

MEMORANDUM

State of Alaska

#0.4

CONFIDENTIAL

ATTORNEY/CLIENT

COMMUNICATION

TO: Bill McMullen
DOT & PF
Northern District

DATE: December 15, 1986

FILE NO: 02-0568

FROM: Ronald W. Lorensen
Acting Attorney General

SUBJECT: Fairbanks-Nenana Road

By: Linda L. Walton
Assistant Attorney General

Stamp: DIRECTOR, TECHNICAL SERVICE, DESIGN, CONSTRUCTION, PERMITS, CONTROL, M & O, RETURN

Stamp: DEPT. COMMISSION, ADMIN. SERV., PLANNING

Handwritten: 12-16-86, TX

As we discussed I have been asked by Juneau to write an Attorney General opinion in response to Mike Davis' request to Ron Lorensen regarding the width of the Fairbanks-Nenana Road.

I have reviewed the Borough's position in the December 10, 1986 "Staff Report Platting Board" memo, regarding merger of the dominant and servient estates. If DOT & PF and DNR are considered legally the same "person", or if the State of Alaska in general rather than the DOT & PF held title to the PLO right of way on the state's behalf, the Borough's position would be correct.

Although the Commerce Deed itself is to the "State of Alaska," rather than a specific department, under Alaska law, DNR and DOT & PF are each recognized as having the power to hold title to land. As argument could be made that DOT & PF as administrator of all roads received title to the PLO right of way from the Department of Commerce and that therefore DNR had no power to convey DOT & PF's interest. (The patent issued by DNR has the legal effect of a quitclaim deed, rather than a warranty of title.) However this argument would, I believe, be viewed by a court with some skepticism, given the fact that most members of the public would probably assume that a deed from the state conveyed all the state's interest.

The State of Alaska has always taken the position that the Commerce deed transferred to the state, all the federal government's interest in the road. (See McGee Attorney General Opinion dated May 20, 1985.) BLM has over the years disputed this analysis arguing that the Department of Commerce held only an easement for the road use, and therefore could not convey a broader interest, i.e. the fee simple or the right to permit encroachments which BLM claims are rights it held as the primary custodian of federal lands. If in this case the state were to adapt an argument similar to BLM's argument, i.e. that one department cannot convey another department's interest, as an

FILE	RETURN TO:	RELOCATIONS	NEGOTIATIONS	APPRAISALS	PLANS	TITLE	ENGINEERING	DRY AUDIT	CHIEF R/W AGENT

RECEIVED N/D
DEC 17 1986
NORTHERN DISTRICT

official Attorney General opinion, that could be used against the state later by the BLM.

I have not done sufficient research to tell you exactly which position I would take in a formal Attorney General opinion, however there would be strong policy reasons for concluding that DNR did give up all the state's rights to the 100 feet in question, when it patented the property to the Borough. It is my recommendation that unless this particular 100 feet is of great practical importance to DOT & PF, the state avoid this issue by DOT & PF's vacation of the 100 feet in question. However if you would prefer that more legal research be done before DOT & PF makes that decision, or that the matter be decided by a formal Attorney General opinion or ultimately by the court's if the Attorney General opinion is that DOT & PF still owns the 300 foot right of way, I am prepared to do more research. (Given our current understaffing other projects may be delayed if I give this matter priority, as instructed by Juneau.) Please let me know DOT & PF's decision as soon as possible.

LLW/dat

we did not receive fee simple rights we received easement one which we retain management (via Statute) until we no longer need the easement for roadway purposes. BLM has somewhat negated their own argument by requesting a permit to place signs on the easement right of way.

DNR accidentally
linguished 100' of PLO
o.w due to errors in
mapping the PLO's
then this makes a stronger
case for the mapping of
or ROW whenever there is
vehicle to fund it. i.e.
State Hwy, Circle Hot Springs.

A3

Strong policy reason for the
conclusion that DNR did not
give up all the State's rights
there could be a significant
precedent set at the other
conclusion; there are many
State subdivisions through which
PLO rights of way exist. It would
not be in DOT's best interest
to allow DNR, via the
dominant / servient easement
merger issue, to have the
ability to set our ROW width
which, in essence is what
happened @ Ester Hts. And if
the merger did occur by
virtue of both DOT + DNR being
the State - a vacation is not
the appropriate transfer

vehicle - DOT's interest in
the outer 100' (50' @ side of
C) was already taken
care of. Perhaps a little of
resection? would be more
appropriate. I'd recommend
more research to see ~~what~~
the long term ramifications
could be. DOT should protect its
interests

