

**FNSB ADMINISTRATIVE HEARING
ACTION MEMO
MARCH 21, 2019 10:30 AM**

APPLICATIONS

Preliminary Applications

1. **SD022-19 Basecamp Subdivision** A request by 3-Tier Alaska on behalf of Adriel Butler to subdivide Tract A out of Alaska Cadastral Survey 86-13, a parcel of 540 acres, into three lots ranging in size from 13 acres to 14 acres, and one Tract of approximately 500 acres. It is all within the Section 11, T3N, R2W, FM located on Himilaya Road. **Staff Contact: Julie Kotila**

Audio Track 1

CONDITIONS OF APPROVAL

Recommendation: Staff recommends preliminary approval for Basecamp Subdivision with the following conditions:

1. GVEA shall have a maximum of 30 calendar days to review and comment on the final plat.
2. A note shall be added to the plat stating: *"No lot in this subdivision can be further subdivided until such time as legal, constructed road access is available to the boundary of the lot proposed to be resubdivided."*
3. A note shall be added to the plat stating: *"Roads in and to this subdivision were not required to and may not meet the borough's minimum standards for materials and construction. To the extent these road standards have not been met, fire protection, ambulance and other public services may not be available year-around or their availability may be severely limited."*
4. The applicant shall remove all encroachments from the existing PUE running parallel with Himilaya Road prior to final plat submittal or shall dedicate a new PUE satisfactory to GVEA requirements.

FINDINGS OF FACT

Staff further recommends adoption of the following findings of fact:

1. The 30 foot wide Public Utility Easement with ADL 403097 was recorded on January 29, 1982 in Book 269 at Page 985.
2. The purpose of ADL 403097 was to reserve 100 feet for Public Access and 30 feet for Public Utilities.
3. Several encroachments are currently located in the existing PUE.

4. FNSBC 17.56.030(A) states: "*The platting board shall require reservation of utility easements along lot lines or rights-of-way within a subdivision when a utility company demonstrates a specific need for them*".
5. GVEA has requested that the encroachments be removed or a new PUE be dedicated.
6. This plat creates 4 lots from one section of land.
7. This plat has legal access through the 100 foot ADL 403097 rights-of-way easement already in place since 1982.
8. No further subdividing can be done until a road is constructed to Title 17 standards per FNSBC 17.56.020(G) stating; *A subdivision creating five or fewer lots shall not be required to have constructed road access to the boundary of the subdivision. However, a lot created under this subsection may not be further subdivided until such time as legal, constructed road access is available to the boundary of the lot proposed to be resubdivided.*
9. FNSBC 17.56.060.A.2 states "*The exemption from minimum road materials and construction must be disclosed in writing to any buyer of an exempted lot and any subdivision approved pursuant to this subsection shall contain a plat note with the disclosure...*"
10. This plat request does not alter a dedicated street or right-of-way or require any dedication.
11. This plat request does not require road construction or improvement.
12. This plat request does not require a variance from a subdivision regulation.
13. This plat request does not deny legal or physical access to any lot or tract.
14. This plat request does not vacate a public road, trail, public use area or any easements other than a public utility easement.
15. With the four conditions recommended by staff, this subdivision request meets the applicable requirements of Title 17.

APPROVED

Appeal of this decision must be made in writing within ten (10) days of the decision. Request an appeal form from the Community Planning Department.

- 2. SD024-19 Dalton Pointe Subdivision** A request by Stutzmann Engineering Associates, Inc on behalf of Kathleen Dalton and Candace Waugaman to replat TL-3005 and TL-3034, a total of approximately 36.5 acres into two lots of approximately 17.0 acres and 19.5 acres each. The request only adjusts the common lot line between lots and does not create any additional lots. The property is located within the W½ SW¼ Section 30 T1N R1W FM on Dalton Trail. **Staff Contact: Daniel Welch**

Audio Track 1

CONDITIONS OF APPROVAL

Recommendation: Staff recommends preliminary approval for the Dalton Pointe Subdivision with the following conditions:

1. GVEA shall have a maximum of 30 calendar days to review and comment on the final plat.
2. ACS shall have a maximum of 10 calendar days to review and comment on the final plat.
3. A note shall be added to the plat that states "Any new driveway, or modification to an existing driveway, onto Dalton Trail shall require an ADOT&PF permit."

