268

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 29, 1994

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

Re: Review of CSSB 355 (Res)

Dear Representative Sunde:

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

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

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

Honorable Con Bunde
State Representative

April 29, 1994
Page 2

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

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: John T. Baker
Assistant Attorney General

JTB/mw

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

HB

180

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 180

Revision Date:
Title: An Act Relating to Liquor License Issuance
Sponsor: Representative James
Requester: (H)ITT

Dept. Affected: Revenue
BRU: ABC
Component: ABC
COMPONENT SERIAL NO. 100

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: $ _____

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

No additional costs or significant revenue is anticipated with the implementation of HB 180. No significant demand for increased licensure is anticipated.

Prepared by: Pat Sharrock, Director
Division: ABC Division
Phone: (907)277-8638
Date: 2/16/95

Approved by
Commissioner: Deborah Vogt
Agency: Revenue
Date: 2/16/95

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Alaska State Legislature

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House of Representatives
House District 34

SPONSOR STATEMENT

HOUSE BILL 180

LIQUOR LICENSES FOR REMOTE LODGES

HB180 is a cooperative effort between **remote lodge owners** and the **Alcohol Beverage Control Board** to correct an inequity.

Under current law, some small lodges which happen to be located in a remote corner of large unified population areas cannot get a liquor license. These small remote lodges exemplify the very heart of Alaska and provide a vital service to Alaskan residents as well as visitors from outside our state.

For example, as the law now reads, if a person wants to develop a small lodge or tourist facility in a remote or inaccessible area of the Mat-Su or Kenai Borough, the lodge would be required to have 40 rental rooms to obtain a full-service liquor license. All of us who have enjoyed visiting small remote lodges in Alaska know that this requirement is excessive and unfair.

This is not a "liquor issue." This is an effort to remove a roadblock created by an inequity in our laws. If Alaska is to survive economically, we **must** allow hard-working Alaskans to develop small businesses in the spirit of Alaskan enterprise.

Alaska State Legislature

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House of Representatives

House District 34

February 22, 1995

Representatives Austerman and Ivan, Co-Chairmen
House Community and Regional Affairs Committee

Please schedule House Bill 180, "Liquor Licenses for Remote Lodges", for hearing in your committee as soon as possible. Back-up material is attached.

Fiscal notes were ordered a week ago from Departments of Revenue and Law, and I will get those to you as soon as we receive them. I believe they will both be "zero."

Also, it has been requested that Mr. Patrick Sharrock, Director of the Alcohol Beverage Control Board, be available to answer questions when your committee hears HB 180. Could you schedule the bill so that Mr. Sharrock can testify via teleconference or conference call? His telephone number in Anchorage is 277-8638.

Thank you for your help.

Jeannette James

Representative Jeannette James

JJ/bc

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF REVENUE

ALCOHOLIC BEVERAGE CONTROL BOARD

550 W 7TH AVE
ANCHORAGE ALASKA 99501-3568

February 16, 1995

The Honorable Jeannette James
Alaska State House of Representatives
Room 102, State Capitol
Juneau, Alaska 99801-1182

RE: HB 180

Dear Representative James:

Your HB 180 has specific potential to correct an inequity in current law. For example, a person who would like to develop a tourist facility in a rural or inaccessible area in the Matanuska-Susitna or Kenai Borough has to construct a 40-room facility to obtain a full-service liquor license (or acquire an existing license from another person). In reality, this requirement is excessive.

The Alcoholic Beverage Control Board fully supports the legislation and believes that your amendment will possibly stimulate development of small tourist facilities in certain remote areas.

If I can provide you any additional information or clarification, please do not hesitate to call.

Sincerely,

Patrick L. Sharrock
Director

95-013

Maclaren River Lodge

42 Mt. Denali Hwy.
P.O. Box 3018
Paxson, AK 99737

(907) 822-7105 (at Lodge)
(907) 263-8809 (Fairbanks Office)

RECEIVED BY
JAN 25 1995
Rep. Jeannette James

January 3, 1995

All Honorable members,
Alaska State Legislature
Juneau, Alaska

Ladies and Gentlemen of the Legislature:

By way of introduction, my name is Mike Tittle and until her untimely death last November my wife Lynn and I were the only year round residents of the Denali Highway.

Lynn and I (I can't yet believe she is dead nor can I refer to her in the past tense) are 35 year residents of Alaska and prior to buying the Maclaren River Lodge and moving to the Denali Highway we owned a real estate company in Fairbanks.

We had Paxson Lodge and Tangle River Inn listed for sale with our company and in the process of servicing the listings we fell in love with the area and saw a way we could make our dream come true and promote winter tourism as well. Not to mention the Alaskans that can't find a place to ride a snowmachine. We had over 2,000 people come out here by snowmachine our first winter of operation.

We took an old lodge and completely rebuilt it to make it winter ready and comfortable. In order to do this we sold our company and everything we owned to be able to make the lodge something the State of Alaska could be proud of.

However, since we're located a mere 1.5 miles inside the Mat-Su borough we can't get a liquor license and are in very real danger of losing everything we've worked so hard for because of it.

There has been a license at this lodge since Statehood and it's gone only because the prior owner didn't renew it in a timely manner.

The regulation in question is Sec 04.11.400 of Title 4 which says that I must have 40 rooms for rent before I can get a license.

Ladies and Gentlemen, this is the most unfair situation I am aware of in the entire State of Alaska. I pay taxes to the Mat-Su borough and have to haul my trash to Fairbanks. We provide a service to the public that no one else is doing yet we get penalized for it. We promote winter tourism as much or more than anyone in the State yet because the Mat-Su borough decided to annex the earth I can't get the license that would allow me to compete on an even keel with other lodges. We have provided an oasis in the arctic and have given it our lives.

I have talked to hundreds of tourists and the overwhelming consensus is that they would rather spend much more of their time in small rustic lodges where the pace is a little slower and they can experience the "real Alaska" They say they feel they're missing something if they don't experience the bush as well as the cities.

I've outlined a few minor changes to the ABC regulations that I hope you will support as it will help our economy as well as promote tourism.

I beg your indulgence and understanding.

Best Regards,

Mike Tittle

Mike Tittle, owner

HB

185

9-LS0685\G
Cook
3/16/95

CS FOR HOUSE BILL NO. 185( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

"An Act relating to exemptions from municipal property taxes for certain principal residences; relating to the determination of full and true value of taxable property in a municipality; and providing for an effective date."

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

* Section 1. AS 14.17.140(a) is amended to read:

(a) To determine the amount of local effort under AS 14.17.025 and to aid the department and the legislature in planning, the Department of Community and Regional Affairs, in consultation with the assessor for each district, shall determine the full value of the taxable real and personal property in each city or borough district. If there is no local assessor or current local assessment for a district, then the Department of Community and Regional Affairs shall make the determination of full value from information available. In making the determination, the Department of Community and Regional Affairs shall be guided by AS 29.45.110. <u>However, the value of property exempted under AS 29.45.050(i) up to $150,000 may not be</u>

included in the determination. The determination of full value shall be made by October 1 and sent by certified mail, return receipt requested, on or before that date to the president of the school board in each district. Duplicate copies shall be sent to the commissioner. The governing body of a borough or city that is a school district may obtain judicial review of the determination. The superior court may modify the determination of the Department of Community and Regional Affairs only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

* **Sec. 2.** AS 29.45.030(e) is amended to read:

(e) The real property owned and occupied as the primary residence and permanent place of abode by a (1) resident 65 years of age or older; (2) disabled veteran; [OR] (3) resident at least 60 years old who is the widow or widower of a person who qualified for an exemption under (1) [OR (2)] of this subsection**; or (4) resident at least 60 years old who is the widow or widower of a person who qualified for an exemption under (2) of this subsection**, is exempt from taxation**. The exemption for an individual who qualifies under (1) or (3) of this subsection is limited to the first $75,000 of the assessed value of the real property. The exemption for an individual who qualifies under (2) or (4) of this subsection is limited to** [ON] the first $150,000 of the assessed value of the real property. A municipality may, in case of hardship **and in accordance with regulations of the department**, provide for exemption [BEYOND THE FIRST $150,000] of assessed value **beyond the limits set in this subsection** [IN ACCORDANCE WITH REGULATIONS OF THE DEPARTMENT]. Only one exemption may be granted for the same property and, if two or more persons are eligible for an exemption for the same property, the parties shall decide between or among themselves who is to receive the benefit of the exemption. Real property may not be exempted under this subsection if the assessor determines, after notice and hearing to the parties, that the property was conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor may be appealed under AS 44.62.560 - 44.62.570.

