

Introduced by:	Martin
Date:	12/11/01
Hearings:	01/08/02, 02/05/02, 02/19/02, 03/12/02, 04/16/02, 05/07/02 & 08/06/02
Action:	Postponed until 05/07/02
Action:	Postponed until 08/06/02
Action:	Enacted
Date:	08/06/02
Vote:	5 Yes, 4 No
Action:	Reconsideration given by Merkes
Action:	Motion to Reconsider Passed
Vote:	7 Yes, 0 No, 2 Absent
Action:	Postponed until 09/03/02
Action:	Enacted as Amended
Date:	09/03/02
Vote:	5 Yes, 4 No
Action:	Vetoed
Date:	09/11/02

**KENAI PENINSULA BOROUGH  
ORDINANCE 2001-47 (MARTIN) SUBSTITUTE**

**AN ORDINANCE AMENDING KPB TITLE 20 "SUBDIVISIONS" PROVIDING FOR  
THE CONSTRUCTION OF ROADS TO BOROUGH MAINTENANCE STANDARDS  
PRIOR TO FINAL PLAT APPROVAL**

- WHEREAS,** there are numerous dedicated rights-of-way that are poorly constructed within the Kenai Peninsula Borough Road Service Area ("RSA"); and
- WHEREAS,** residents of the RSA turn to the borough to resolve issues of poor road construction; and
- WHEREAS,** borough personnel and resources are expended in resolving road construction issues because roads are not constructed before final plat approval of the dedication; and
- WHEREAS,** requiring construction of roads before final plat approval would best serve the growing number of residents and homebuyers within the borough;
- WHEREAS,** other second class boroughs within Alaska require construction of roads before final plat approval; and
- WHEREAS,** subdivisions in near proximity to borough- or state-maintained roads are typically purchased by people who expect to receive road maintenance; and
- WHEREAS,** roads initially constructed to borough standards decrease access and safety problems for residents and taxpayers of the RSA; and

**WHEREAS,** roads constructed to borough standards will provide an important service in RSA maintenance to borough residents; and

**WHEREAS,** it is common practice to require certificates or signatures from other departments or agencies as a condition of final plat approval; and

**WHEREAS,** the RSA board certifies roads for maintenance and has continuing responsibility for improvement and maintenance of roads certified for maintenance; and

**WHEREAS,** goal 4.1 of the comprehensive plan is to continue maintenance of borough roads, and goal 4.2 is to establish procedures to upgrade substandard roads;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** KPB Chapter 14.06 is amended by adding a new section as follows:

**14.06.135. Waiver of road construction.**

A. Where the road construction requirements of KPB 20.16.065 otherwise apply to a subdivision road those requirements may be waived by the RSA board for one or more of the roads upon making findings regarding the following factors:

1. Substandard access to the subdivision due to topography, location, or width of right-of-way, current or projected traffic volume or other unique conditions or surrounding development.
2. The lack of road construction will not have a deleterious affect on access.
3. The applicant did not cause the conditions on which the waiver request is based.
4. The borough' s interest served by granting the waiver outweighs the interest in certifying the roads for maintenance.
5. Where the rights-of-way in the subdivision access other parcels beyond the subdivision waivers are disfavored.
6. Economic inconvenience or hardship for the applicant is not a valid reason for a waiver under this section.

B. The application for waiver shall be made on a form provided by the RSA. There shall be a written staff report regarding waiver applications.

C. Board Action. The burden is on the applicant to meet the above factors and demonstrate to the RSA board that granting the waiver of road construction will not undermine the objectives of KPB 20.16.065 and KPB 14.06. The board may deny, modify, or grant the requested waiver by board resolution.

**SECTION 2.** KPB Chapter 20.08 "Definitions" is amended by adding a new section as follows:

**20.08.065. Legal access.**

"Legal access" in this chapter means a contiguous section line easement, platted public right-of-way, or public access granted by recorded document from a road right-of-way maintained by the Kenai Peninsula Borough Road Service Area or State of Alaska DOTPF to a parcel.

"Unsubdivided remainder" means the portion of a parcel that has received preliminary plat approval but does not have recorded final plat approval.

**SECTION 3.** KPB 20.12.090 is hereby amended as follows:

**20.12.090. Approval--Scope--Expiration restriction.**

Approval of the preliminary plat shall not constitute approval of the final plat, but means only that the basic lot and street design is acceptable. The subdivider is on notice that it is his responsibility to provide all the information required in this ordinance and to prepare a correct final plat. [WHEN MORE THAN ONE YEAR TRANSPIRES BETWEEN PRELIMINARY PLAT APPROVAL AND DATE OF RECEIPT OF A FINAL PLAT, THE COMMISSION MAY REQUIRE THE SUBMISSION, AND ACTION ON, A NEW PRELIMINARY PLAT. THE APPROVAL OF A FINAL PLAT FOR A PORTION OF THE PRELIMINARY SHALL EXTEND THE PRELIMINARY APPROVAL FOR ONE YEAR EXCEPT THAT THE COMMISSION MAY REQUIRE A NEW PRELIMINARY PLAT WHEN THE ABUTTING ROAD SYSTEM CHANGES.] Final plats must be submitted to the planning department within two years of the date of preliminary plat approval or the preliminary plat approval is void. The planning commission may grant extensions to the time period for final plat approval if such extension is requested before the expiration of the original deadline for final plat approval. Extensions may be granted for one year periods. If an extension to the deadline for final plat approval is granted, the subdivider must comply with the borough laws in effect on the date the final plat is approved unless an exception is granted under KPB 14.06.130 or KPB 20.24 as appropriate.