FINDINGS OF FACT

1. FNSBC 17.52.050 exempts this platting application from the design and public improvements requirements of Title 17 because:
 - i. The lots were legally created.
 - ii. The request does not increase the number of lots.
 - iii. The request does not create a new violation of the design and public improvement requirements of Title 17.
 - iv. The request does not increase the non-conformity of any lot under this or any other FNSB title.
2. FNSBC 17.56.010.H.2.b states "Evidence has been submitted by the applicant that a borough standard road can be constructed in the stem in the event of a future dedication."
 - i. The plat is not required to provide evidence that a borough standard road can be constructed within the flag stem because it meets the requirements of FNSBC 17.52.050.
3. Dalton Trail is maintained by ADOT&PF.
4. Dalton Trail is classified as a major collector road.
5. Dalton Trail, at the location of this subdivision, only has 40-feet of rights-of-way dedication.
6. FNSBC 17.56.080.B requires major collector roads to be within an 80-foot wide dedicated rights-of-way.
 - i. The plat is not required to dedicate and additional 40 feet of rights-of-way for Dalton Trail because it meets the requirements of FNSBC 17.52.050.
7. FNSBC 17.56.010.F states "Direct lot access onto a major collector road or arterial shall not be allowed unless topography allows no reasonable alternative."
 - i. The plat relies on one existing access point shared by proposed Lots 1 and 2 onto Dalton Trail, and does not propose any new access points onto Dalton Trail.
 - ii. The existing access is not required to be addressed by a variance or other means because the plat relies on FNSBC 17.52.050.
8. This plat request does not deny legal and physical access to any lot or tract.

9. This plat does not vacate a public road, trail, public area or any easements other than public utility easement.
10. This plat does not alter a dedicated street or right-of-way or require dedication.
11. This plat request does not require road construction or improvement.
12. This plat request does not require a variance from a subdivision regulation.
13. With the three conditions recommended by staff, this subdivision request meets the applicable requirements of Title 17.

APPROVED

*Appeal of this decision must be made in writing within ten (10) days of the decision.
Request an appeal form from the Community Planning Department*

3. **RP029-19 (Aiken's Acres Subdivision)** Replat of Lot 13 A request by Troy Hicks on behalf of himself to replat Lot 13 Aiken's Acres Subdivision, approximately 5 acres, into two lots of approximately 2.4 and 2.6 acres. The property is located in the SW1/4 of the SE1/4 of Section 23, T1N R1E, FM at the corner of Chena Hot Springs Road and Esro Road. **Staff Contact: Julie Kotila**

WITHDRAWN BY APPLICANT

4. **GR2019-082:** A request by Mark Acord for affirmative recognition of legal nonconforming structure status (grandfather rights) for an existing single-family residence with a basement in the Groundwater Damage Protection (GWP) overlay in the Rural Residential (RR) zone for the property on Lot 5, Block 6, Seavy Subdivision (Located at 2900 Irene Mae Street). **Staff Contact: Bridget Hamilton**

Audio Track 1

FINDINGS OF FACT

The FNSB Administrative Hearing Officer adopted the staff report and the following Findings of Fact in support of this determination:

1. FNSB Title 18 was amended by Ordinance No. 94-088 establishing a GWP overlay zone to prohibit construction of buildings or structures below the natural elevation of ground surface, effective February 10th, 1995. At that time, the overlay was not applied to any properties.
2. The intent of the GWP overlay was to minimize property damage associated with groundwater flooding by preventing construction below the ground surface.
3. Ordinance No. 94-088 stated that *"any new construction or any additions to existing buildings or structures below natural elevation of the ground surface is*

prohibited, except as permitted in this subsection. The placement of foundations, footings or other support structures below the natural elevation of the ground surface is permitted."