* **Sec. 3.** AS 29.45.050(i) is amended to read:

(i) A municipality may by ordinance [APPROVED BY THE VOTERS] exempt from taxation the assessed value **of real property** that exceeds **the limits set under AS 29.45.030(e) if the** [$150,000 OF REAL] property **is** owned **by an individual who qualifies for an exemption under AS 29.45.030(e)** [AND OCCUPIED AS A PERMANENT PLACE OF ABODE BY A RESIDENT WHO IS

(1) 65 YEARS OF AGE OR OLDER;

(2) A DISABLED VETERAN, INCLUDING A PERSON WHO WAS DISABLED IN THE LINE OF DUTY WHILE SERVING IN THE ALASKA TERRITORIAL GUARD; OR

(3) AT LEAST 60 YEARS OLD AND A WIDOW OR WIDOWER OF A PERSON WHO QUALIFIED FOR AN EXEMPTION UNDER (1) OR (2) OF THIS SUBSECTION].

* Sec. 4. This Act takes effect January 1, 1996.

9-LS0685\G
Cook
3/10/95

CS FOR HOUSE BILL NO. 185( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

"An Act relating to exemptions from municipal property taxes for certain principal residences; relating to the determination of full and true value of taxable property in a municipality; and providing for an effective date."

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determination. The determination of full value shall be made by October 1 and sent by certified mail, return receipt requested, on or before that date to the president of the school board in each district. Duplicate copies shall be sent to the commissioner. The governing body of a borough or city that is a school district may obtain judicial review of the determination. The superior court may modify the determination of the Department of Community and Regional Affairs only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

* Sec. 2. AS 29.45.030(e) is amended to read:

(e) The real property owned and occupied as the primary residence and permanent place of abode by a (1) resident 65 years of age or older; (2) disabled veteran; [OR] (3) resident at least 60 years old who is the widow or widower of a person who qualified for an exemption under (1) [OR (2)] of this subsection; **or (4) resident at least 60 years old who is the widow or widower of a person who qualified for an exemption under (2) of this subsection**, is exempt from taxation. **The exemption for an individual who qualifies under (1) or (3) of this subsection is limited to the first $75,000 of the assessed value of the real property. The exemption for an individual who qualifies under (2) or (4) of this subsection is limited to** [ON] the first $150,000 of the assessed value of the real property. A municipality may, in case of hardship **and in accordance with regulations of the department**, provide for exemption [BEYOND THE FIRST $150,000] of assessed value **beyond the limits set in this subsection** [IN ACCORDANCE WITH REGULATIONS OF THE DEPARTMENT]. Only one exemption may be granted for the same property and, if two or more persons are eligible for an exemption for the same property, the parties shall decide between or among themselves who is to receive the benefit of the exemption. Real property may not be exempted under this subsection if the assessor determines, after notice and hearing to the parties, that the property was conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor may be appealed under AS 44.62.560 - 44.62.570.

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(1) 65 YEARS OF AGE OR OLDER;

(2) A DISABLED VETERAN, INCLUDING A PERSON WHO WAS DISABLED IN THE LINE OF DUTY WHILE SERVING IN THE ALASKA TERRITORIAL GUARD; OR

(3) AT LEAST 60 YEARS OLD AND A WIDOW OR WIDOWER OF A PERSON WHO QUALIFIED FOR AN EXEMPTION UNDER (1) OR (2) OF THIS SUBSECTION].

* Sec. 4. This Act takes effect January 1, 1996.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 185

Revision Date: March 9, 1995
Department Affected: Education
Title: An Act relating to an exemption from municipal property taxes for certain primary residences; and providing for...
BRU: K-12
Component: Foundation
Sponsor: Rep. Ivan
Requester: Rep. Ivan
COMPONENT SERIAL NO. 141

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	-0-	-0-	(4,258.2)	(4,258.2)	(4,471.1)	(4,471.1)
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	(4,258.2)	(4,258.2)	(4,471.1)	(4,471.1)
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	-0-	-0-	(4,258.2)	(4,258.2)	(4,471.1)	(4,471.1)
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	(4,258.2)	(4,258.2)	(4,471.1)	(4,471.1)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: $ -0-

ANALYSIS: (Attach a separate page if necessary.) Section 4 amends AS 29.45 by adding a new section, AS 29.45.052, which allows municipalities to exempt by local ordinance certain primary residences from taxation on all or part of the assessed value of the property. The same property would be included in the state's assessment for full value determination. The Department of Community and Regional Affairs has estimated the statewide value of property currently exempted to be approximately $1,064,556,490 in 1996 and $1,117,784,315 in 1998. The increased property values will first be reported in the 1996 full value determination. The foundation program utilizes the full value determination from the second preceding year to calculate a municipal school district's required local contribution. The increased property value will decrease the general fund requirement to support the foundation program beginning in fiscal year 1998.

Prepared by: Eddy Jeans
Phone: 465-8685
Division: School Finance
Date: March 9, 1995
Approved by Commissioner: Mike Maher
Agency: Education
Date: March 9, 1995

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Representative Ivan M. Ivan

Sponsor Statement - House Bill 185

The Senior Citizen/Disabled Veteran Property Tax Exemption was enacted by the legislature in 1973. It exempted people over the age of 65 from paying municipal property tax. In 1985, the program was extended to include disabled veterans with a disability of 50% or more. The state was to reimburse municipalities for tax revenues lost because of the exemption. The original cost of the program was $197,050. The cost of the program in FY 95 was $16.8 million. The state reimbursed municipalities only $1.5 million for FY 95, an underfunding of $15.7 million. Since inception, there has been a steady increase in the number of applicants. The last year the program was fully funded, 1985, there were 5,418 taxpayers eligible. For FY 95, the number increased to 12,197 applicants. This program has become an unfunded mandate passed on to the municipalities who have taken on the fiscal responsibility for this policy.

Municipalities have identified the Senior Citizen/Disabled Veterans Property Tax Exemption as the most problematic unfunded mandate placed on municipalities by the state of Alaska. The municipalities believe that municipal taxpayers should have the right tc address their needs in each community that currently pays the cost of the mandate and the senior citizens and disabled veterans of each community will have ample opportunity to address their needs before their respective local governments. It is my belief this issue be resolved on the local level unless the legislature is committed to fully fund this mandate.

House Bill 185 repeals the statutes that allow the tax exemption for senior citizens and disabled veterans. It does allow each municipality to determine the type of exemption, if any, they may wish to offer. The bill also allows a municipality to grant an exemption based on need.

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Representative Ivan M. Ivan

DIFFERENCES BETWEEN HOUSE BILL 185 AND COMMITTEE SUBSTITUTE DRAFT #9-LS0685\G

The first notable difference between the original version of House Bill 185 and the proposed committee substitute is the removal of the findings section. This is no longer necessary since the committee substitute amends the current senior citizen/disabled veteran tax exemption program. The original bill deleted the program and gave municipalities various options should they desire to retain a similar program.

The committee substitute reinstates the full exemption of $150,000 for disabled veterans. This provision was removed in the original bill. The CS also provides the exemption for the widow or widower of a disabled veteran who qualified for the exemption.

The original version deleted the senior citizen property tax exemption program. The committee substitute reduces this part of the program from $150,000 to $75,000.

Section 1 of the CS exempts the value of property under the senior citizen/disabled veteran property tax exemption program when making a determination of full value of the taxable real and personal property in each city and borough district. This determines the local effort contributed to education.

The last section in the committee substitute allows the municipalities to exempt the assessed value of real property that exceeds the limits of either $75,000 for senior citizens and $150,000 for disabled veterans.

Alaska State House of Representatives
House District 39

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Representative Ivan M. Ivan

SECTIONAL ANALYSIS - HOUSE BILL 185

Section 1: Findings section.

Section 2: Amends AS 29.45.03(h), Required exemptions. Technical amendment which deletes references to statutes which are being repealed in this bill. Paragraph (j) is a reference to the automobile exemption which may have offered by municipalities.

Section 3: Amends AS 29.45.030(k), Required exemptions. Technical amendment which refers to paragraphs deleted in the bill.

