

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities

TO: Leone Hatch
Assistant Attorney General
Northern Region

DATE: February 13, 1998

FILE NO:

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FROM: John F. Bennett, PLS
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SUBJECT: Fairbanks North Star
Borough – Preliminary
Replat Approval Status

Confidential - Attorney/Client Communication

Attached is a spreadsheet listing all of the projects that have been submitted to the FNSB for preliminary replat approval. The sheet lists project names, submittal dates, preliminary replat approval dates, recording dates, plat numbers and notes. They are listed in two groups that I refer to as the pre-Badger road projects and the post-Badger road projects. The pre-Badger list consists of 15 projects and the post-Badger list consists of 16 projects for a total of 31 projects.

Pre-Badger Projects

Between 1988 and 1990, DOT&PF and FNSB attempted to negotiate how the replat process was to be implemented on highway projects. By the time preliminary replat approval was granted for the pre-Badger projects, most were either well into the acquisition phase or substantially constructed. Our position for this group of projects was that the preliminary replat approval would only be a formality. That is, other than obtaining preliminary replat approval, we did not intend to comply with the additional requirements set forth by FNSB. To document this position, I have attached several memos and letters regarding the platting issue.

1. 1/29/88 letter & 1/25/88 memo from Kathy Talbert (Maitlen) discussing a 1/22/88 meeting with Kathy, Herb Mann, and myself. The notes indicate an agreement that the current FNSB platting regulations could not be practically applied to DOT&PF projects. Most important was paragraph 4 that states "*It was verbally agreed that for projects that are already out of the Location phase, a status quo policy would remain.*" Initially, we did not intend to even apply for replat approval on these projects. Eventually, we decided to submit the projects to the platting board to get the dialogue going that would help us establish a workable process.
2. 5/16/88 letter to FNSB submitting 9 of the pre-Badger projects. The letter clearly states that although we requested preliminary replat approval, we would continue process the projects using existing DOT&PF policy guidelines and standards until new FNSB right of way platting regulations were implemented.
3. 3/10/89 letter to FNSB providing additional information on the projects previously submitted in the 5/16/88 letter.
4. 6/1/89 letter to FNSB submitting 9 additional projects including Badger Road.

5. 3/21/90 memo to Steve Sisk, D&C Director, relaying the impasse between DOT&PF and FNSB and recommending higher level action.
6. 3/28/90 minutes of FNSB Platting Board meeting considering the Badger Holmes Connector project and proposed minimum guidelines for DOT projects.
7. 4/5/90 letter, Northern Region Director to FNSB Mayor. This letter explained the problem of applying FNSB platting regulations to highway projects and the potential impact on our future construction schedules. Attached to the letter was a proposal for revised platting regulations that would facilitate the processing of highway projects.
8. 4/11/90 resolution of the FNSB Platting Board setting forth the minimum standards by which DOT&PF projects would be evaluated.

The initial 15 pre-Badger projects all received unconditional or conditional preliminary replat approval. However, instead of complying with the FNSB conditions, the projects were performed according past DOT&PF procedures. These procedures included setting monuments only at centerline and recording the right of way plans as opposed to a separate final plat or record of survey.

Post-Badger Projects

Badger Road was intended to be the model project. This was to set the standard for future acquisition projects in the FNSB. Preliminary replat approval would be obtained based upon DOT&PF right of way plans. A final plat would be prepared in the form of a Record of Survey. This was prepared instead of the typical final subdivision plat as envisioned by FNSB Title 17 because the subdivision of the lots had effectively occurred by the execution of the deed between DOT&PF and the property owner. A Record of Survey essentially depicts boundary surveys of properties already defined in the public record. The ROS would show all recovered monuments and all monuments set as a part of the project. The ROS would also reference the recording data for the parcels acquired. A Record of Survey cannot be used to subdivide property. Therefore there is no provision to require local government review or approval. We initially asked FNSB if they wanted an approval certificate of their design placed on the ROS. They did and one was placed on the draft Record of Survey for Badger Road. As this was the first ROS reviewed by FNSB, they asked a private surveyor to review and comment on the submittal. Although I have not seen a written review, I was told by Herb Mann that the product was determined to be acceptable.

While this process was taking place other projects were submitted and approved for replat approval. Badger Road consisted of almost 200 parcels. In 1992 we submitted the University Avenue/Rewak Street Project for preliminary replat approval. This project had only 1 partial acquisition requiring replatting. The ROS was submitted and approved by the FNSB making it the first project under this format to be completed.

It turns out that it was also the only project completed with FNSB approval. Although the Badger road plat met the FNSB review requirements, there was also a multitude of zoning variance problems. The variance issue is really a separate subject but they are tied to the replatting by virtue of the conditions placed on the preliminary replat approval. The FNSB

platting officer will not approve a replat (ROS) until all of the zoning variance issues have been resolved. (See attached 1/18/95 letter, FNSB to DOT&PF)

This unfortunately, led to a breakdown in communication with the FNSB. With replat approval having been granted for Badger Road in 1990 and a large number of new property corners set, I felt it was a disservice to the public to further delay the recording of the ROS. Therefore, in June of 1997, the ROS was recorded without the FNSB certificate or approval.

Of the remaining projects in the 16 project post-Badger group, 8 projects were submitted for preliminary replat approval, and for reasons not completely known to us, were never placed on the Platting Board agenda. Of these, we received a letter on one project that platting action was not necessary, 2 were completed under the old DOT&PF format (recording ROW plans), 3 were monumented and recorded as an ROS, one was not built and one is in progress.

Of the 8 projects placed on the Platting Board agenda, 4 have been monumented and recorded as an ROS, and 3 projects are in the process of being constructed or scheduled for construction and the monumentation and ROS are in progress. The final project had ROW acquired but was never constructed. The nature of the properties acquired also would not have required any ROW monumentation, therefore a ROS separate from the ROW plans would not have provided any additional information.

When the Chena Hot Springs MP 0-7 ROS was completed, it was sent to FNSB for review and approval. As this did not have any outstanding variance issues we expected the FNSB to grant a formal approval. We also noted in the transmittal letter that if the FNSB did not respond in 90 days, we would proceed with the recording. No response was received and the ROS was recorded. Our current process for those projects that have received preliminary replat approval is to submit the final ROS to FNSB for review and approval with a 90 day limit. After that date passes, we will record the ROS.

We believe this pattern indicates the commitment of DOT&PF to accept and conform to the 1990 FNSB Platting Board Policy #90-2 with or without the participation of FNSB staff.

Finally, I am attaching a couple of items that you might find of interest. First is the 5/21/90 letter from FNSB approving the Geist University to Peger project. It includes a letter from Lance Parrish objecting to the preliminary replat approval on behalf of his client. He calls into question the Platting Board's handling of highway projects.

I am also attaching the February 26, 1992 Platting Board Minutes for the Parks Chena Ridge Interchange project. The Board's and my testimony is fairly representative of the circus we have been dealing with over the years.