

**MATANUSKA-SUSITNA BOROUGH
PLATTING BOARD**

IN RE:
APPEAL OF THE APPROVAL OF THE
ABBREVIATED PLAT KNOWN AS
RIPJENSON,

Austin Burrill, Appellant.

Platting Board Case No. 2023-050

WRITTEN SUBMISSION OF THE MATANUSKA-SUSITNA BOROUGH



I. Relief Requested

COMES NOW, the Matanuska-Susitna Borough (the "Borough"), by and through the Borough Attorney's Office, and hereby submits this written argument in support of the Platting Officer's Decision approving the Abbreviated Plat known as RIPJENSON.

II. Jurisdiction

The Platting Board has jurisdiction over this appeal from the decision of the Borough Platting Officer approving the abbreviated plat known as RIPJENSON. *See* MSB 43.35.003 *Appeals of Platting Officer Decision*.

III. Standards of Review

Pursuant to MSB 43.35.003(A)(2), an appeal of a Platting Officer's Decision on an Abbreviated Plat must be based on one of the following: (a) the decision of the Platting Officer is in violation of borough code, state or federal law; (b) there was a clerical error in the decision; (c) there is newly discovered evidence or a change of circumstances which by due diligence could not have been discovered before the original hearing; or (d) there was a substantial procedural error in the original proceeding.

IV. Discussion

A. The Borough's Response to Appellant's Points on Appeal.

(1) In his first point on appeal, the Appellant alleges that there was a significant procedural error in his receipt of the agenda and staff report for the RIPJENSON abbreviated plat after the hearing on the matter. The staff report and agenda were available at the hearing which the Appellant chose not to attend. The agenda and staff report were also available online the day before the hearing. In summary, the Appellant did not avail

himself of attending the abbreviated plat hearing where the agenda and staff report were available. Nor did the Appellant look online at these documents which were also available the day before the hearing. For these reasons, Appellant's argument that a significant procedural error occurred is without support and should be rejected by the Platting Board.

(2) In his second point on appeal, the Appellant alleges that the owner of the property subject to the abbreviated plat had a significant contracting relationship with the Matanuska-Susitna Borough and transparency and conflict of interest support that the abbreviated plat should have been considered by the Borough Platting Board rather than the Borough Platting Officer.

In pertinent part, MSB 43.15.025 *Abbreviated Plats* provides:

43.15.025 Abbreviated Plats.

(A) The platting officer shall review and act upon all preliminary plats that shall only move or eliminate lot lines, or create no more than four tracts or lots, and that shall not:

(1) deny legal and physical access to and from all lots or tracts created by, or adjacent to, the subdivision, or require construction of improvements necessary for access, other than the improvement of an existing publicly dedicated right-of-way to current standards; nor

(2) alter a dedicated street or right-of-way, or require any dedication; nor

(3) require a vacation of a public dedication; nor

(4) require a variance from a subdivision regulation. . . .

As noted in the staff report, the RIPJENSON abbreviated plat was limited to moving interior lot lines in order to remedy a setback violation. Assuming for purposes of argument that the property owner had a contractual relationship with the Borough, it does not follow that the abbreviated plat should be heard by the Borough Platting Board. This platting

action falls within the jurisdiction of the Platting Officer under MSB 43.15.025 which the Borough Assembly adopted. *See MSB 43.15.025 Abbreviated Plats.*

(3) In his third point on appeal, the Appellant alleges that the preliminary plat hearing for the abbreviated plat circumvented a pending Matanuska-Susitna Borough Conditional Use Permit (“CUP”) application for fleet bus activity operating on the same property.

The RIPJENSON abbreviated plat was brought by the property owner to remedy a setback violation. The abbreviated plat application was a precursor to the Planning Commission consideration of the CUP application to bring the subdivision into compliance with setback ordinances. In short, the abbreviated plat did not circumvent the conditional use permit process, it was a predicate to the CUP application before the Borough Planning Commission. For these reasons, Appellant’s argument that the abbreviated plat circumvented the CUP process before the Borough Planning Commission is without support and should be rejected by the Platting Board.