Section 4: New section to AS 29.45. Allows a municipality the option to offer an full or partial exemption to a senior citizen or disabled veteran or the spouse of a deceased person who qualified for an exemption. This section also allows for the municipality to offer an exemption on a need basis. The definition for disabled veteran and real property is the same as is currently found in AS 29.45.030(i).

Section 5: Repeals AS 29.45.030(a)(6), 29.45.030(e), 29.45.030(f), 29.45.030(g), 29.45.030(i) and 29.45.050(i). This statutes refer to the current senior citizen/disabled veteran property tax exemption program.

Section 6: Effective date of January 1, 1996.

Sec. 29.45.030
REQUIRED EXEMPTIONS.

(a) The following property is exempt from general taxation:

(1) municipal property, including property held by a public corporation of a municipality, or state property, except that

(A) a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(B) notwithstanding any other provision of law, property acquired by an agency, corporation, or other entity of the state through foreclosure or deed in lieu of foreclosure and retained as an investment of a state entity is taxable; this subparagraph does not apply to federal land granted to the University of Alaska under AS 14.40.380 or 14.40.390, or to other land granted to the university by the state to replace land that had been granted under AS 14.40.380 or 14.40.390;

(C) an ownership interest of a municipality in real property located outside the municipality acquired after December 31, 1990, is taxable by another municipality; however, a borough may not tax an interest in real property located in the borough and owned by a city in that borough;

(2) household furniture and personal effects of members of a household;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of an auxiliary of that organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section;

(7) real property or an interest in real property that is exempt from taxation under 43 U.S.C. 1620(d), as amended;

(8) property of a political subdivision, agency, corporation, or other entity of the United States to the extent required by federal law; except that a private leasehold, contract, or other interest in the property is taxable to the extent of that interest;

(9) natural resources in place including coal, ore bodies, mineral deposits, and other proven and unproven deposits of valuable materials laid down by natural processes, unharvested aquatic plants and animals, and timber.

(b) In (a) of this section, "property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister, or religious order of a recognized religious organization;

(2) a structure, its furniture, and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education, or a nonprofit hospital;

(3) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a)(3) or (4) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(d) Laws exempting certain property from execution under AS 09 (Code of Civil Procedure) do not exempt the property from taxes levied and collected by municipalities.

(e) The real property owned and occupied as the primary residence and permanent place of abode by a (1) resident 65 years of age or older; (2) disabled veteran; or (3) resident at least 60 years old who is the widow or widower of a person who qualified for an exemption under (1) or (2) of this subsection, is exempt from taxation on the first $150,000 of the assessed value of the real property. A municipality may, in case of hardship, provide for exemption beyond the first $150,000 of assessed value in accordance with regulations of the department. Only one exemption may be granted for the same property and, if two or more persons are eligible for an exemption for the same property, the parties shall decide between or among themselves who is to receive the benefit of the exemption. Real property may not be exempted under this subsection if the assessor determines, after notice and hearing to the parties, that the property was conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor may be appealed under AS 44.62.560 - 44.62.570.

(f) An exemption may not be granted under (e) of this section except upon written application for the exemption on a form approved by the state assessor for use by local assessors. The claimant must file the application no later than January 15, or a date provided by ordinance that is not later than March 31, of the assessment year for which the exemption is sought. The governing body of the municipality for good cause shown may waive during a year the claimant's failure to make timely application for exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, the assessor shall allow an exemption in accordance with the provisions of this section. If a

failure to file by January 15, or a date provided by ordinance that is not later than March 31, of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax that the claimant has already paid for the assessment year for the property exempted shall be refunded to the claimant. The assessor shall require proof in the form the assessor considers necessary of the right to and amount of an exemption claimed under (e) of this section, and shall require a disabled veteran claiming an exemption under (e) of this section to provide evidence of the disability rating. The assessor may require proof under this section at any time.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement may be made to a municipality for revenue lost to it only to the extent that the loss exceeds an exemption that was granted by the municipality, or that on proper application by an individual would have been granted under AS 29.45.050(a). If appropriations are not sufficient to fully fund reimbursements under this subsection, the amount available shall be distributed pro rata among eligible municipalities.

(h) Except as provided in (g) of this section, nothing in (e) - (j) of this section affects similar exemptions from property taxes granted by a municipality on September 10, 1972, or prevents a municipality from granting similar exemptions by ordinance as provided in AS 29.45.050.

(i) In (e) - (i) of this section,

(1) "disabled veteran" means a disabled person

(A) separated from the military service of the United States under a condition that is not dishonorable who is a resident of the state, whose disability was incurred or aggravated in the line of duty in the military service of the United States, and whose disability has been rated as 50 percent or more by the branch of service in which that person served or by the Veterans' Administration; or

(B) who served in the Alaska Territorial Guard, who is a resident of the state, whose disability was incurred or aggravated in the line of duty while serving in the Alaska Territorial Guard, and whose disability has been rated as 50 percent or more;

(2) "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) One motor vehicle per household owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax under AS 28.10.431. An exemption may be granted under this subsection only upon written application on a form prescribed by the Department of Public Safety.

(k) The department shall adopt regulations to implement the provisions

of (g) and (j) of this section.

(l) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

(m) For the purpose of determining property exempt under (a)(7) of this section, the following definitions apply to terms used in 43 U.S.C. 1620(d) unless superseded by applicable federal law:

(1) "developed" means a purposeful modification of the property from its original state that effectuates a condition of gainful and productive present use without further substantial modification; surveying, construction of roads, providing utilities or other similar actions normally considered to be component parts of the development process, but that do not create the condition described in this paragraph, do not constitute a developed state within the meaning of this paragraph; developed property, in order to remove the exemption, must be developed for purposes other than exploration, and be limited to the smallest practicable tract of the property actually used in the developed state;

(2) "exploration" means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources;

(3) "lease" means a grant of primary possession entered into for gainful purposes with a determinable fee remaining in the hands of the grantor; with respect to a lease that conveys rights of exploration and development, this exemption shall continue with respect to that portion of the leased tract that is used solely for the purpose of exploration.

(n) If property or an interest in property that is determined not to be exempt under (a)(7) of this section reverts to an undeveloped state, or if the lease is terminated, the exemption shall be granted, subject to the provisions of (a)(7) and (m) of this section.

History -

(Sec. 12 ch 74 SLA 1985; am Sec. 1, 2 ch 91 SLA 1985; am Sec. 44 ch 37 SLA 1986; am Sec. 2 - 4 ch 70 SLA 1986; am Sec. 3 ch 66 SLA 1991; am Sec. 1 ch 85 SLA 1991; am Sec. 14 ch 93 SLA 1991; am Sec. 1 ch 54 SLA 1992; am Sec. 4 ch 97 SLA 1992)

Delayed Action -

of subsection (a). - Under Sec. 3, ch. 66, SLA 1991, (a) of this section is amended by inserting new language in (a)(1), following ""or state property". If the conditions set out in Sec. 58, ch. 66, SLA 1991, as amended by Sec. 37, ch. 5, FSSLA 1994, are met, then the amendment takes effect under Sec. 59, ch. 66, SLA 1991, as added by Sec. 38, ch. 5, FSSLA 1994, on December 16, 1994 or on a date not more than 45 days after December 15, 1994, determined by the governor under Sec. 47, ch. 5, FSSLA 1994. If the conditions are not met, then under Sec. 48, ch. 5, FSSLA 1994, ch. 66, SLA 1991 is repealed. If the amendment takes effect, the new language will read as set out in the delayed amendment note in the main pamphlet.

Under sec. 58, ch. 66, SLA 1991, as amended by sec. 37, ch. 5, FSSLA 1994 and sec. 2, ch. 1, SSSLA 1994, ch. 66, SLA 1991 and secs. 3 - 9, 12 - 16, 19 - 21, 23 - 30 33 - 36, 43, and 46, ch. 5, FSSLA 1994 will take effect December 16, 1994 if, and only if, not later than December 15, 1994, the superior court has made a determination that the state has satisfied its obligation to reconstitute the mental health trust under State v. Weiss, 706 P.2d 681 (Alaska 1985) and the superior court has entered an order dismissing Weiss v. State, 4FA-82-2208 Civil. Under sec. 14, ch. 1, SSSLA 1994, in the event the order of the superior court dismissing Weiss v. State, 4FA-82-2208 Civil, is reversed on appeal, including certiorari to the United States Supreme Court, secs. 3 - 9, 12 - 16, 19 - 21, 23 - 30, 33 - 36, 43, and 46, ch. 5, FSSLA 1994 and ch. 66, SLA 1991, as amended by ch. 5, FSSLA 1994 and ch. 1, SSSLA 1994, are repealed. In that event, under sec. 15, ch. 1, SSSLA 1994, provisions of the Alaska Statutes that were enacted by the repealed laws are repealed, provisions that were amended are restored to read as they did before the amendments, and provisions that were repealed are revived.

