



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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JOHN J. WILLIAMS
BOROUGH MAYOR

MEMORANDUM

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

THRU: John J. Williams, Borough Mayor 

FROM:  Max J. Best, Planning Director

DATE: April 17, 2008

SUBJECT: Ordinance 2008-10, amending KPB Title 20 requiring documented legal access to subdivisions

The Planning Commission reviewed the subject ordinance during their regularly scheduled April 14, 2008 meeting.

A motion to recommend enactment of this ordinance was postponed until the next meeting of April 28, 2008 so that the public could have more opportunity to review this ordinance.

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

AGENDA ITEM F. PUBLIC HEARINGS

5. Ordinance 2008-10, amending KPB Title 20 requiring documented legal access to subdivisions

Memorandum reviewed by Max Best

PC Meeting: 4/14/08

In the past, subdivisions have been developed, including by the state of Alaska, without documenting that there is legal access to the subdivision. A state statute was adopted which specifies that State of Alaska Department of Natural Resources (DNR) should not be relieved of its obligation to provide legal access to a subdivision. However, the Kenai Peninsula Borough has not adopted any specifications for DNR or private developers to provide legal access to subdivisions. This ordinance requires subdividers to document constructible legal access to their subdivisions. The ordinance does not require construction but is intended to ensure that the access is feasible to construct in the future. A waiver process is available for subdivisions, which have inadequate legal access but may be accessed by other modes of transportation such as plane, boat, or train. Additionally, where it is reasonable to expect that a half right-of-way will be matched or a road subject to historical use will be dedicated in the future, the legal access requirement will be considered met.

A case in point is the development of Caribou Lake Subdivision by the State of Alaska in the early 1980s. The State anticipated access would be by plane; however, inadequate land access has developed instead causing damage to wetlands and which requires costly surveying and construction to remedy the situation. While an amendment to Title 29 was adopted in 1985, which provides that the state can no longer avoid providing legal access to its subdivisions, the borough has yet to adopt a companion ordinance that requires documentation of legal access by either the state or private developers.

Hope Advisory Planning Commission unanimously approved the Ordinance at their April 10, 2008 meeting. Anchor Point Advisory Planning Commission met and discussed the ordinance at their April 8, 2008 meeting. They recommended enactment of the ordinance but it died due to a lack of a second.

END OF MEMORANDUM

Vice Chairman Martin opened the meeting for public comment.

1. Milli Martin, PO Box 2625, Homer

Ms. Martin is the sponsor of this particular ordinance. This ordinance was inspired by the difficulties that were encountered in the Caribou Lake area, which was subject to a few larger subdivisions. There were over 300 parcels sold by the State where access was provided over seismic trails or section lines. It was advocated using the wetlands. In the process of that, the wetlands were severely damaged so the State stated something needed to be done. Ms. Martin understood there are subdivisions that are remote. The Department of Natural Resources has recently passed a policy that subdivisions would have to provide access. She wanted to take that a step further and say that it would be constructible access that doesn't have to be built but just that it can be built as some future date.

Ms. Martin also wanted to clarify and define legal access. She stated that Anchor Point APC had a question about item #3 which states, *"Where a road is in use for physical access but there is no right-of-way document for all or part of the access road, the provisions of subsection A may be considered met if it is reasonable to expect that the right-of-way will be dedicated in the future.* Many times there are plats before the Commission where one parcel has dedicated a road but the road hasn't been completed. She was available to answer questions.

Vice Chairman Martin asked if there were questions for Ms. Martin.

Commissioner Johnson asked if a body of water could be used for access. Ms. Martin replied yes, there are multiple ways of accessing property, which was another issue in the Caribou Lake area. It was anticipated that people would use the lake for access but that was not how it happened. She stated access was obtained with snow machines and 4-wheelers.

Commissioner Foster asked if water access would be through traditional water access versus someone who had property on Cook Inlet who stated they would access their property through the water. Ms. Martin stated

they were asking that there be a way to access a remote parcel through a constructible easement but that it didn't have to be built just that it could be built in the future.

Commissioner Johnson asked if access needed to be tied into a section line easement. Ms. Martin replied she did not see it that way. She stated that on remote parcels there needed to be an access from an access point that could be constructed and provides an easement. Commissioner Johnson stated that someone could only provide a dedication on property that they own.

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

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

Commissioner Johnson asked staff for clarification that a landowner could only dedicate property they own. Mr. Best replied there are two different things being discussed. The first one has to do with remote entry. He stated that the State that owns property would need to provide access before it could be subdivided. The Borough wouldn't allow them to subdivide without some sort of dedication. The second thing is that a legal access dedication would have to be provided if someone has a 40 or 80-acre parcel. Commissioner Johnson asked about what would happen if an 80-acre parcel were landlocked. Mr. Best replied if there was an 80-acre parcel that was landlocked then it couldn't be subdivided unless legal access was provided.

Commissioner Foster stated there was concern within the City regarding further subdivisions of properties that have a legal access on a road that had been vacated. Another situation has been with the plat waiver situation where legal access has been provided but was not constructible. He felt this ordinance would clean up these two situations.

Commissioner Johnson asked what the Assembly timeframe was for this legislation. He would like to give the public more opportunity to look at this ordinance. Mr. Best replied there will be a public hearing at May 6, 2008 Assembly meeting. The Planning Commission could postpone to the next meeting of April 28, 2008.

Commissioner Foster asked if this definition was the same definition that was in the Roads Ordinance. Mr. Best replied that was correct.

MOTION: Commissioner Johnson moved, seconded by Commissioner Isham to postpone recommendation until the next meeting of April 28, 2008 so that the public could have more opportunity to review this ordinance.

VOTE: The motion to postpone passed by unanimous consent.

BRYSON ABSENT	CARLUCCIO YES	COLLINS YES	FOSTER YES	GROSS YES	ISHAM YES	JOHNSON YES
LOCKWOOD YES	MARTIN YES	MURPHY YES	PETERSEN YES	TAURIAINEN ABSENT		10 YES 2 ABSENT

AGENDA ITEM F. PUBLIC HEARING

- 6. Ordinance 2008-___; An Ordinance adopting an amendment to Ordinance 2007-25 adopting the Kenai Peninsula Borough Coastal Management Program

Memorandum given by Max Best

PC Meeting: 4/14/08

On August 21, 2007 the Kenai Peninsula Borough Assembly approved the final plan amendment proposed to and accepted by the Office of Project Management and Permitting (OPMP) who then forwarded the amendment to the office of the Commissioner of Alaska Department of Natural Resources (ADNR). Commissioner's staff in the Division of Mining land and Water objected to the language in KPB Enforceable Policy 3.3. Public Access despite the fact that the Kenai Peninsula Borough, under a grant from the ADNR, has worked for years to affect a policy to provide the kind of comprehensive access planning to important water