4. Ordinance No. 99-055 applied the GWP overlay zone to the subject property effective September 17th, 1999.

5. The requirements of FNSBC 18.48.070 prohibiting construction below the ground surface, except for *"foundations, footings and other support structures"* remained in effect until March 25, 2005.

6. Ordinance No. 2005-21 added the definition of basements and crawlspaces to FNSBC 18.04.010, effective March 25th, 2005. It defined a basement as *"a fully enclosed, finished or unfinished area located beneath a structure's first floor having a wall height greater than four feet"* and defined a crawlspace as *"a space beneath the first floor of a structure with no exterior door and a wall height no greater than four feet. It is used for visual inspection of the structure, access to plumbing, heating ducts, or electrical wiring."*

7. Ordinance No. 2005-21 allowed crawlspaces of four feet in height or less for the first time, provided that *"crawlspaces shall not be used for mechanical and electrical equipment or storage purposes of any kind below the surface of the natural elevation of the exterior ground surface"* (FNSBC 18.92.070).

8. The prohibition of mechanical and electrical equipment, and the storage of personal belongings in the crawlspace was intended to further protect against property damage that could occur as a result of groundwater flooding.

9. The FNSB Assessor Field Card shows that on November 16th, 2001 the Assessor's staff placed a check-back on the property for the construction of a new home, but noted that as of January 6th, 2003 "lot still vacant."

10. FNSB aerial photography taken during the years 1996-99, 2002-03, 2007, and 2009 shows the development of the subject property. The subject lot was vacant between 1996 and 1999. A portion of the lot was cleared between 2002 and 2003. Photography taken in 2007 shows the footprint of the subject structure. The subject structure was completed by 2009.

11. The FNSB Department of Community Planning issued a zoning permit (No. 15706) on January 30, 2007 for the construction of a single-family residence on the subject property. The approved zoning permit noted the existing RR/GWP zoning and noted "no basements" on the permit.

12. Photographs taken on inspections by the Assessor's staff show that the subject single-family residence with basement was completed between October 26th, 2007 and October 7th, 2008.

13. The applicant has described the nonconforming structure as a single-family residence with a 6'6" crawlspace that is unfinished and takes up the full footprint of the house. A crawlspace over four (4) feet in wall height is classified as a basement

according to FNSBC 18.04.010. Therefore, the subject structure has an unfinished basement, not a crawlspace.

14. The applicant submitted seven (7) undated photographs on March 22, 2019 after the administrative hearing. The photos showed the interior ramped entrance to the basement, mechanical and electrical equipment, storage, and a basement height that appeared consistent with the stated height.

15. The subject parcel contains a single-family residence with a full unfinished basement in the GWP overlay in the Rural Residential (RR) zone. This basement does not comply with the GWP overlay because:

- a. It was constructed at approximately 6'6" in height between 2007 and 2008, which exceeds the four-foot maximum height allowed for crawlspaces after March 25, 2005 (when Ord. No. 2005-21 went into effect).
- b. It meets the definition of a "basement" below the surface of the natural elevation of the exterior ground surface, which is prohibited by FNSBC 18.92.070.
- c. In addition, mechanical and electrical equipment and storage is located below the natural elevation of the exterior ground surface, which is prohibited by FNSBC 18.92.070.

16. FNSBC 18.108.030(A) requires an application and affidavit describing the existence of the structure *"prior to the date of the zoning change that caused the nonconformance"* including a *"written positive assertion"* that the structure *"existed prior to the date of the zoning change."* The application and affidavit lacked an affirmative statement from the applicant that the structure lawfully existed prior to the 2005 code change.

17. There is a lack of evidence supporting that the basement predated the 2005 code change that caused the nonconformance. Instead, the evidence supports the basement existing only after the code change.

NOT AFFIRMED (DENIED)

The issuance of this notice is an administrative decision and is appealable within fifteen (15) days from the date of this notice to the Fairbanks North Star Borough Planning Commission. An appeal application may be filed with the Community Planning Department office.