Revisors Notes -

The amendments made to (e) and (g) of this section by Sec. 1 and 2, ch. 91, SLA 1985 were enacted as amendments to AS 29.53.020(e) and (g). Chapter 74, SLA 1985 enacted AS 29.45.030 and repealed AS 29.53.020. The effective date of both 1985 Acts is January 1, 1986. The legislature's intent to amend the property tax exemption provisions has been recognized by treating the amendments to AS 29.53.020(e) and (g) as amendments to (e) and (g) of this section.

Cross References -

For exemption of electric and telephone cooperatives from local ad valorem taxes, see AS 10.25.540(b).

Amendment Notes -

The first 1991 amendment, effective January 1, 1992, in paragraph (a)(1), deleted "or federally owned" following "state" in the introductory

language, added the subparagraph designations, and the language in subparagraphs (B) and (C); and added paragraph (a)(8).

The second 1991 amendment, effective September 30, 1991, in paragraph (i)(1), added the subparagraph designations, added subparagraph (B), and made a related stylistic change.

The first 1992 amendment, effective January 1, 1993, added paragraph (a)(9) and made a related stylistic change.

The second 1992 amendment, effective June 20, 1992, inserted "property, including property held by a public corporation of a municipality," in paragraph (a)(1).

AG Opinions -

The constitutional convention intended that only so much of the property used for religious purposes as was being used to produce income should be taxable, that such other parts should be exempt, and that a proration between taxable and nontaxable parts should be made. 1962 Op. Att'y Gen. No. 15, decided under former, similar law.

All religious property in the state not used for business, rent or profit, is exempt from taxation. 1962 Op. Att'y Gen. No. 15, decided under former, similar law.

Decisions -

Editor's notes. - The cases cited in the notes below were decided under former, similar law.

Strict construction. - The courts must narrowly construe statute granting tax exemptions. Greater Anchorage Area Borough v. Sisters of Charity, 553 P.2d 467 (Alaska 1976).

Provisions exempting property from ad valorem taxation must be strictly construed against the property holder and in favor of the taxing authority. McKee v. Evans, 490 P.2d 1226 (Alaska 1971).

Paragraph (a)(1) tracks the Alaska Const., art. IX, Sec. 5. - See Ben Lomond, Inc. v. Fairbanks N. Star Borough Bd. of Equalization, 760 P.2d 508 (Alaska 1988).

A former, similar provision was enacted pursuant to Alaska Const., art. IX, Sec. 4. - Harmon v. North Pac. Union Conference Ass'n of Seventh Day Adventists, 462 P.2d 432 (Alaska 1969).

Purpose. - The purpose of a former, similar provision was to encourage the establishment of privately supported nonprofit educational institutions; the motivation for their establishment was largely irrelevant. McKee v. Evans, 490 P.2d 1226 (Alaska 1971).

Burden of showing eligibility for exemption. - A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Greater Anchorage Area Borough v. Sisters of Charity, 553 P.2d 467 (Alaska 1976).

Property leased or rented is exempt if: - (1) The property is leased or

rented for an exempt activity; (2) the lease or rental payments are not the product of an owner's dominant profit motive; and (3) the lease or rental payments are incidental to and reasonably necessary for the exempt use of the property and do not exceed the operational requirements of the exempt activity. If (3) is not met, the property must be used for classroom space to be exempt. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985) (decided under former AS 29.53.020).

The termination of a lease of developed property taken alone, would not suffice to render the property tax exempt; what is required, additionally, is a tangible change such as destruction or decay of the improvements to constitute reversion to an undeveloped state. Kenai Peninsula Borough v. Tyonek Native Corp., 807 P.2d 502 (Alaska 1991).

Exclusive use for nonprofit religious, etc., purposes must be shown. - In order to qualify for an exemption, the taxpayer must show not benefits, but exclusive use for nonprofit religious, charitable, cemetery, hospital or educational purposes. Greater Anchorage Area Borough v. Sisters of Charity, 553 P.2d 467 (Alaska 1976).

When the property in question is used even in part by nonexempt parties for their private business purposes, there can be no exemption. Greater Anchorage Area Borough v. Sisters of Charity, 553 P.2d 467 (Alaska 1976).

Actual use rather than owner's use should be analyzed - in determining eligibility for an exemption. Greater Anchorage Area Borough v. Sisters of Charity, 553 P.2d 467 (Alaska 1976).

The power of deciding what types of education are to be publicly supported, - either under the School Foundation Act or by tax exemption, is vested with the legislature. McKee v. Evans, 490 P.2d 1226 (Alaska 1971).

Alaska Const., art. IX, Sec. 4, directs the legislature to define the educational exemption - and encourage the exercise of that responsibility. McKee v. Evans, 490 P.2d 1226 (Alaska 1971).

The phrase "educational purposes" - as used in Alaska Const., art. IX, Sec. 4, and a former, similar provision included systematic instruction in any and all branches of learning from which a substantial public benefit was derived. McKee v. Evans, 490 P.2d 1226 (Alaska 1971).

A former, similar provision in no way delimited the term "educational purposes," and there was no justification for the supreme court to give to that term anything other than its ordinary meaning. That restrictive definition was a legislative concern seemed especially apparent at a time when there was increasing desire for specialized practical education, a proliferation of new kinds of educational institutions, and rapidly changing concepts of mass education. McKee v. Evans, 490 P.2d 1226 (Alaska 1971).

The minutes of the constitutional convention revealed no indication of what was intended to constitute an "educational" purpose, the drafters

stating merely that they intended to adopt a "standard" state exemption in a former, similar provision. Nor has the legislature defined the term as it has done with regard to "religious purposes." McKee v. Evans, 490 P.2d 1226 (Alaska 1971).

When exemption attaches. - Under a former, similar provision, once it was determined that the institution involved was nonprofit in character and that the property was exclusively used for educational purposes, the exemption attached. McKee v. Evans, 490 P.2d 1226 (Alaska 1971).

The Apprenticeship and Manpower Training Trust Fund - was entitled to an exemption from real property taxation by the Greater Anchorage Area Borough (GAAB) on the ground that its property was "used exclusively for nonprofit . . . educational purposes" within the meaning of a former, similar provision. McKee v. Evans, 490 P.2d 1226 (Alaska 1971).

The general public was clearly benefited both by the increased opportunity for Alaskans to obtain vocational training not otherwise available, and by the increased quality of service from a skilled trade. McKee v. Evans, 490 P.2d 1226 (Alaska 1971).

"Charity" and "charitable purposes". - Neither in Alaska's Constitution nor in its general laws are the terms "charity" or "charitable purposes" defined. In such circumstances, resort to the common-law definition of these terms is appropriate. Matanuska-Susitna Borough v. King's Lake Camp, 439 P.2d 441 (Alaska 1968).

It is quite clear that what is done out of good will and a desire to add to the improvement of the moral, mental, and physical welfare of the public generally comes within this meaning of the word "charity." Matanuska-Susitna Borough v. King's Lake Camp, 439 P.2d 441 (Alaska 1968).

"Charitable purposes" has the identical meaning and application in paragraphs (a)(3) and (b)(2). City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985).

Property may be exempt under paragraph (a)(3) if - the taxpayer establishes that the use of that property is directly incidental to and vitally necessary for the exempt use of other specifically identified property; similarly, property used part-time for exempt purposes and otherwise for uses directly incidental to and vitally necessary for the exempt purposes is exempt. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985).

Property will not lose an exemption under paragraph (a)(3) - even if payment is received for the use of the property if: (1) The property is used exclusively for exempt purposes; (2) the payment is not sought as a result of a dominant profit motive; and (3) the payment is both incidental to and reasonably necessary for the accomplishment of the exempt activity and does not exceed the operating costs of the exempt activity for which payment is received. If (3) is not met, the property is only exempt if used

for classroom space. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985).