(4) The Appellant’s fourth point on appeal is that having the preliminary plat/abbreviated plat heard by the Borough Platting Officer circumvents concerns and other agency intervention for improperly sited bulk fuel storage associated with the fleet bus activity operating at the property location.

The Appellant does not specify how the bulk fuel storage was “improperly sited.” If it is a reference to the setback violation, as noted above, the abbreviated plat was sought to move interior lot lines to cure the building setback violation related to the fuel tank. If

this is what the Appellant is focused upon, it does not make sense that fixing a setback violation would interfere with third-party agencies which may seek some sort of remedy with regard to the fuel storage on the property.

It should be noted that a notice and request for comments on the abbreviated plat application was sent to: AK Department of Fish and Game; US Army Corps of Engineers; Community Council #22 Gateway; Fire Service Area # 130 Central Matsu; Road Service Area #9 Midway; Borough Emergency Services; Community Development; Department of Public Works; Borough Assessments; Borough Development Services, Borough Planning Department; Borough Legal; Borough Assemblymember for District #3; US Postmaster; Matanuska-Electric Association; Matanuska Telephone Association; Enstar Natural Gas; and GCI. In addition, the abbreviated plat was advertised in the Frontiersman Newspaper and public notices were mailed to all property owners within 600 feet of the parcels involved in the application. None of these agencies lodged objections to the proposed abbreviated plat application.

As noted in the Borough staff report, the RIPJENSON abbreviated plat application met the standards of MSB 43.15.025 *Abbreviated Plats*. The contention that the abbreviated plat application circumvented other agency intervention has not been demonstrated, is without merit, and should be rejected by the Platting Board.

(5) The Appellant's fifth point on appeal is that the Platting Officer's consideration of the RIPJENSON abbreviated plat circumvented concerns and other

agency intervention for improperly developed public drinking water associated with fleet bus activity on the property.

The Appellant does not specify which agency had concerns over public drinking water on the property nor how this alleged concern was circumvented by the Platting Officer's consideration of the abbreviated plat.

As stated above, it should be noted that a notice and request for comments on the abbreviated plat application was sent to: AK Department of Fish and Game; US Army Corp of Engineers; Community Council #22 Gateway; Fire Service Area # 130 Central Matsu; Road Service Area #9 Midway; Borough Emergency Services; Community Development; Department of Public Works; Borough Assessments; Borough Development Services, Borough Planning Department; Borough Legal; Borough Assemblymember for District #3; US Postmaster; Matanuska-Electric Association; Matanuska Telephone Association; Enstar Natural Gas; and GCI. In addition, the abbreviated plat was advertised in the Frontiersman Newspaper and public notices were mailed to all property owners within 600 feet of the parcels involved in the application. None of these agencies lodged objections to the proposed abbreviated plat application.

As noted in the Borough staff report, the RIPJENSON abbreviated plat application met the standards of MSB 43.15.025 *Abbreviated Plats*. The contention that the abbreviated plat application circumvented other agency intervention about concerns over public drinking water has not been demonstrated, is without merit, and should be rejected by the Platting Board.

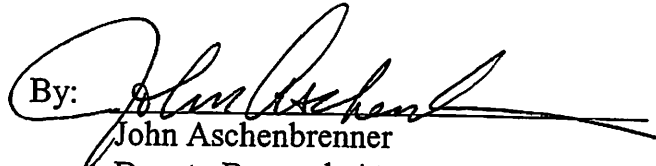
V. Conclusion

For the reasons noted above, it is respectfully submitted that this appeal should be denied and the Platting Board should affirm the decision of the Platting Officer approving the RIPJENSON abbreviated plat.

DATED this 26th day of June, 2023.

MATANUSKA-SUSITNA BOROUGH
Nicholas Spiropoulos, Borough Attorney

By:



John Aschenbrenner
Deputy Borough Attorney

JA/lgy