*John -
Please review
and copy to John
Athens@ALG for
review of language
THX
A*

DPOs sent
Opposed:
Favor:
Undeliverable:

STAFF REPORT
PLATTING BOARD
RP 040-87

Location: Old Wood Road, Old Nenana Hwy
 Legal Description: Lots 4A and B, Ester Heights (SW¼, Section 7, T. 1 S., R. 2 W., F.M.)
 Specific Request: To resubdivide two lots totaling 2.7 acres into two lots of 1.26 and 1.46 acres

Applicant: Bonnie F. Friedman
 P.O. Box 81110
 Fairbanks, AK 99708

Owner: Same

Surveyor: Stutzmann Engineering Assoc., INC.
 P.O. Box 1429
 Fairbanks, AK 99707

<input type="checkbox"/>	ENGINEER/AGENT
<input checked="" type="checkbox"/>	DESIGN/PLAT
<input checked="" type="checkbox"/>	ENGINEERING
<input type="checkbox"/>	TITLE
<input type="checkbox"/>	PLANS
<input type="checkbox"/>	MATERIALS
<input type="checkbox"/>	APPRAISALS
<input type="checkbox"/>	NEGOTIATIONS
<input type="checkbox"/>	RELOCATION/PROCP. MGMT.
<input type="checkbox"/>	RETURN TO:
<input type="checkbox"/>	FILE

Adjacent Subdivisions: Ester Estates
 Adjoining Parcel Sizes: Range from 2.3 to 40 acres

Existing Land Use: 2 SFR and shed on proposed north lot
 Proposed south lot vacant

Current Zoning: Unrestricted Use - UU

Comprehensive Plan: Outskirt Area - primarily open space, mining, and residential uses

Soils: Predominantly Fairbanks silt loam

Flood Zone: Zone C

Road Service Area: None

Analysis: This replat will move the lot line common to Lots 4A and 4B (created by RP 050-86) by adding 7063 sq ft from 4B to 4A to place the hexagonal house within the new Lot 4-A-1.

GVEA requests specific easements and review of the final plat. MUS-T has no objection. DEC has no objection. DOT/PF has no objection but comments that access onto the Old Nenana Highway required a driveway permit, and right-of-way for Old Nenana Highway should be shown as 150' either side of centerline.

Staff research shows a PLO 601 withdrawal for the Old Nenana Highway (aka Fairbanks-Nenana Highway) was established in September 1956 by Amendment #2 to Secretarial Order #2665. PLO 1613 modified that right-of-way reservation whereby adjacent owners of land could acquire those reserved lands subject to certain specified highway easements.

DEC 9 1988
 NORTHERN REGION DOT/PF

PL0 1613 designated the Fairbanks-Nenana Highway as a "through road" with a 150' right-of-way both sides of centerline. When the State of Alaska platted the Ester Heights Subdivision in 1966, only 200' of right-of-way (100' both sides of centerline) was dedicated for the Fairbanks-Nenana Highway. An examination of the preliminary file for that subdivision showed no requirement by the Dept of Highways for more right-of-way.

