

TO: FNSB Community Planning/Platting  
SUBJECT: Appeal Application/Preliminary File RP-028-13/SD 010-13 Elbasan Acres  
DATE: February 6, 2013

Notice of Appeal under Title 17.80.020 A.

1. Names and addresses of the appellant(s):

**Jeanne Olson, 1890 Hollowell Road, North Pole, AK 99705**  
<corvi@mosquitonet.com>

2. Platting serial case file number or other identification of the matter from which the appeal is taken:

**RP 028-13 / SD 010-13 Elbasan Acres**

3. Date and identity of the specific action or decision from which the appeal is taken:

**Date of Platting Board Approval January 30, 2013**

4. Specific grounds or reasons for the appeal, with reference to all title provisions upon which the appellant relies.

**Specific grounds or reasons to appeal:**

1. Input from the Brock Road Working Group, including the approved Master Plan, was not considered during in-house and interagency reviews, nor by the engineering firm involved in the preliminary plot plan. Moreover, there was no mention of this Working Group or Master Plan to the Land Management Advisory Commission during presentations and discussions of this proposal. Disregarding citizen input in planning, fails to “encourage” that participation as intended by the Comprehensive Plan. Local knowledge is a valuable asset to augment professional planners and surveyors and should not be disregarded. (Land Nomination Program Policy, 17 March 2003; FNSB Title 25.10.010; FNSB Comprehensive Plan pg. 40, Goal 4, Strategy 9, Action A; AS 29.40.030).
2. Inaccurate description of customary trail use, resulting in a proposal containing insufficient planning of trail re-route, and potential trail conflicts with private property. (See Item #1).
3. Proposed school site selection is a poor choice due to long distance from any public transportation, inadequate shoulders along Repp Road for safe movement of pedestrians and bicyclists, documented unhealthy air quality, and obstacles to develop large volume water and septic systems for the school (See Item #1).
4. Air Quality (historical, current and future) was not considered, despite FNSB maps showing unhealthy levels of fine particulates (PM2.5) pollution specific to the area. Platting Board approval of this replat/subdivision jeopardizes the health, safety, and general welfare of

the people of the Borough (FNSB Title 17.10.010.A.5; FNSB Title 17.30.030.E.1, E.2; AS 29.40).

5. Impacts of private property, including unsold real estate in North Pole, were not considered. Flooding the market with an already saturated and uncertain future market would create additional hardship on the private sector. In fact, Kristen Machacek, Land Officer in FNSB Land Management Dept, stated at the 31 October 2012 Land Management Advisory Commission that this is “not a great time for land development.” (LMAC audio file 10-31-12-1018.mp3). The Platting Board approved this preliminary plan despite guidelines in the Comprehensive Plan for “minimum impact and disruption of individual private property rights.” (FNSB Comprehensive Plan p. 10, Goal 1, Strategy 2).

6. The complete soils report was not provided to the Platting Board in their Full Agenda Packet, thereby preventing a thorough awareness and appreciation of the land analysis. Moreover, the Brock Road Working Group had knowledge of this area being used as military land during WWII, with the presence of partially-buried and rusted 55 gallon drums still visible in the vegetation.

7. There was inadequate public notice provided by the Borough throughout the planning process.

a. A feasibility study and Master Plan was completed in 2011 by the Borough’s consultant, and presented at the Land Management Department Open House, November 14, 2011. What happened to the Brock Road Master Plan? Why was it renamed to Elsbarn Acres? Why weren’t the citizens involved in the original Master Plan notified and asked to be involved? Why was the open open house held closer to the community near the proposed development? [*Corrected 2/7/2013: Why wasn’t the open house held closer to the community near the proposed development?*]

b. This plan involves a very large parcel affecting many citizens, not just adjoining property owners. It also involves creation of a school. While the Borough met the technical and legal requirements for notification, there was a lack of good faith in notification.

8. The Brock Road Master Plan created by the Brock Road Working Group was never updated after it was created. The citizens in that group were informed in 2001 that there was no money available to develop the parcel and that the plan would be “filed away.” Three citizens of that group (Curt Fortenbery, Karen Gordon and Jeanne Olson) were never contacted again about any changes. (FNSB Title 25.10.010).

9. The staff report to the Platting Board contained several inaccurate and misleading statements with no time for rebuttal allowed. At this time, I do not have access to the audio of the meeting or of the plan’s file, so I can only state from memory and personal notes of the meeting. The staff report implied that the local citizens were not involved in the care of this land prior to early 2000 timeframe, and that arson-caused fires were common. The Platting Board was perhaps led to believe that this vacant land was [*little*] more than an attractive nuisance. I have personal experience and knowledge to dispute this.

10. There was confusion of my testimony by at least some of the Platting Board members. At least twice, it was mentioned that they had received a letter that I had submitted. To my knowledge, I did not submit a letter, just copies of documents from a personal file of the original Brock Road Working Group. There was a letter submitted for public record by Karen Gordon who was also part of the Working Group. Then, Mr. Pitney asked a citizen if there was anyone present who was a member of this Group (after I had testified that I was part of that group!). I stood up, and raised my hand, but wasn't allowed to testify again.