Rentals or income not derived as result of dominant profit motive. - If it appeared that rentals or income were not derived as a result of a dominant profit motive on the charity's part, but were incidental to and reasonably necessary for the accomplishment of its charitable purposes, then such rentals or income were not within the ambit of a former, similar provision's limitation upon properties which qualified for a charitable exemption. Matanuska-Susitna Borough v. King's Lake Camp, 439 P.2d 441 (Alaska 1968) decided under former, similar law.

The term "claimant," - as used in subsection (f), includes any person having an interest in the property to be exempted, or such person's agent or assigns. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985).

"Developed." - The meaning of the term "developed" in this section, is consistent with the meaning of that term as used in the Alaska Native Claims Settlement Act. Kenai Peninsula Borough v. Tyonek Native Corp., 807 P.2d 502 (Alaska 1991).

The definition of "developed" is broad enough to include subdivided land which is ready for sale. Kenai Peninsula Borough v. Cook Inlet Region, Inc., 807 P.2d 487 (Alaska 1991).

"Residence" exemption. - The post-Harmon amendment of paragraph (b)(1) broadened the "residence" exemption; the statute now exempts the residence of a pastor who is primarily a spiritual leader but who may also be responsible for other church-related activities. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985).

The wording of paragraph (b)(1) allows a single parish to contain more than one exempt residence. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985).

The words "the residence of the pastor," - etc., in a former, similar provision implied that only those residences may qualify that have some direct relationship to a structure used primarily as a house of worship. Harmon v. North Pac. Union Conference Ass'n of Seventh Day Adventists, 462 P.2d 432 (Alaska 1969).

Exemption of assistant pastor's residence. - Sometimes an assistant pastor's residence may be exempt; the label "assistant" does not preclude the exemption. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985).

The parsonage of an assistant or lay pastor - was exempt from an ad valorem tax under the broadened tax exemption provisions of Alaska Const., art. IX, Sec. 4, and a former, similar provision. Evangelical Covenant Church of Am. v. City of Nome, 394 P.2d 882 (Alaska 1964).

Residences of church administrators and teachers - did not qualify for property tax exemption under a former, similar provision. Harmon v. North

Pac. Union Conference Ass'n of Seventh Day Adventists, 462 P.2d 432 (Alaska 1969).

A religious order has only a single residence; - this is the motherhouse, convent or monastery where the order is based. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985) (decided under former AS 29.53.020).

A pastor's choice to allow volunteers or other guests to live in his home does not destroy a "residence" exemption. - City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985) (decided under former AS 29.53.020).

But the use of church property for housing visitors and volunteers is not an exempt "religious purpose." - City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985) (decided under former AS 29.53.020).

Housing for seminary students, church volunteers, and visiting pastors nonexempt. - The policy of strict construction and the Harmon decision necessarily makes nonexempt the housing for seminary students, church volunteers and visiting pastors; nothing in the post-Harmon amendment of paragraph (b)(1) suggests a legislative intent to change the inclusiveness of the exempt residences list. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985) (decided under former AS 29.53.020).

Youth hostel. - A church-operated youth hostel was a charitable activity. The income from the youth hostel did not taint the hostel's exempt status, for the fees received as payment for the exempt hostel services were related to and necessary for the hostel's operating costs, and were not motivated by profit making; thus, the income limitations of subsection (c) did not apply. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985) (decided under former AS 29.53.020).

Church-operated radio station. - Ad valorem taxes could be assessed and collected upon the facilities and property of a radio station operated by a church if a portion of the radio time was sold and used for commercial purposes, even if a portion of the profit was used to support the missionary work of the church. Evangelical Covenant Church of Am. v. City of Nome, 394 P.2d 882 (Alaska 1964).

To hold that a church-operated, profit-making radio station was exempt from ad valorem taxes would have resulted in a taxed commercial business being forced to compete with the commercial activities of institutions claiming a tax exempt status under a former, similar provision. Evangelical Covenant Church of Am. v. City of Nome, 394 P.2d 882 (Alaska 1964).

Property on which a radio station operated by the Catholic bishop was situated was exempt from taxation for the years at issue, for it was used exclusively for "religious purposes"; it was used solely for a combination of "public worship," "religious education," and "charitable purposes." Contributions that were received were only for good will, not in exchange for commercial air time. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska

1985) (decided under former AS 29.53.020).

Office space rented to doctors engaged in private practice. - Office space in a building partially used exclusively for nonprofit hospital purposes, rented to doctors engaged in the private practice of medicine by a nonprofit charitable and religious corporation, was not exempt from taxation. Greater Anchorage Area Borough v. Sisters of Charity, 553 P.2d 467 (Alaska 1976).

Garages. - A garage that housed vehicles used by the Lutheran pastors was exempt property; the garage was "adjacent" to and supporting property for the pastors' exempt residences. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985) (decided under former AS 29.53.020).

Storage space - may be exempt as supporting property for other exempt property, or as a charitable use of the property in itself. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985) (decided under former AS 29.53.020).

Property leased by hospital. - Property used by a lessee for nonprofit hospital purposes which is also used by the lessor to generate profit is not within the express language of paragraph (a)(3) of this section since the property is not being used exclusively for nonprofit purposes. Sisters of Providence in Washington, Inc. v. Municipality of Anchorage, 672 P.2d 446 (Alaska 1983).

Different tax treatment of equipment owned or leased by hospital is rational - and bears a fair and substantial relation to the object of (a)(3) of this section, which exempts from municipal property tax, property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes; and, therefore, taxation of leased property does not violate the equal protection clauses of the Alaska and United States constitutions. Sisters of Providence in Washington, Inc. v. Municipality of Anchorage, 672 P.2d 446 (Alaska 1983).

While the use of office space by doctor-tenants in conducting their private practices does provide incidental benefits to the adjacent hospital, the office space is not used exclusively for hospital purposes. Greater Anchorage Area Borough v. Sisters of Charity, 553 P.2d 467 (Alaska 1976).

The providing of recreational facilities, - such as accommodations for campers, was a charitable use of the property under a former, similar provision. Matanuska-Susitna Borough v. King's Lake Camp, 439 P.2d 441 (Alaska 1968).

Electric cooperative operating under arrangement with federal agency is not exempt. - A nonprofit cooperative was not an agency of the United States government simply by virtue of an "arrangement" with the Rural Electrification Administration pursuant to 7 USC Sec. 901-915, and therefore immune from local taxation under a former, similar provision. City of Anchorage v. Chugach Elec. Ass'n, 252 F.2d 412 (9th Cir. 1958).

There was no statutory authority under a former, similar provision

exempting the property of Chugach Electric Association from taxation by the city of Anchorage and the Anchorage independent school district. City of Anchorage v. Chugach Elec. Ass'n, 252 F.2d 412 (9th Cir. 1958).

Exemption of property on federal land inapplicable to Railroad Reserve. - Under a former, similar provision the doctrine that property located upon federally owned land was immune from local taxation was inapposite where it was not shown that the Railroad Reserve was "federal property" or under the exclusive jurisdiction of the federal government. City of Anchorage v. Chugach Elec. Ass'n, 252 F.2d 412 (9th Cir. 1958).

Housing project on air force base. - Any property interest of the federal government in an air force base housing project or any other property within a federal reservation is exempt from taxation by state or local authorities, but any private interest in such land is taxable to the extent of the interest. Ben Lomond, Inc. v. Fairbanks N. Star Borough Bd. of Equalization, 760 P.2d 508 (Alaska 1988).

Where taxpayer has leased land on an air force base from the federal government and has leased back to the government the housing project taxpayer constructed on the land, taxpayer's leasehold interest as well as its interest in the buildings are subject to taxation. Ben Lomond, Inc. v. Fairbanks N. Star Borough Bd. of Equalization, 760 P.2d 508 (Alaska 1988).

Exceptions to exclusive use rule. - The Supreme Court of Alaska acknowledged two very narrow exceptions to the "exclusive use" rule: (1) De minimus uses and (2) an exception under paragraph (a)(3) for property used for purposes directly incidental to and vitally necessary for the exempt use of other property. City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985) (decided under former AS 29.53.020).