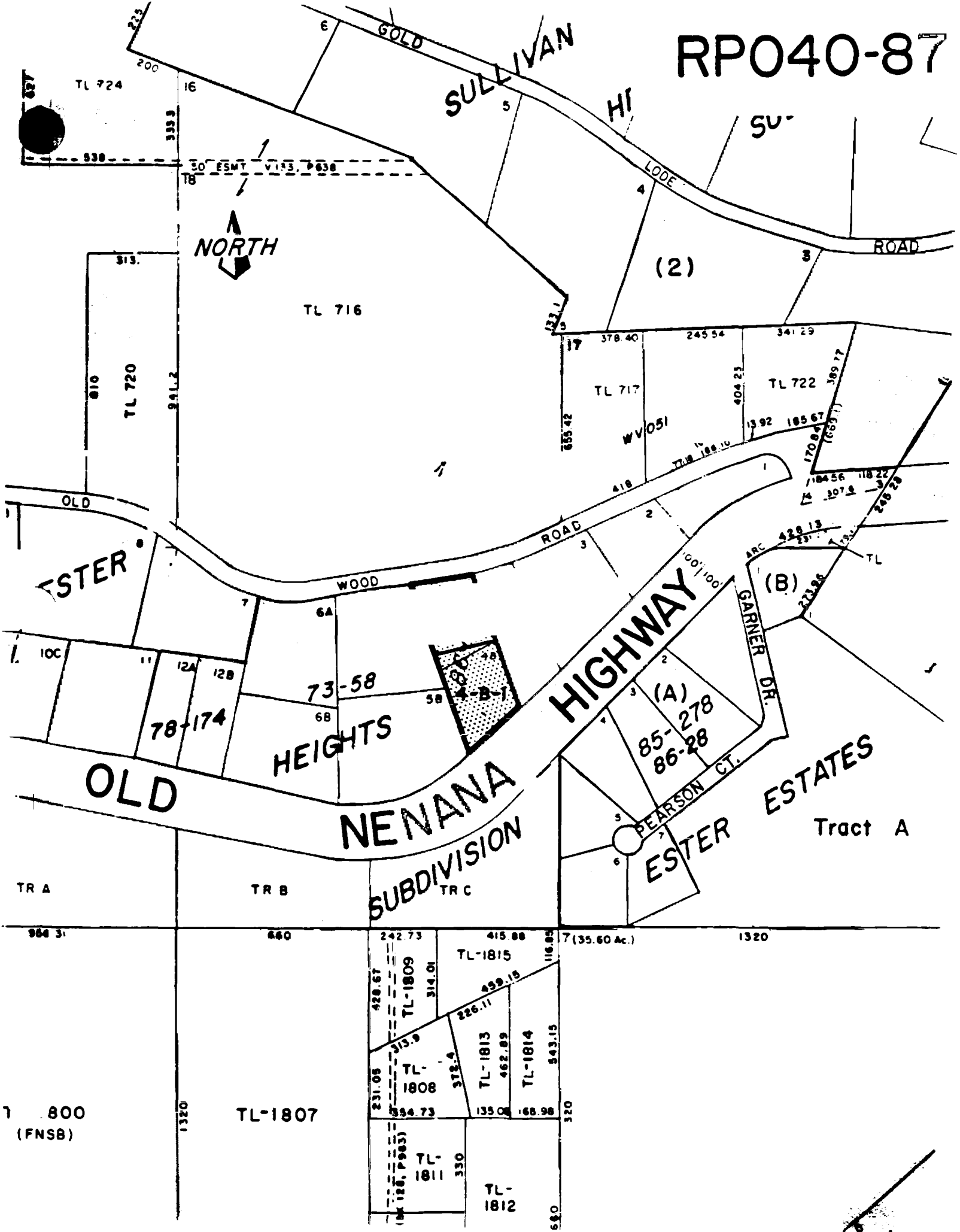
When the FNSB acquired the Ester Heights Subdivision property from the State in July 1969, the patent was subject to "platted easements within Ester Heights Alaska Subdivision, located in Section seven (7), and the Fairbanks-Nenana Highway right-of-way 200 feet in width." The only other exception made was for a 100' right-of-way for an electric transmission line.

Staff's position is that the appropriate time for the reservation of the right-of-way for the Old Nenana Highway was on the plat of Ester Heights Subdivision when the State had patent and designated the right-of-way. DOT asserts that there is more right-of-way than is indicated on the plat and that the lots are still encumbered by the PLO easement. This position is not supported by a legal tenet called "merger of dominant and servient estates." This principle states that, "When the right to an easement and fee title to the servient tenement become vested in the same person, the easement is extinguished, since all rights are merged in the title in fee. Thus, as a general rule, an easement is extinguished when the ownership of the dominant and servient tenements becomes vested in the same person."

Recommendation: Staff recommends preliminary approval with the following conditions:

- 1 DEC stamp the final plat.
2. GVEA review and comment on the final plat.

RP040-87



OLD WOOD ROAD

N 81° 15' 57" E

207.58'

ALUMINUM MONUMENT WITH MAGNETS ("BERNTSEN"), RECOVERED (TYPICAL)

15' PUBLIC UTILITIES EASEMENTS

5/8" REBAR WITH ALUMINUM SURVEY CAP, RECOVERED

LOT 4-A-1

146 ac. (proposed)

EASTERLY 1/2 LOT 4

BASIS OF BEARINGS

310.00' N 20° 36' 05" W

250.00'

S 20° 11' 58" E

is, anchors, and
monuments it contains
and bear, with
vicinity of the
for reference to

LOT 5-A

FORMER LOT LINE
N 64° 29' 01" E
202.14'

5/8" REBAR WITH ALUMINUM SURVEY CAP, SET THIS SURVEY (TYPICAL)

219' (PROPOSED) NEW LOT LINE

LOT 4-B-1

126 ac. (proposed)

521.94'
271.94'

LOT 5-B

70.2'

657.37'

277.37'

220.00'