11. The decision by the Platting Board members may have been based upon not just inaccuracies, but upon personal bias. One member stated during the Member Comment section that they "wouldn't want to live there." Also, the accusation that the basis of our testimony was NIMBY (not in my back yard) is also untrue. Of the people who testified against this preliminary plat, several were not from the neighborhood.

At the time of this submission of appeal, I am still waiting for access to the Land Management file and the audio of the Platting Board meeting on 30 January 2013. I submitted a public records request 3 days ago, in order to more accurately determine if there was a basis for appeal, and to ascertain the facts. So, the above grounds and reasons for appeal are as accurate as possible and to the best of my knowledge.

## **Appellant Citations to Support Appeal**

### **17.10.010 Purpose.**

A. The purpose of this title is to do the following:

1. Promote and provide for adequate and efficient street and road systems;
2. Prevent congestion on streets and promote traffic safety;
3. Provide for adequate utilities and public improvements;
4. Ensure the accurate survey and proper preparation of plats to facilitate the documentation of land ownership;
5. Protect and improve the health, safety, and general welfare of the people of the borough.

### **17.30.030 Action on major plat applications.**

The procedure for major plat approval of a proposed subdivision is as follows:

A. Application requests must be submitted at least 45 calendar days before the meeting of the platting board at which the proposed subdivision will be considered.

B. Within 25 calendar days after the submittal deadline, the platting officer shall determine whether an application meets the requirements of FNSBC [17.30.020](#) and do one of the following:

1. If the application is complete, the platting officer shall accept the application for review and action by the platting board;
2. If the application is incomplete, return it to the applicant with a written list of deficiencies to be satisfied for acceptance.

C. After acceptance of the application and at least 14 calendar days prior to the time set for the platting board review and action, the platting officer will:

1. Prepare a staff report that includes a recommendation for approval or denial of the proposed subdivision;
2. Send notice of the proposed subdivision to adjoining property owners.
  - a. Individuals may respond in writing prior to the platting board meeting.
  - b. Verbal testimony may be given at the platting board meeting.
3. No revisions to the application will be considered which are subsequent to the preparation of the staff report and notice of the proposal to adjoining property owners. Any such revisions will be treated as a new application and reviewed at the next regularly scheduled meeting of the platting board.
4. All plans, data, and other supporting material shall be available for public inspection at the department of community planning at least 14 calendar days prior to the time set for platting board review.
  - D. Notice of the application shall be published in a newspaper of general circulation not less than five calendar days prior to consideration by the platting board.
  - E. An accepted application shall be placed on the agenda of the next regularly scheduled platting board meeting.
    1. The board shall grant preliminary approval of the major subdivision upon determining that it meets the requirements and purpose of this title.
    2. The platting board may impose such conditions as it deems necessary to ensure compliance with the requirements and purpose of this title.
    3. The board shall adopt specific findings of fact and reasons for its action if any of the following occurs:
      - a. The board denies the application;
      - b. The board imposes conditions opposed by the applicant;
      - c. The board grants approval over the objection of any person or agency.
  - F. Anyone who objects to the board's decision may appeal the decision by submitting written notice of appeal as provided in Chapter [17.80](#) FNSBC.
  - G. Upon approval of a preliminary plat by the platting board under this section, the applicant shall have 24 months in which to satisfy all conditions of platting board approval and submit an application for final approval.
    1. The platting board may provide for the later submittal of one or more phases or segments of the subdivision.
    2. Deadlines for submitting the last phase or segment shall be set by the platting board at the initial preliminary subdivision hearing. (Ord. 2007-77 § 2, 2008; Ord. 2005-10 § 2, 2005)

**1.02.030 Mandatory areawide powers.**

- A. The borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14. Fort Wainwright and Eielson Air Force Base are included in the borough school district because of contracts with the State Department of Education.
- B. The borough shall assess and collect property, sales, and use taxes that are levied in its boundaries, subject to AS 29.45.
- C. The borough shall provide for planning, platting, and land use regulation, in accordance with AS 29.40 on an areawide basis. (Ord. 86-071 § 2, 1986)

**Sec. 29.40.040. Land use regulation.**

- (a) In accordance with a comprehensive plan adopted under [AS 29.40.030](#) and in order to implement the plan, the assembly by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,
- (1) zoning regulations restricting the use of land and improvements by geographic districts;
  - (2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;
  - (3) measures to further the goals and objectives of the comprehensive plan.
- (b) A variance from a land use regulation adopted under this section may not be granted if
- (1) special conditions that require the variance are caused by the person seeking the variance;
  - (2) the variance will permit a land use in a district in which that use is prohibited; or
  - (3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

**Sec. 29.40.030. Comprehensive plan.**

- (a) The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough, and may include, but is not limited to, the following:
- (1) statements of policies, goals, and standards;
  - (2) a land use plan;
  - (3) a community facilities plan;
  - (4) a transportation plan; and
  - (5) recommendations for implementation of the comprehensive plan.
- (b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the comprehensive plan and update the plan as necessary.

