



# **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

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[www.borough.kenai.ak.us](http://www.borough.kenai.ak.us)

**DAVID R. CAREY  
BOROUGH MAYOR**

## **MEMORANDUM**

**TO:** Milli Martin, Assembly President  
Kenai Peninsula Borough Assembly Members

**THRU:** *Mayor* David R. Carey, Borough Mayor

**FROM:** *Max* Max J. Best, Planning Director

**DATE:** February 12, 2009

**SUBJECT:** Ordinance 2009-04; Amending KPB Chapter 20.20, Subdivision Design Requirements to Require a Minimum Width of 60 feet for Platted Lots.

The Planning Commission postponed action on the subject ordinance during their regularly scheduled February 9, 2009 meeting so that the addendum to the ordinance could be reviewed. A motion to postpone action until brought back by staff (tentatively scheduled for the February 23, 2009 Planning Commission meeting) passed by unanimous consent.

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

AGENDA ITEM F. PUBLIC HEARINGS

1. Ordinance 2009-04; Amending KPB Chapter 20.20, Subdivision Design Requirements to Require a Minimum Width of 60 feet for Platted Lots.

Staff Report given by Max Best

PC Meeting: 1/26/09

An amendment was presented to the commissioners in the lay down packet which is as follows:

In reviewing plats to which this ordinance would be applicable, staff discovered the ordinance may increase the number of exception requests. Therefore, staff has requested the following amendments to accomplish the same goal of eliminating the access portions of flag lots being inadequate to accommodate further subdivision and traffic. The following amendments are requested:

- Add a new Section 1 as follows:

**SECTION 1.** That KPB 20.08/063 is hereby enacted to read as follows:

"Flag lot" means a lot with two discernible portions, one a building site portion not fronting on or abutting a street and the second portion abutting on the street and providing private access to the building site portion.

- Renumber original Section 1 to Section 2 and amend as follows:

**SECTION 2.** That KPB 20.20.180 is hereby amended as follows:

**20.20.180. Lots—Dimensions.**

A. The size and shape of lots shall be such as to provide usable sites appropriate for the locality in which the subdivision is located and in conformance with the requirements of any zoning ordinance effective for the area in which the proposed subdivision is located. Lots shall not be less than 60 feet wide on the building setback line. ~~Any lot that is capable of further subdivision shall also not be less than 60 feet wide from the point where the lot abuts the dedicated street to the building setback line.~~ The minimum depth shall be no less than 100 feet, and the depth shall be no greater than 3 times the width.

B. The access portion of a flag lot shall not be less than 20 feet wide. A flag lot with the access portion that is less than 60 feet wide shall be subject to a plat note that the lot shall not be further subdivided.

- Renumber original Sections 2 and 3 to Section 3 and 4.

**STAFF RECOMMENDATION:** Staff recommends the Planning Commission request an additional public hearing with the assembly on March 3, 2009. The Planning Commission open the public hearing, take testimony at this meeting and postpone action or continue the public hearing until the next meeting of February 23, 2009.

END OF STAFF REPORT & ADDENDUM

Chairman Bryson opened the meeting for public comment.

1. Roger Imhoff  
Mr. Imhoff read a letter from Don Mullikin, Mullikin Surveys which is as follows:

*Dear Sirs:*

*My name is Don Mullikin, a Professional Land Surveyor, with 30 years experience in platting statewide. I am opposed to the mandatory requirement of a 60 ft. width for flag lots. We only rarely use the flag lot design and there is usually a compelling reason for only a 30 ft. width.*

*The main disadvantage to the borough and city is a lot reducing size; therefore, reduced taxable land.*

*A 30 ft. x 50 ft. extra dedication in Homer would reduce property taxes by \$30 to \$100 per year. It would result in a confiscation of property of \$4,000 to \$10,000.*

*Regulations should not be passed on a whim.*

*If this extra dedication is in the "best interest of the public", then the borough or city should purchase the extra 30 ft.*

*Sincerely,  
Donald E. Mullikin, P.L.S*

Mr. Imhoff stated that when he saw the original ordinance the first thing that hit him was that it was regulatory taking. He has been doing a lot of research on it because it is a fascinating topic nationwide. There are literally thousands of cases that have gone to court throughout the States including Alaska. Mr. Imhoff concluded there was definitely a regulatory taking here assuming that all proposed right of way dedications gone. He stated that the original proposal of 60 foot panhandles would eventually be dedicated into a public right of way.

