



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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JOHN J. WILLIAMS
BOROUGH MAYOR

M E M O R A N D U M

TO: Grace Merkes, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: John J. Williams, Borough Mayor

FROM:  Max J. Best, Planning Director

DATE: May 1, 2008

SUBJECT: Ordinance 2008-10, amending KPB Title 20 requiring documented legal access to subdivisions within the Kenai Peninsula Borough

The Planning Commission reviewed the subject ordinance during their regularly scheduled April 28, 2008 meeting.

A motion to recommend enactment of Ordinance 2008-10, an ordinance amending KPB Title 20 requiring documented legal access to subdivisions within the Kenai Peninsula Borough passed by majority consent. (Bryson, No; Carluccio, Absent; Collins, Yes; Foster, Yes; Gross, Yes; Isham, Yes; Johnson, No; Lockwood, Yes; Martin, Absent; Murphy, Yes; Petersen, No; Tauriainen, No)

Draft, unapproved minutes of the subject portion of the meeting are attached.

AGENDA ITEM F. PUBLIC HEARING

5. Ordinance 2008-10, amending KPB Title 20 requiring documented legal access to subdivisions within the Kenai Peninsula Borough

Staff Report given by Max Best

PC Meeting: 4/28/08

The Planning Commission reviewed the subject ordinance at the last meeting of April 14, 2008. A motion to recommend enactment of the ordinance was postponed until the April 28, 2008 meeting so that the public could have more opportunity to review the ordinance.

Two written comments were received.

1. Anchor Point Advisory Planning Commission who recommended enactment.
2. Don Mullikin of Mullikin Surveys wrote a letter of opposition of the ordinance.

The Ordinance changes the definition of legal access as well as requiring a legal access plan be provided for a subdivision within the Borough.

END OF STAFF REPORT

Chairman Bryson opened the meeting for public comment.

1. Tom Latimer, Mullikin Surveys
Mr. Latimer referred to the written comments submitted by Don Mullikin.

Mr. Latimer disagreed with the comment that this ordinance would fix the problems at Caribou Lake. Access to Caribou Lake is across State land. He understood that if this ordinance were enacted then the Caribou Lake Subdivision would still be able to go through because it has access across State land. There is no control over how it is built so it could be built in a manner that would be damaging like it is now.

Mr. Latimer doesn't know how he would show the Commission how something was constructible. He did not want to be part of guaranteeing that there is constructible access along a section line easement by proposing huge cuts and fills. The legal and constructible portion of the ordinance is an unworkable part of it.

Mr. Latimer felt the farther a parcel would be from a Borough maintained road the more tenuous this proven legal access is going to be. He stated the likelihood that anyone would build that would be reduced the farther it was from a built road. It seemed to be an exercise in futility the farther away someone was at. Mr. Latimer felt the stated goals would not be accomplished.

Mr. Latimer would be hosting a meeting with the ASPLS and would be getting comments from them regarding this proposed ordinance.

Chairman Bryson asked if there were questions for Mr. Latimer.

Commissioner Foster stated another concern beside Caribou Lake was the floating legal accesses that are not constructible that subdivisions have properties linking to and are actually accessible through a private easement. The are touching this one so called legal access that may have existed at one time, parts of it have been vacated but never constructible. He felt this ordinance could address this concern. Things like this should be curtailed if subdividing was based on legal access that couldn't be built. Mr. Latimer stated he would speak with ASPLS but did not see this ordinance addressing this problem.

Commissioner Johnson asked if Mr. Latimer if there were benefits to the proposed ordinance. Mr. Latimer replied he clearly sees the situation that Commissioner Foster addresses. He will defer to the ASPLS group to see if they see some positives regarding the ordinance.

There being no further questions, the public hearing continued.

2. Roger Imhoff

Mr. Imhoff felt the ordinance was reiterations of the things the surveyors already do. In a typical subdivision, they already make sure there is access to a subdivision and that the right of ways that are dedicated within the subdivisions are constructible. He also questioned how he could certify what was constructible outside the subdivision.

Mr. Imhoff expressed concern regarding what should work with the extreme case of Caribou Hills should also work with the mundane subdivisions that are close to town. There are cases within the Borough of subdivisions that don't have platted access but that access has developed over a period of time. From this ordinance, he could see the possibility that good well-planned subdivisions could be blocked from getting recorded by not being able to show a constructible access for right of way.