Spatial apportionment. - The "all, or any portion of, property" language of Alaska Const., Art. IX, Sec. 4 mandates the spatial apportionment of all property into exempt and nonexempt portions; this section mandates spatial apportionment of applicable "property," "residences," "structures," and "lots." City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985) (decided under former AS 29.53.020).

Cited in City of Valdez v. State, Dep't of Community & Regional Affairs, 793 P.2d 532 (Alaska 1990).

Collateral Refs -

Exemption from taxation of municipally owned or operated stadium, auditorium, and similar property. 16 ALR2d 1376.

Inclusion of tax-exempt property in determining value of taxable property for purposes of debt limit. 30 ALR2d 903.

Sec. 29.45.040
PROPERTY TAX EQUIVALENCY PAYMENTS.

(a) A resident of the state who rents a permanent place of abode is eligible for a tax equivalency payment from the state through the department if the resident is:

(1) at least 65 years old;

(2) a disabled veteran; or

(3) at least 60 years old and the widow or widower of a person who was eligible for payment under (1) or (2) of this subsection.

(b) For purposes of determining the amount of a payment to an eligible person, the department shall calculate at the rate of one percent per mill a property tax equivalent percentage for each municipality that levies a property tax. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain a tax equivalency payment the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. The department for good cause shown may waive an applicant's failure to make timely application for a tax equivalency payment and accept the application as if timely filed. Each applicant shall submit with the application rental receipts or, if rental receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid. A disabled veteran shall submit with the application evidence of the disability rating.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for a tax equivalency payment under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, a tax equivalency payment to an eligible applicant may not be reduced because the spouse is less than 65 years of age or is not a disabled veteran. If all occupants in a residence are eligible for a tax equivalency payment under this section, the occupants shall decide between and among themselves which shall receive payment.

(e) If appropriations are not sufficient to fully fund tax equivalency payments under this section, the amount available shall be distributed pro rata among eligible residents.

(f) In this section "disabled veteran" has the meaning given in AS 29.45.030(i).

History -
(Sec. 12 ch 74 SLA 1985; am Sec. 3, 4 ch 91 SLA 1985)
Revisors Notes -

The amendment made to (a) of this section by Sec. 3, ch. 91, SLA 1985 was enacted as an amendment to AS 29.73.060(a). Chapter 74, SLA

1985 enacted AS 29.45.040 and repealed AS 29.73.060. The effective date of both 1985 Acts is January 1, 1986. The legislature's intent to amend the tax equivalency provisions has been recognized by treating the amendment to AS 29.73.060(a) as an amendment to (a) of this section. Subsection (e) of this section was enacted as AS 29.73.060(f) and renumbered in 1985. Subsection (f) of this section was enacted as (e) and renumbered in 1985.

Sec. 29.45.045
REIMBURSEMENT PAYMENTS. *REPEALED, Sec. 6 CH 70 SLA 1986, EFFECTIVE JANUARY 1, 1987* .

Repealed or Renumbered

Sec. 29.45.050
OPTIONAL EXEMPTIONS AND EXCLUSIONS.

(a) A municipality may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at an election. An exclusion or exemption authorized by this section may not exceed the assessed value of $10,000 for any one residence.

(b) A municipality may by ordinance

(1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage;

(2) classify and exempt from taxation

(A) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes if the income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter;

(B) historic sites, buildings, and monuments;

(C) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c);

(D) all or any portion of private ownership interests in property that, based upon a written agreement with the University of Alaska, is used exclusively for student housing for the University of Alaska; property may be exempted from taxation under this subparagraph for no longer than 30 years unless the exemption is specifically extended by ordinance adopted within the six months before the expiration of that period;

(3) exempt personal property from taxation;

(4) exempt business inventories from taxation;

(5) classify as to type and exempt or partially exempt any or all types of motor vehicles from taxation;

(6) classify as to type and exempt or partially exempt any or all types of aircraft from taxation;

(7) exempt or partially exempt from taxation all boats and vessels that are not documented under the laws of the United States;

(8) exempt or partially exempt from taxation all pickup campers, shells, and canopies;

(9) exempt or partially exempt from taxation all unlicensed motorized all-terrain vehicles, snow machines, and trail bikes.

(c) The provisions of (a) of this section notwithstanding,

(1) a borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city in the borough, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city has the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes if

(A) the exemptions or exclusions have been adopted as to city taxes; and

(B) the city appropriates to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly;

(3) a city in a borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax that have been granted by a home rule municipality in addition to exemptions authorized or required by law, and that are in effect on September 10, 1972, and not later withdrawn, are not affected by this chapter.

(e) A municipality may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. The easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property, so that the property owner is compensated at a rate that does not reflect the easement grant. The municipality may provide by ordinance that, if the area subject to the easement is sold, leased, or otherwise disposed of for uses incompatible with the easement or if the easement is conveyed to the owner of the property, the owner must pay to the municipality all or a portion of the amount of the tax exempted, with interest.

(f) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land, or new maintenance, repair, or renovation of an existing structure, and if the alteration, maintenance, repair, or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. An exemption may not be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use in the structure or for the alteration of land

as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed, or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to a single-family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed, or from the date of approval of an application for the exemption by the local assessor, whichever is later.

(h) A municipality may by ordinance partially or wholly exempt land from a tax for fire protection service and fire protection facilities and may levy the tax only on improvements, including personal property affixed to the improvements.

(i) A municipality may by ordinance approved by the voters exempt from taxation the assessed value that exceeds $150,000 of real property owned and occupied as a permanent place of abode by a resident who is

(1) 65 years of age or older;

(2) a disabled veteran, including a person who was disabled in the line of duty while serving in the Alaska Territorial Guard; or

(3) at least 60 years old and a widow or widower of a person who qualified for an exemption under (1) or (2) of this subsection.

(j) A municipality may by ordinance approved by the voters exempt real or personal property in a taxing unit used in processing timber after it has been delivered to the processing site from up to 75 percent of the rate of taxes levied on other property in that taxing unit. An ordinance adopted under this subsection may not provide for an exemption that exceeds five years in duration. In this subsection "taxing unit" means a municipality and includes

(1) a service area in a unified municipality or borough;

(2) the entire area outside cities in a borough; and

(3) a differential tax zone in a city.

(k) A municipality may by ordinance approved by the voters exempt from taxation pollution control facilities that meet requirements of the United States Environmental Protection Agency or the Department of Environmental Conservation. An ordinance adopted under this subsection may not provide for an exemption that exceeds five years in duration.

(l) A municipality may by ordinance exempt from taxation an interest, other than record ownership, in real property of an individual residing in the property if the property has been developed, improved, or acquired with federal funds for low-income housing and is owned or managed as low-income housing by the Alaska Housing Finance Corporation under AS 18.55.100 -

18.55.960 or by a regional housing authority formed under AS 18.55.996. However, the corporation may make payments to the municipality or political subdivision for improvements, services, and facilities furnished by it for the benefit of a housing project, and this subsection does not prohibit a municipality from receiving those payments or any payments in lieu of taxes authorized under federal law.

(m) A municipality may by ordinance partially or totally exempt all or some types of economic development property from taxation for up to five years. The municipality may provide for renewal of the exemption under conditions established in the ordinance. However, under a renewal, a municipality that is a school district may only exempt all or a portion of the amount of taxes that exceeds the amount levied on other property for the school district. A municipality may by ordinance permit deferral of payment of taxes on all or some types of economic development property for up to five years. The municipality may provide for renewal of the deferral under conditions established in the ordinance. A municipality may adopt an ordinance under this subsection only if, before it is adopted, copies of the proposed ordinance made available at a public hearing on it contain written notice that the ordinance, if adopted, may be repealed by the voters through referendum. An ordinance adopted under this subsection must include specific eligibility requirements and require a written application for each exemption or deferral. In this subsection "economic development property" means real or personal property, including developed property conveyed under 43 U.S.C. 1601 - 1629e (Alaska Native Claims Settlement Act), that

(1) has not previously been taxed as real or personal property by the municipality;

(2) is used in a trade or business in a way that

(A) creates employment in the municipality;

(B) generates sales outside of the municipality of goods or services produced in the municipality; or

(C) materially reduces the importation of goods or services from outside the municipality; and

(3) has not been used in the same trade or business in another municipality for at least six months before the application for deferral or exemption is filed; this paragraph does not apply if the property was used in the same trade or business in an area that has been annexed to the municipality within six months before the application for deferral or exemption is filed; this paragraph does not apply to inventories.