Chairman Bryson stated the original proposal was before the commission at this time.

Mr. Imhoff read his written letter regarding the first proposed Ordinance 2009-4 which is as follows:

*Dear KPB Planning Dept and Planning Commission  
I am writing to explain why many of us on the Peninsula believe that the Proposed Borough Ord 2009-4 should NOT be added to our KPB Subdivision Code.*

*For the most part, fair and reasonable rules are accepted and followed by the public. However, there are several major problems, questions, and concerns with this proposal.*

*The Planning Dept and the Planning Commission have both done an excellent job over the years in their policy of plat recommendations regarding panhandles. Physical and practical access to "lots" created by plat is well protected by the Borough and the State Court System.*

*The proposed ordinance is not "housekeeping". It is a new addition to the Code that goes well beyond current practice and policy.*

*This proposal does not solve any perceived problem. It certainly does not contribute to any comprehensive plan of road systems. It eventually puts substandard roads (ie driveways) into future ROWs, which is something we have been trying to avoid. (Bor maint).*

*It also does not solve the perceived problem of fire dept access to residences, which Ms. Martin is apparently seeking to address. The panhandle is used for driveway access to a residence. Increasing the width of the panhandle is not going to result in a wider driveway because owners do not need and cannot afford to pay for a full blown borough road to access their house from the street.*

*Furthermore...owners are paying taxes on that future strip of ROW. The extra 20-30 ft can no longer be used as part of the body of the lot. That is a regulatory taking. According to the Alaska State Constitution takings must be justly compensated. This is backed up by Alaska State Case Law.*

*A couple of applicable quotes:*

*"Private property shall not be taken or damaged for public use without just compensation." art 1 sec 18 Alaska State Constitution.*

*"This clause is interpreted liberally in favor of the property owner" State v Doyle.*

*"The Alaska Constitution affords the property owner broader protection than that conferred by the Fifth Amendment of the Federal Constitution"*

*Anchorage v Sandberg, Davis, and Richards.*

*This proposed action deprives owners of the full use of their taxed property and is an obvious diminishment of value.*

*Not only that but KPB will make the "setaside strip" a required condition for plat recording. In this case, that requirement comprises an obvious taking. KPB 20.20.020 Reserved Strips Prohibited -Exception. (The <reserve strip> must be placed under the jurisdiction of the Bor. under conditions specified by the Commission and attached to the final plat).*

*Therefore, I think that if this ordinance is passed, it will surely result in court action against the Borough. The Courts would surely order the Borough to justly compensate for the action. So, to me, the question becomes "Is the Borough Assembly willing to open up the purse to pay for this unnecessary Ordinance?" I think not and I don't think the public would stand for such nonsense.*

*Thanks, I hope to come up to the PC Meeting on Monday to offer testimony.*

*Sincerely, Roger Imhoff, RLS*

Mr. Imhoff felt the language in the addendum was better. He suggested that if a lot could be further subdivided then the subdividers show that some width may be appropriate other than 60 feet if that is the case due to topography.

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

Commissioner Foster asked if the surveyors have been opposed to Soldotna's restriction of flag lots. Mr. Imhoff did not know but thought it was a consensus of the surveyors that flag lots do serve a useful purpose and help property owner utilize their property.

There being no further questions, the public hearing continued.

2. Jerry Johnson, Johnson Surveying

Mr. Johnson supported the continuance of allowing flag lots and thought the City of Soldotna felt that they should be the one maintaining the private driveways of the flag lots which costs the taxpayers more money. He felt flag lots have worked out with the Borough requiring certain things on his plats.

Chairman Bryson asked if there were questions for Mr. Johnson. Hearing none 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:** Commissioner Johnson moved, seconded by Commissioner Isham to postpone action until brought back by staff.

