



KENAI PENINSULA BOROUGH

144 North Binkley Street • Soldotna, Alaska 99669-7520

Toll-free within the Borough: 1-800-478-4441, Ext. 2150

PHONE: (907) 714-2150 • **FAX:** (907) 714-2377

JOHN J. WILLIAMS
BOROUGH MAYOR

MEMORANDUM

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

FROM: Milli Martin, Assembly Member

DATE: July 8, 2008

SUBJECT: Ordinance 2008-10, Amending Title 20 to require documented legal access to subdivisions with the Kenai Peninsula Borough

The borough attorney's office has proposed some formatting changes to the ordinance 2008-10 and deleted one redundant provision in the accompanying memo. I thought it would be helpful for the assembly to have an explanation of each of the methods of documenting legal access. Any or all of these methods may be used to document legal access to a particular subdivision. For example, a section line easement could be used as one portion of the legal access to a subdivision and a borough dedicated road could be used for another portion. An explanation of the different methods for documenting legal access follows:

KPB 20.20.035(A)(1):

Ingress and egress will be provided over section line easements located within a surveyed section;

This paragraph allows for section line easements to constitute legal access.

KPB 20.20.035(A)(2):

The applicant provides copies of borough-accepted recorded conveyances creating the public easement or right-of-way where the access is located;

This paragraph allows for a public easement which has been approved and accepted by the borough to constitute legal access.

KPB 20.20.035(A)(3):

That access is a State of Alaska maintained road or municipal maintained road;

This paragraph allows a state or municipal maintained road to constitute legal access. This will be true regardless of whether that road meets current maintenance standards or regardless of whether there is a dedicated right-of-way or easement.

KPB 20.20.035(A)(4):

The applicant provides documentation satisfactory to the borough demonstrating that public legal access is guaranteed through judicial decree;

Sometimes prescriptive easements are litigated in court and result in a judicial decree declaring there is a public easement. Such judicially declared easements are valid legal access.

KPB 20.20.035(A)(5):

The right-of-way is an easement or fee interest at least 60 feet in width dedicated or irrevocably conveyed to the public and acceptable to the planning commission.

There are times where easements have been granted to the public without borough involvement or oversight. While the borough formally accepts easements either by signature on a written easement form or through dedication on a plat there have been easements granted to the public in the past which have been used as roads for many years. For example, public easements granted during territorial days before the borough or even the state existed. As long as these roads have adequate width and cannot be unilaterally terminated by the grantor or his assigns such easements should constitute valid legal access.

There have been questions raised that the waiver provisions will not address enough situations where legal access cannot be documented. I note that there is also an exception process in the borough code at KPB 20.24. The waiver provisions in section B were meant to address the obvious situations that should be exempted from the requirement for documenting legal access. However, we cannot legislate for every possible scenario. The exception process may be used for situations that don't meet the waiver provisions but legal access still cannot be documented, it should not be used in situations where an applicant simply doesn't wish to provide the documentation. The standards for granting an exception are as follows:

1. That special circumstances or conditions affecting the property have been shown by application;
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.