**SECTION 4.** KPB Chapter 20.16 "Final Plat" is amended by adding a new section as follows:

**20.16.065. Road construction required within road service area.**

- A. Road construction required. The subdivider must provide a certificate from the Kenai Peninsula Borough Road Service Area Board that all roads within the road service area dedicated by the plat are constructed to the standards set forth in KPB 14.06:
1. where the outer boundaries of the subdivision are abutting or adjacent to a borough- or state-maintained road; or
  2. where borough or state maintenance terminates at a subdivided lot, parcel, or tract abutting the proposed subdivision, and the proposed subdivision includes at least five lots and is 330 feet or less from a borough -or state-maintained road.
  3. This section does not require construction of that segment of an internal subdivision road that is dedicated solely to provide access to parcels adjoining the proposed subdivision.
  4. This section does not require road construction where the subdivision creates only two lots from a parent parcel at least 40 acres in size and one of the lots created is no more than an acre or is no more than the minimum size necessary to support an on-site well and septic system.
- B. Access. Subdivision design shall provide connection to a state- or borough-maintained road where feasible and shall provide two access points where feasible. For subdivisions meeting the criteria of KPB 21.16.065(A)(2), the access to the subdivision must be constructed to KPB 14.06 standards if any of the subdivision boundaries are 330 feet or less from a borough- or state-maintained road. All access points within 330 feet of a borough- or state-maintained road must be constructed.
- C. Procedure. Subdividers shall make application for certification for maintenance with the road service area prior to final plat approval consistent with the provisions of

KPB 14.06 and any applicable road service area board resolutions. Roads receiving the road service area certificate referred to in KPB 20.16.065(A) shall be certified for maintenance contingent on final plat approval and dedication of the roads to the borough.

- D. Phased subdivisions. Roads need only be constructed for that phase of the subdivision submitted for final plat approval. Phases of subdivisions must be submitted in such order that the roads in the first phase receiving final plat approval are connected or most adjacent to the maintained access to the subdivision. Subdivision phases must be numbered consecutively in the order which they are submitted for final plat approval, beginning with "phase one."
- E. Double frontage lots. Where a plat dedicates double-frontage right-of-way for lots and one of the rights-of-way abuts the outer boundary of the subdivision only the internal subdivision road accessing the lot must be constructed.
- F. Legal access exemption.
1. Subdivisions without legal access are exempt from the requirement of KPB 20.16.065(A)(B).
  2. Subdivisions which require access via an Alaska Railroad Corporation corridor are not exempt from the provisions of KPB 20.16.065(A). Subdividers must obtain an Alaska Railroad Corporation crossing permit prior to final plat approval
- G. Remote Parcel Exemption. Proposed subdivisions are exempt from this section if there is no intersection with another borough- or state-maintained road within 7.5 miles before the termination of maintenance.
- H. Exceptions.
1. Any reduction in road construction standards must be granted by road service area board resolution pursuant to KPB 14.06.130. Any necessary exception must be granted before final plat approval.
  2. Exceptions to subdivision design shall be granted in accordance with KPB 20.24.
- I. Deferred improvement surety.
1. When the preliminary plat of a subdivision is approved subject to conditions requiring the construction of roads, the final plat may be recorded prior to the completion of the improvements if the applicant meets the following requirements:
    - a. On a form provided by the road service area, the applicant shall submit a design for the bonded improvements and an estimate of the cost of required road construction. The subdivision improvement cost estimate shall be certified by a civil engineer.
    - b. Upon acceptance of the cost estimate by the road service area board, the applicant shall submit to the road service area board a bond issued by a qualified corporate surety licensed to do business in Alaska guaranteeing payment to the borough of one hundred twenty percent of the certified subdivision improvement cost.
    - c. In the event the applicant fails to complete the subdivision improvements within one year after final plat approval or, if applicable, within such other deadline as may be specified in the platting authority's

approval of the plat, the borough shall redeem the surety for construction of required improvements.

2. Surety shall be returned by the road service area upon completion by the applicant and approval of required improvements.

J. Appeals. Appeals regarding waivers, exceptions or conditions placed on road construction may be taken to the Superior Court at Kenai, Third Judicial District, State of Alaska, pursuant to the Alaska Rules of Appellate Procedure.

**SECTION 5.** That KPB 20.20.240 is repealed.

**SECTION 6.** That this ordinance takes effect immediately upon its enactment. Plats which have received preliminary approval or an extension for final plat approval on the date of adoption of this ordinance are subject to the subdivision regulations in effect on the date preliminary plat approval or the extension was granted. Any further extensions for final plat approval are subject to the requirements of this ordinance.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS XRD DAY OF XXXXXXXXXXXX, 2002.**

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Timothy Navarre, Assembly President

ATTEST:

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Linda S. Murphy, Borough Clerk

