



## MATANUSKA-SUSITNA BOROUGH

Planning and Land Use Department

Development Services Division

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### MEMORANDUM

DATE: October 28, 2016

TO: Matanuska-Susitna Borough Assembly

FROM: Alex Strawn, Development Services Manager 

THRU: John Moosey, Borough Manager  
George Hays, Assistant Borough Manager

SUBJECT: Position paper regarding issuance of General Construction Permit C160011 for installation of an access roadway within the Spruce Hen Dr. ROW

This memorandum is in response to recent concerns regarding issuance of Permit No. C160011 for construction of a road within a dedicated Right of Way (ROW) known as Spruce Hen Dr. The permit was issued to Greenstreet General Contracting, LLC on September 7, 2016.

Construction within public rights of way is regulated under MSB Title 11 which requires a permit for any “encroachment” within public easements, rights of way, and land owned or dedicated to the Borough. Dedicated rights of way are intended for public thoroughfare. As such, the Borough typically allows roads to be constructed within rights of way as long as they are built such that they do not rapidly deteriorate, cause a safety hazard, or create drainage issues.

In this case, the permit was issued at a time when the developer had a pending subdivision under review for his property. However, it would have been appropriate to issue the permit whether or not the subdivision was approved because there was no rational reason not to; as long as the road was constructed to the Borough’s minimum standards.

There have been concerns raised about wording within the permit. Specifically, the title of the permit describes the construction as a “Subdivision Roadway” and as a “driveway access road” within the body of the permit. The different terms are not defined within MSB Title 11 or the Subdivision Construction Manual. Utilization of these terms to describe the development is a matter of semantics and does not affect the substance of the permit which is intended to allow a public road to be built within the public ROW.

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There is concern that adjacent property owners were not notified of the project prior to construction, as specified by the permit. MSB Title 11 does not require a citizen engagement process, and the decision is not appealable by adjacent landowners. The specification for notification in the permit is not intended to be a citizen engagement process whereby surrounding property owners can weigh in as to the validity of the permit. Rather, it is intended to be a courtesy to the adjacent landowners, and to foster communication between adjacent landowners and the developer.

There is also concern that the developer did not fall and skid trees four inches in diameter and larger prior to beginning grubbing and road construction, as specified by the permit. The developer did not adhere to this specification. Rather, the developer piled the trees on his property with the intent of burning them. When asked why he did not skid the trees as specified by the permit, he stated "It is much cheaper for me to just burn the trees." He then offered to buy firewood for the adjacent landowners if they needed it.

Skidding trees should not have been a requirement of the permit for the reason that the public ROW is owned in fee simple by the Borough. This would have been an important requirement had the work been done in a public easement where underlying property ownership was private. The trees within a public easement belong to the underlying property owner unless otherwise specified in the language of the easement. In this case, the underlying property owner is the Borough. On large road projects, the Borough makes saleable timber available to the public through a personal use firewood permit. However, the Spruce Hen Dr. ROW is approximately 300 feet long and is not large enough to warrant the administrative cost of a personal use firewood sale. The other reason for skidding trees within a ROW is to get them out of the way so as to not impede construction or create an obstacle to the traveling public.

In summary, it is the Borough's position that Mr. Greenstreet has a lawfully issued permit to construct a public road within the Spruce Hen Dr. public ROW to provide public access to his property. The ROW was dedicated to the Borough through the MSB Platting process with the intent of providing access to this particular property which Mr. Greenstreet now owns. The time to object to placement of a road at this particular location would have been at the time that the public ROW was platted. While Mr. Greenstreet did not exactly follow the letter of the conditions of the permit, it is not in the best interest of the public to pursue enforcement at this point for the reasons noted herein. It would also not be appropriate to revoke the permit because Mr. Greenstreet, like any other private property owner, should be entitled to physically improve an existing public ROW created to provide access to his property. Mr. Greenstreet has gone through the appropriate process to gain permission to develop the public ROW, and as such, is entitled to access his land via construction of a road to his property within the public ROW.