(n) A municipality may by ordinance classify as to type inventories intended for export outside the state and partially or totally exempt all or some types of those inventories from taxation. The ordinance may provide for different levels of exemption for different classifications of inventories. An ordinance adopted under this subsection must include specific eligibility

requirements and require a written application, which shall be a public document, for each exemption.

History -

(Sec. 12 ch 74 SLA 1985; am Sec. 1 ch 103 SLA 1985; am Sec. 5 ch 70 SLA 1986; am Sec. 1 ch 151 SLA 1988; am Sec. 2 ch 73 SLA 1989; am Sec. 1 ch 98 SLA 1989; am Sec. 15 ch 93 SLA 1991; am Sec. 107 ch 4 FSSLA 1992; am Sec. 1 ch 66 SLA 1993; am Sec. 1 ch 7 SLA 1994; am Sec. 1 ch 65 SLA 1994)

Revisors Notes -

Subsection (h) of this section was enacted as AS 29.53.025(h). Renumbered in 1985. Chapter 103, SLA 1985 also enacted, in Sec. 2, AS 29.63.066, which provides an exemption identical to that set out in (h) of this section from taxes levied under former AS 29.63, repealed by Sec. 88, ch. 74, SLA 1985. The provisions of former AS 29.63 were substantially incorporated in AS 29.45, and the addition of subsection (h) to AS 29.45.050 makes it unnecessary to codify Sec. 2, ch. 103, SLA 1985 to achieve the legislature's purpose.

Amendment Notes -

The 1988 amendment, effective January 1, 1989, added subsection (l).

The first 1989 amendment, effective May 31, 1989, in subsection (e), deleted "However" from the beginning of the third sentence and added the present last sentence.

The second 1989 amendment, effective September 10, 1989, added subsections (m) and (n).

The 1991 amendment, effective September 30, 1991, inserted "including a person who was disabled in the line of duty while serving in the Alaska Territorial Guard" in paragraph (i)(2).

The 1992 amendment, effective July 1, 1992, rewrote subsection (l).

The 1993 amendment, effective September 22, 1993, in subsection (n), deleted the former second and third sentences.

The first 1994 amendment, effective July 5, 1994, added paragraphs (b)(6)-(b)(9) and made a related stylistic change.

The second 1994 amendment, effective August 23, 1994, added subparagraph (b)(2)(D).

History Reports -

For legislative letter of intent in connection with the enactment of (m) and (n) of this section by ch. 98, SLA 1989 (SCS CSHB 272(Fin) am S), see 1989 Senate Journal 1866.

Decisions -

City may not exempt property without express authority. - The authority of a municipal corporation to allow exemptions of particular property from taxation, unless expressly conferred by law, has very

generally been denied. Valentine v. City of Juneau, 36 F.2d 904 (9th Cir. 1929), decided under former, similar law.

Cited in City of Valdez v. State, Dep't of Community & Regional Affairs, 793 P.2d 532 (Alaska 1990).

Legislative Research Agency

Alaska State Legislature

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Phone: (907) 465-3991
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February 17, 1995

MEMORANDUM

TO: Representative Ivan Ivan

FROM: Linda J. Snow
Legislative Analyst

RE: **Senior Citizens' and Disabled Veterans' Residential Property Tax Exemptions**
Research Request 95.120

You asked us to provide an overview of the Senior Citizens' and Disabled Veterans' Property Tax Exemption Program [AS 29.45.030 (e) - (i)], including a legislative history and history of appropriations. You also asked us to compare state reimbursements to the municipalities' costs for the program. In this memorandum, we have also included information about the Senior Citizen and Disabled Veteran Property Tax Equivalency Program (AS 29.45.040), which is a companion program to the tax exemption program. The Alaska Department of Community and Regional Affairs administers both programs.

History of the Senior Citizens' Residential Property Tax Exemptions

Following is a brief chronological summary of legislative activity involving the Senior Citizens' and Disabled Veterans' Property Tax Exemption Program. Table A presents a financial history of the actual property tax exemptions, and the reimbursements to the municipalities for lost revenue.

- 1973 - AS 29.45.030 (e) - (h), allowing a property tax exemption on the full value of residential property for Alaska residents 65 years of age and older with a gross annual income of less than $10,000, was enacted (Chapter 118, SLA 1972). Alaska municipalities were to grant the exemption, and were to be fully reimbursed by the state for revenues foregone by the granting of the exemptions.

- 1974 - Chapter 60, SLA 1973 deleted the gross income limitation as a prerequisite to eligibility.

- 1976 - Chapter 65, SLA 1975 added language to allow an extension of the January 15 filing deadline for "good cause shown."

- 1985 - Chapter 40, SLA 1984 added language to the statute allowing the same property tax exemption to Alaska resident veterans with at least 50 percent disability. Chapter 91, SLA 1985 also allows the tax exemption for a person who is at least 60 years of age, and is the widow or widower of a person eligible for property tax exemption under AS 29.45.030 (e) (1) or (2). Further language in this legislation allows the Department of Community and Regional Affairs to prorate reimbursements to the municipalities if legislative appropriations are not sufficient to fully fund the reimbursements. Existing language does not allow the municipalities to cease giving a 100 percent property tax exemption to senior citizens and disabled veterans, and their eligible widows or widowers.

- 1987 - Chapter 70, SLA 1986 limited the tax exemption to the first $150,000 of the assessed value of the real property, except that municipalities may allow for additional exemptions in hardship cases.

Table A shows the amount of property tax revenue foregone by the municipalities because of the exemption, and the amount reimbursed to the municipalities over the life of the program (fiscal years 1973 to 1995, which correspond to tax years 1972 to 1994). The legislature reimbursed the full amount of lost tax revenues to the municipalities through FY 85. After the law allowed prorated reimbursements to the municipalities, the percent of those reimbursements paid fell progressively, until in FY 95, the legislature reimbursed only 6.9 percent of the mandated tax exemption. Alaska municipalities absorbed $15.7 million in lost tax revenues due to the mandate in FY 95. The cumulative loss to municipalities since proration of reimbursements began in FY 86 is $75.1 million.

Senior Citizen and Disabled Veteran Property Tax Equivalency Program (AS 29.45.040)

This program extends to renters the same benefits received by home owners under the Senior Citizen and Disabled Veteran Property Tax Exemption Program. Eligible renters receive a rebate in the amount equivalent to the portion of their rent that is property tax. The major difference between this program and the tax exemption program is that in this program the state directly pays the eligible senior citizens, disabled veterans, and surviving spouses. Any shortfall directly affects the eligible recipients, as individual rebates are prorated to the amount of funds available for payment. Municipal revenues are not impacted by shortfalls to the program as the property owners must pay the full amount of municipal property taxes. The property owners are not affected, as the eligible renters must still pay the full amount of their rent.

Following is a brief legislative history of the Senior Citizen and Disabled Veteran Property Tax Equivalency Program. Table B presents a history of the total benefits paid to eligible residents over the life of the program.

- 1976 - AS 29.45.040 was enacted, creating the Senior Citizen Property Tax Exemption Program (Chapter 217, SLA 1976). Initially, the amount of the equivalency payment was computed by multiplying the number of mills that a municipality levies times 1/2 percent. This amount was considered the percentage portion of the total annual rent paid that went to property taxes. That percentage was then multiplied by the eligible residents' annual rent to determine the amount of the rebate, with a limitation of $375 per eligible resident per year.

- 1978 - the act was amended to double the rebates by increasing the payment from 1/2 percent times the number of mills to 1 percent times the number of mills charged per municipality, and the $375 annual payment cap was deleted.

- 1985 - the act was amended to include veterans with at least a 50 percent disability, and persons who were at least 60 years of age and a surviving spouse of an eligible person. Prorationing language included in this bill allows the Department of Community and Regional Affairs to prorate tax equivalency payments if legislative appropriations are not sufficient to fully fund them.

Table B shows the total rebates paid to eligible Alaska residents over the life of the Senior Citizen and Disabled Veteran Property Tax Equivalency Program (FY 77 to FY 95, which correspond to tax years 1976 to 1994). Although representatives of the Department of Community and Regional Affairs were unable to provide us with the calculated payments due according to the legislation, we do know that payments have been prorated according to available legislative appropriations since FY 86. According to Steve Van Sant, State Assessor in the Department's Division of Municipal and Regional Assistance, FY 95 prorated payments consisted of about 30 percent of the calculated rebates due.