**VOTE:** The postponement motion passed by unanimous consent.

BRYSON YES	CARLUCCIO ABSENT	COLLINS ABSENT	FOSTER YES	GROSS YES	ISHAM YES	JOHNSON YES
LOCKWOOD YES	MARTIN YES	MCCLURE ABSENT	MURPHY ABSENT	PETERSEN YES	TAURIAINEN YES	9 YES 4 ABSENT

**AGENDA ITEM F. PUBLIC HEARINGS**

2. Ordinance 2009-09, creating a flood hazard district in the Seward area

Memorandum reviewed by Max Best

PC Meeting: 2/9/09

A federal disaster as a result of flooding has been proclaimed three times within the Seward-Bear Creek Flood Service Area ("SBCFSA") since 1986. Millions of dollars of damage to private properties and public infrastructure has resulted from these flood events. The Flood Insurance Rate Maps ("FIRMs") are outdated and do not encompass much of the area in the SBCFSA that is subject to regular flooding. It is not known when the updated FIRMs will be released. On January 20, 2009, a floodplain task force was formed to examine options for long-term solutions to the damage caused by the regular flooding which occurs in the SBCFSA. This ordinance is being sponsored as the first step toward finding those long-term solutions.

The Kenai Peninsula Borough's GIS division has mapped the area encompassed by the 1986, 1995, and 2006 floods outside the FIRM area. This ordinance increases the regulated flood hazard area within the SBCFSA to include the mapped 1986, 1995, and 2006 flood areas. Base flood elevation in the SMFDA (KPB SBCFSA Mapped Flood Data Area) will be established by application of a formula set forth in the ordinance. The permitting requirements will apply only to primary structures as defined by the ordinance and work within the floodway as defined by KPB 21.06.020(G). By limited regulation of construction of primary structures and floodway work, the ordinance seeks to protect adjacent and downstream property owners from suffering increased risk to their property as a result of projects within areas subject to regular flooding that currently require no borough oversight or permitting.

**STAFF RECOMMENDATION:** Staff recommends the Planning Commission request an additional public hearing with the assembly on March 3, 2009. The Planning Commission open the public hearing, take testimony at this meeting and postpone action or continue the public hearing until the next meeting of February 23, 2009.

**END OF STAFF REPORT**

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

**MOTION:** Commissioner Foster moved, seconded by Commissioner Gross to recommend adoption of Ordinance 2009-09 creating a flood hazard district in the Seward area.

Commissioner Petersen expressed disappointment with the process of how this was handled. Resolution 2009-005 was passed on January 20, 2009 which was to create a taskforce to study the problem in the Bear Creek Flood Service Area. To his knowledge the group has not been populated yet and now there is an ordinance creating a special flood district. He hoped that was one thing that would come from the taskforce.

Commissioner Petersen contacted the Bear Creek Flood Service Area board members who should know about this and only two had heard about this ordinance. He felt there needed to be time for the public to weigh

## MEMORANDUM

**TO:** Milli Martin, Assembly President  
Members, Kenai Peninsula Borough Assembly

**FROM:** Milli Martin, Assembly President

**DATE:** February 5, 2009

**SUBJECT:** Ordinance 2009-04 amendments

In reviewing plats to which this ordinance would be applicable, staff discovered the ordinance may increase the number of exception requests. Therefore, staff has requested the following amendments to accomplish the same goal of eliminating the access portions of flag lots being inadequate to accommodate further subdivision and traffic. The following amendments are requested:

➤ Add a new Section 1 as follows:

**SECTION 1.** That KPB 20.08/063 is hereby enacted to read as follows:

“Flag lot” means a lot with two discernible portions, one a building site portion not fronting on or abutting a street and the second portion abutting on the street and providing private access to the building site portion.

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~~be less than 60 feet wide from the point where the lot abuts the dedicated street to the building setback line.~~ The minimum depth shall be no less than 100 feet, and the depth shall be no greater than 3 times the width.

B. The access portion of a flag lot shall not be less than 20 feet wide. A flag lot with the access portion that is less than 60 feet wide shall be subject to a plat note that the lot shall not be further subdivided.

- Renumber original Sections 2 and 3 to Section 3 and 4.