**Fairbanks North Star Borough Regional Comprehensive Plan  
Adopted by the FNSB Borough Assembly September 13, 2005 (Ordinance No. 2005-56)**

**Comprehensive Plan Map – Urban**

**25.10.010 Management plans.**

- A. The mayor shall prepare for each parcel of borough land a written management plan that:
1. Identifies whether the parcel may pose a danger to public health, safety, or welfare because of a geophysical hazard;
  2. Identifies the uses, including public uses, for which the parcel is suited;
  3. Evaluates the economics of the identified uses; and
  4. Makes recommendations regarding the retention, management, development and sale of the parcel.
- B. The mayor shall publish notice of and hold at least one public meeting to hear public comment on the management plans.
- C. At least once every five years the mayor shall review and update the management plans that are then in effect. (Ord. 86-056 § 2, 1986)

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APPROVED

*Jim Sullivan 3/20/03*  
LAND NOMINATION PROGRAM POLICY

I. GENERAL

The Land Nomination Program is the Borough's formalized process to gather public input on the disposition of Borough-owned lands. Nominations are solicited, reviewed by the public, and approved by the Mayor. Approved nominations constitute the management and development plan for Borough-owned lands.

II. PURPOSE

The primary purpose of the program is to identify Borough-owned lands for transfer into private ownership. Nominations may also be made to retain land for public uses or facilities.

III. RESPONSIBILITY

- A. The Land Management Director shall ensure that his department staff follows the procedure set forth in this policy.
- B. Land Management shall maintain this policy.

IV. POLICY

The Land Nomination Program is accomplished through the implementation of the following policies:

- A. Any resident of the Borough, or any other legal entity may make nominations. Members of the Borough administration staff may also make nominations.
- B. All Borough-owned lands not already sold, designated, or in a planning process are open for nomination.
- C. All nominations presented to the Department will be considered for initial staff review.
- D. The review of each nomination will be guided by the constraints of sound economic and land management policies. Nominations that do not meet this standard, or nominations that duplicate the same area and purpose that has been included in an approved nomination report within the previous five years will not be forwarded for public review.
- E. Each nomination must complete the public review process in order to be considered for sale or retention.
- F. Any parcel nominated for sale directly to the nominator will be included in the nomination process unless the parcel meets the criteria for direct sale by Borough ordinance, Title 25.15.090.

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- G. Nominations may be made at any time during the year, but if not made during the normally scheduled nomination period, will not be considered until the next review cycle. Resource sales (timber, gravel, etc.) may be allowed to follow a customized public review schedule.
- H. Nominations made specifically to protect trails will be referred to the Borough Trails Commission for consideration in the Borough Trails Plan.
- I. The nomination cycle should be long enough to encourage adequate public participation, but not be so long as to unnecessarily delay development and sale. The current nominations cycle, which begins in March of each year and concludes with a report approved by the Mayor the following November, is adequate to fund, develop, and begin the sale program by the spring the following year.
- J. Department staff shall seek input by meeting with Borough Planning Commission, Borough Land Management Advisory Commission (LMAC), and Borough Assembly Committee of the Whole prior to submitting a completed report of recommendations to the Mayor. Other Borough Commissions will receive draft reports and will be invited to comment.
  - 1. Public participation drives the nominations process.
  - 2. Public nominations reflect the desire of the public and are a form of market indication.
  - 3. Public participation offers people a chance to influence management decisions on Borough-owned lands.
  - 4. People who live in the "neighborhood" of the nominated parcel represent a knowledge base not otherwise available to the Department staff.
  - 5. Public comments often result in a development that is more compatible with surrounding properties.
  - 6. Ensuring public participation in the process helps to reduce the chance that a project may face stiff opposition when considered by the Borough Assembly.
  - 7. The nomination of a parcel represents the starting point for development consideration. Development configurations submitted may be adjusted by Department staff to make prudent economic and management sense.
- K. The numerical superiority of public comments representing one position on either a sale or retention proposal does not necessarily provide a basis for a sound management decision.
- L. Working groups may be encouraged when Department staff concludes a proposal presents complex development issues, such as environment, market demand, impact on neighboring properties, or infrastructure, and/or when there are a significant number of public comments or attendance at public meetings. Working groups should continue until Department staff concludes all major issues have a satisfactory response, or that no further progress can be made on the issues.
- M. The neighborhood knowledge and comments shall be considered when evaluating a parcel.

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- N. Nomination recommendations to the administration must ultimately be based upon what the Department staff determines to be in the best interest of the Borough and all its residents.
- O. An interested person may file with the Department a request that notice of any nomination be provided to them. Mailing lists of interested parties shall be maintained for notification of the nominations process.

V. PROCEDURE

- A. None.

VI. SUPPLEMENTAL INFORMATION

A. References –

1. FNSB C.O. 25.15.090 Direct sale.
2. FNSB C.O. 25.20.010 - .040 Determining which Borough lands may be sold or retained.

B. Definitions – None.

C. Attachments – None.

D. Revision History

Supersedes Policy No.	Effective Dates
None.	None.