There being no further questions, the public hearing continued.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment period and opened discussion among the Commission.

Motion carried forward from the April 14, 2008 meeting.

MOTION: Commissioner Murphy moved, seconded by Commissioner Petersen to recommend enactment of Ordinance 2008-10, an ordinance amending KPB Title 20 requiring documented legal access to subdivisions within the Kenai Peninsula Borough.

Commissioner Johnson stated he would be voting against the motion. This was an example of well meaning people that are trying to fix problems. He felt this would not fix problems but would create problems.

Commissioner Foster stated he supported the motion since this is the exact same wording that was in the Roads Ordinance, which the Commission supported. He felt the proposed ordinance could fix a lot of problems that the Commission had concerns about regarding plat waiver process as well as subdivisions not having access through a right of way.

Chairman Bryson expressed concern that the majority of these in remote parcels will be justified along section line easements. He saw this as a bad situation and that the majority of the time it wouldn't conform to Borough standards.

Commissioner Lockwood asked what the State was doing since they sold the parcels, advocated using the wetlands, and now advocates something needs to be done. Mr. Best believed there was a Statute that requires them to provide legal access.

Commissioner Johnson asked Mr. Best to quantify what was being discussed. When subdivisions are approved they already make the surveyors meeting certain standards within the roads of the subdivision. He felt they were now asking the surveyors to go outside the subdivision and link to an existing road. Mr. Best replied that was correct.

Commissioner Murphy failed to see the wisdom of platting a subdivision without providing legal access. She felt this was a good ordinance and it was time to provide protection to people who buy properties within the subdivisions. Commissioner Murphy stated she would vote in favor of the motion.

Commissioner Collins recused herself from voting and discussion due to her involvement with the Anchor Point Advisory Planning Commission. Mr. Best believed that with a legislative issue such as an ordinance, it would be appropriate for Commissioner Collins to vote on the Ordinance.

Chairman Bryson stated this ordinance is scheduled for another public hearing at the next Borough Assembly meeting on May 6, 2008. It would be their decision whether or not to enact this ordinance.

Commissioner Collins stated she had come in contact with people through the Anchor Point Visitor's Center

who bought property but was unsure how to access the property. She hoped this Ordinance would alleviate this issue and protect people in the future.

Commissioner Lockwood felt the State should have planned better before selling the land.

There being no further comments, Chairman Bryson called for a roll call vote.

VOTE: The motion passed by majority consent.

BRYSON NO	CARLUCCIO ABSENT	COLLINS YES	FOSTER YES	GROSS YES	ISHAM YES	JOHNSON NO
LOCKWOOD YES	MARTIN ABSENT	MURPHY YES	PETERSEN NO	TAURIAINEN NO		6 YES 4 NO 2 ABSENT

AGENDA ITEM G. ANADROMOUS STREAM HABITAT PROTECTION (KPB 21.18) - None

AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING

1. Vacate the 10-foot utility easement along the west boundary of Lot 1A-1 granted by Kranich Subdivision (Plat HM 79-2); within Section 19, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the City of Homer and the Kenai Peninsula Borough; KPB File 2008-091; Location: City of Homer

Staff Report reviewed by Max Best

PC Meeting: 4/28/08

Purpose as stated in petition: The utility easement proposed to be vacated is not currently used.

Petitioners: City of Homer

Notification:

Thirteen notices of vacation mailings were sent by regular mail to owners of property within 300 feet. Five agencies and interested parties were notified.

Notices were mailed to the Homer Post Office and Homer Community Library to post in public places. The notice was posted on the Borough web site and on the Borough bulletin board in Soldotna.

Comments:

ACS: No Objection

City of Homer: No Objection

Homer Electric: Request a 10 x 10 utility easement in the southern portion of the easement proposed for vacation.

Findings:

1. Per the petition, the easement is not in use.
2. ACS provided written non-objection to the vacation.
3. Homer Electric Association requested 10 x 10 easement in the southern portion of the existing utility easement
4. All preliminary plats are sent to the utility companies for review.
5. No surrounding properties will be denied utilities.
6. No letters of objection have been received.
7. Homer Advisory Planning Commission conditionally approved the preliminary plat showing the proposed vacation on October 17, 2007.
8. The Plat Committee reviewed and granted conditional approval to the preliminary plat showing the vacation on November 26, 2007.
9. The final plat does not show the easement being vacated, indicative that it may be recorded prior to the