I hope this information is helpful to you. If you have need of further assistance, please feel free to call this office.

Attachments

Table A

Property Tax Exemptions to Senior Citizens and Disabled Veterans

Fiscal Years 1973 to 1994

Fiscal Year	Number of Applications Approved	Assessed Value Exempt	Total Taxes Exempted	Total Revenue Reimbursement	Shortfall to Municipalities	Percent of Exemption Reimbursed	Average Value per App	Average Tax Ex. per App	Average Reimb. per App
1973	911	$12,960,993	$197,050	$197,050	$0	100.0%	$14,227	$216	$216
1974	1,887	$40,842,657	$631,891	$631,891	$0	100.0%	$21,644	$335	$335
1975*	2,426	$59,918,061	$930,915	$930,915	$0	100.0%	$24,698	$384	$384
1976**	0	$0	$0	$0	$0		$0	$0	$0
1977	2,608	$76,737,060	$1,171,227	$1,171,227	$0	100.0%	$29,424	$449	$449
1978	2,909	$104,306,352	$1,512,983	$1,512,983	$0	100.0%	$35,856	$520	$520
1979	3,108	$128,810,117	$1,761,540	$1,761,540	$0	100.0%	$41,445	$567	$567
1980	3,393	$165,159,728	$1,899,611	$1,899,611	$0	100.0%	$48,677	$560	$560
1981	3,842	$211,428,981	$2,291,811	$2,291,811	$0	100.0%	$55,031	$597	$597
1982	4,147	$277,154,113	$1,757,887	$1,757,887	$0	100.0%	$66,832	$424	$424
1983	4,893	$324,220,034	$2,092,317	$2,092,317	$0	100.0%	$66,262	$428	$428
1984	5,156	$392,215,073	$3,146,618	$3,146,618	$0	100.0%	$76,070	$610	$610
1985	5,418	$478,983,142	$4,005,075	$4,005,075	$0	100.0%	$88,406	$739	$739
1986	6,061	$609,947,921	$4,976,081	$3,958,567	($1,017,514)	79.6%	$100,635	$821	$653
1987	6,569	$737,706,208	$6,325,947	$2,770,300	($3,555,647)	43.8%	$112,301	$963	$422
1988	7,118	$760,355,669	$6,754,982	$2,622,969	($4,132,013)	38.8%	$106,822	$949	$368
1989	7,900	$598,877,461	$7,465,500	$2,519,344	($4,946,156)	33.7%	$75,807	$945	$319
1990	8,557	$606,951,397	$8,625,456	$2,543,469	($6,081,987)	29.5%	$70,930	$1,008	$297
1991	9,246	$665,058,233	$9,588,102	$2,557,900	($7,030,202)	26.7%	$71,929	$1,037	$277
1992	9,986	$754,166,097	$11,294,166	$2,838,800	($8,455,366)	25.1%	$75,522	$1,131	$284
1993	10,719	$883,539,005	$13,669,469	$2,838,800	($10,827,925)	20.8%	$82,427	$1,275	$265
1994	11,594	$979,290,045	$14,840,320	$1,551,766	($13,288,554)	10.5%	$84,465	$1,280	$134
1995	12,199	$1,064,556,490	$16,894,296	$1,163,800	($15,731,815)	6.9%	$87,266	$1,385	$95

* Filing deadline extended.

** The fiscal year time frame was difficult to meet in view of municipal schedules; therefore, FY 76 funds were allowed to lapse and FY 76 reimbursements were made from the FY 77 appropriation.

Notes: 1. The program began with property tax exemptions for senior citizens in FY 73. Disabled veterans and widows or widowers of eligible property owners who were at least 60 years old began receiving exemptions in FY 85.
2. A fiscal year corresponds to the prior tax year (calendar year).

Source: *Alaska Taxable* (1974 - 1994), produced by the Department of Community and Regional Affairs.

Prepared by the Legislative Research Agency, February, 1995 (95.120A).

Table B

Senior Citizen and Disabled Veteran Property Tax Equivalency Program

Fiscal Years 1977 to 1995

Fiscal Year	Number of Applications Approved	Total Benefits Paid	Average Payment per Applicant
1977	324	$62,284	$192
1978	538	$99,033	$184
1979	533	$94,824	$178
1980	738	$122,894	$167
1981	694	$230,996	$333
1982	742	$160,163	$216
1983	720	$208,538	$290
1984	662	$210,573	$318
1985	695	$268,349	$386
1986	654	$260,592	$398
1987	710	$311,632	$439
1988	732	$397,111	$543
1989	802	$499,675	$623
1990	873	$644,144	$738
1991	970	$745,605	$769
1992	1,032	$818,793	$793
1993	1,207	$818,793	$678
1994	1,233	$448,234	$364
1995	1,048	$336,200	$321

Note: A fiscal year corresponds to the prior tax year (calendar year).

Source: *Alaska Taxable (1978 - 1994)*, produced by the Department of Community and Regional Affairs.

Prepared by the Legislative Research Agency, February 1995 (95.120B).

Alaska Native Brotherhood

Camp No. 2

March 17, 1995

Mr. Ivan M. Ivan, Chairman
Committee on Community & Regional Affairs
State Capitol Bldg.
Juneau, Ak 99801

Dear Honorable Chairman Ivan:

The Alaska Native Brotherhood Camp Two, Juneau, wishes to express its opposition to H.B. 185.

The Citizen's proportionately, to be most adversely affected are the elderly and retired Natives of Southeast Alaska, who are Alaskan's through and through. These are individuals that regard Alaska as their only home. They are not your typical transient residents. They have spent their entire lifetime at productive activity benefiting the State with their contributions to a better society as well as a lifetime of taxes. Others will of course choose to leave the State and relocate to friendlier climes.

There is a distinct possibility, due to limited income, that some of our people will loose all their resources as well as their homes, resulting in a life supported by the State in the form of welfare.

We urge you to consider the impact on Alaska's first citizens.

Respectively Submitted,

Jeff Anderson, President

Percy Hope, Camp Council

Roy Dennis, Camp Treasurer

cc:Representatives Kim Elton, Karen Robinson
Senator Jim Duncan

320 West Willoughby Avenue, Suite 100 • Juneau, AK 99801 • (907) 586-2049 • Fax (907) 586-3301

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

To: Representative Ivan Ivan

From: Kevin Ritchie, Executive Director

Date: March 9, 1995

Re: HB 185- Senior Citizen/ Disabled Veteran Property Tax exemption

On behalf of the municipalities of the Alaska Municipal League, thank you for your support of Alaskan municipalities.

As you know, the mandatory property tax exemption was initially funded by the state. This state has progressively reduced its support of the program. Currently, the program is the most problematic of all state unfunded mandates on municipalities. Making this exemption a local option, instead of a state mandate, has been a top priority of the AML for a number of years. However, the municipalities have represented in the past that each municipality would support some type of locally developed program to address the issue of support for seniors and disabled veterans.

The AML recently met with representatives of seniors and disabled veterans. The conclusion of the discussions was that the disabled veterans did not support a reduction in the program. However, the AARP, which represents 43,000 Alaskan seniors, offered a compromise that is acceptable to the communities of the Alaska Municipal League. The compromise is balanced and fulfills the basic goals of the AML and the AARP.

The compromise is to reduce the mandatory exemption from $150,000 for seniors to $75,000. This compromise, while still retaining the exemption as a largely unfunded mandate, provides municipalities with a reasonably balanced program for seniors with low administrative costs, a lower municipal subsidy amount for the program, and a slower growth for the municipal subsidy of this program. This compromise ensures that seniors in modest trailers or houses will receive a full exemption and that seniors in more expensive housing will receive a partial subsidy of their property taxes. **It is critical to recognize that a reduction to $75,000 is not a large windfall for municipalities, in fact, the statewide average exemption under this program is $87,266 according to the 1994 Alaska Taxable (DCRA).** The average subsidy decrease would be approximately a **20% to 25% reduction in subsidies for the exemption on the part of municipalities** (which includes an offset for a higher local contribution for schools), **assuming the current state support remains the same.**