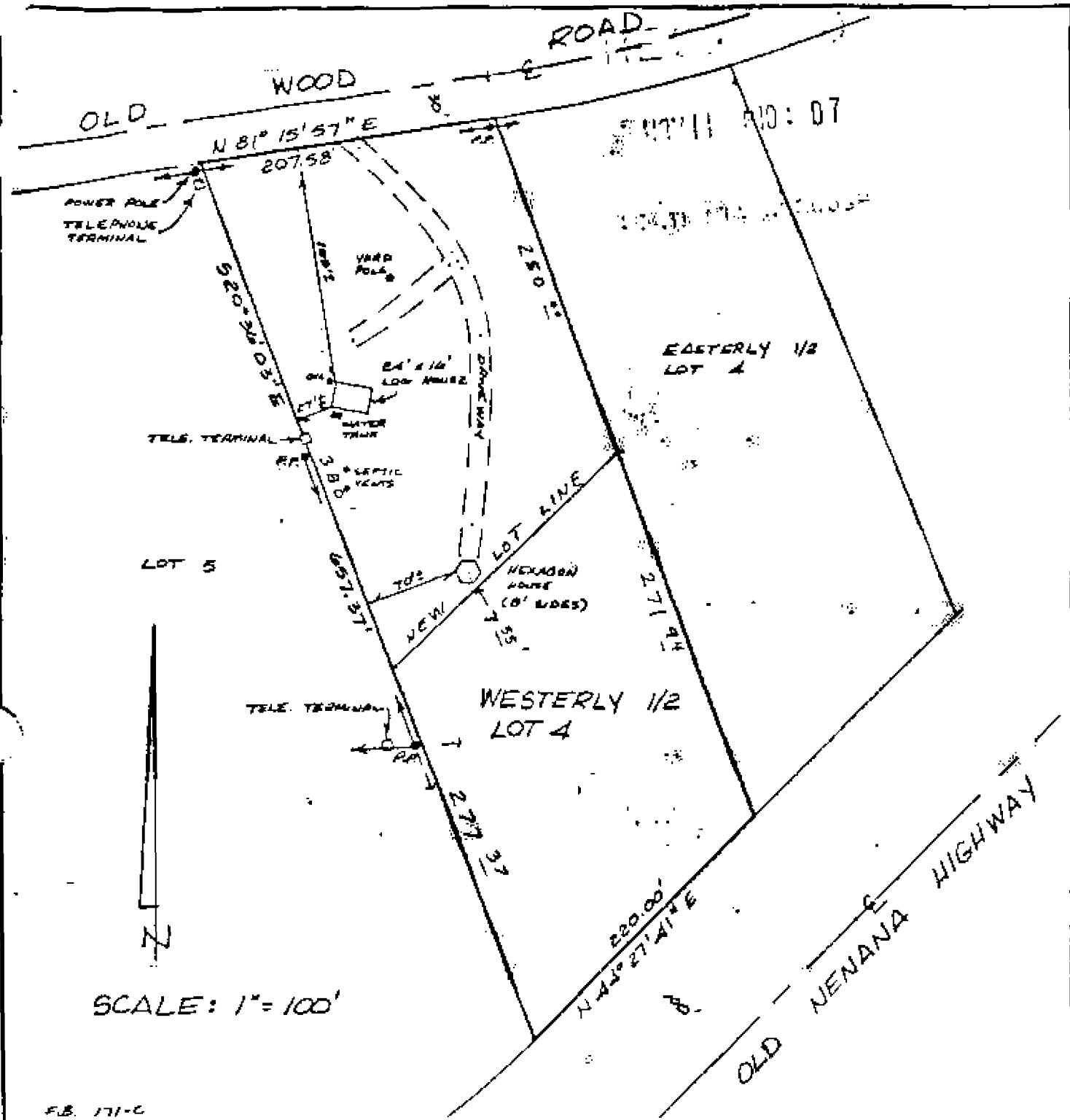
N 44° 27' 41" E

HIGHWAY

OLD

SCALE: 1" = 100' APPROX

is and is
subject to



FB. 171-C

I, NEIL K. EKLUND, a Registered Land Surveyor, hereby certify that I am familiar with the above described property and that the improvements located thereon lie wholly within the property lines and do not overlap onto the property adjacent thereto and that no improvements on the adjacent property encroach onto the property in question and that there are no roadways, transmission lines or other visible easements except as indicated hereon.

Date: 10/25/85

Neil K. Eklund

FOR TITLE INSURANCE PURPOSES ONLY

This As-Built survey was prepared from an actual field inspection.