## Hartley, Patricia

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**From:** Toll, Mary  
**Sent:** Thursday, January 22, 2009 2:49 PM  
**To:** 'Diann T. Martin'  
**Cc:** Best, Max; Hartley, Patricia; Voeller, Paul  
**Subject:** RE: Proposed Ordinance 4-2009

Diane - The only application of the 60-foot requirement would be if the flag lot could be further subdivided. So for instance if you are subdividing a 2 acre lot into 2 1-acre lots, and you are in an area where the minimum lot size is 40,000 SF, the ordinance would not apply. A 20-30 foot flag would still be acceptable. Ditto if you are subdividing a 10-acre lot, and the flag lot would have 1 acre of upland usable area and 8 acres of swamp.

There are not actually a lot of situations where a 60-foot wide panhandle would be required. But it does come up on occasion, with a landowner wanting to access a 10 acre flag lot with a 20-foot panhandle. The 60-foot requirement would 'reserve' the area from development to allow that landowner or a subsequent landowner the ability to provide a dedication in the future and resubdivide the 10 acres into more lots.

Each situation will be looked at independently.

In addition, KPB 20.24 allows the Planning Commission to grant exceptions if the owner can justify them and satisfy the criteria in 20.24.

Flag lots are lots with panhandle access.

I hope this helps. Please feel free to contact me if you have additional questions.

Mary Toll  
Platting Officer

**From:** Diann T. Martin [mailto:dtmartin@xyz.net]  
**Sent:** Thursday, January 22, 2009 12:35 PM  
**To:** Toll, Mary  
**Subject:** Proposed Ordinance 4-2009

Hi Mary Toll,

I haven't talked with you in a long time. I hope you are well and in good health.

I have a concern.

I was just informed about this proposed ordinance that Milli Martin has put before the borough planning commission to have all flagged or pan handled lots be required to have a 60' access.

I am wondering what ever prompted her to make such a proposal.

Has she talked with the city planning commissions, any realtors or surveyors , property owners before proposing this ordinance.

What a tremendous financial burden this would put on the property owner, not to mention loss of property not compensated for.

In the 26 years I have been in real estate, I don't believe I have seen many flagged lots that exceed 5 acres in size.

Most larger parcels usually have a 60' section line easement.



I believe the city planning commissions and the borough already have sufficient regulations in place regarding access.

This last year I had to subdivide my home property into 2 lots with a 20' pan handle access to the back lot. The access had to be over 226' long to just get to the lot.

With a 60' access required, I would of lost over a third of my property for access, not to mention the cost to develop that access.

I am against this regulation as it is worded now.

I can understand if she had put some guidelines for her proposal.

For instance a suggestion I would consider looking at: All flagged lots will require a 60' ROW access, if accessing 5 or more lots, as of (date). That includes any existing flagged lot a property owner may want to subdivide again and any future properties that would need a flagged access.

For the purpose of clarification: Flagged lot definition would also include pan handle access.

I certainly hope the KPB planning commission will take a closer look at this proposed ordinance before voting to accept it as written.

Sincerely,

**Diann T. Martin**  
**Owner Broker**  
**Martin Realty**  
3808 Ben Walters Lane  
Homer AK 99603  
907-235-1043 office  
907-235-4013 fax

## Hartley, Patricia

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**From:** Toll, Mary  
**Sent:** Monday, January 26, 2009 5:19 PM  
**To:** Hartley, Patricia  
**Subject:** FW: 2009-4

**From:** rogerimhoff@alaska.net [mailto:rogerimhoff@alaska.net]  
**Sent:** Monday, January 26, 2009 5:16 PM  
**To:** Best, Max  
**Cc:** Toll, Mary  
**Subject:** 2009-4

Hello Planning Dept Officials, Planning Commissioners

Well, I have been thinking about this proposed ordinance and to me, and everybody that I have spoken with, it seems unnecessary, unjust, and an unpaid for taking of land. This proposed ordinance is another example of the chisling away of our cherished private property rights that we here on the Kenai Peninsula enjoy.

You know, there is nothing like good planning for a road system. And that is probably the principle task before the planning dept and commission. Some of the examples you show (on the website) should have probably had different lot configuration or at least dedications to the large unsubdivided area.

However, for the conventional lot sizes that make up most of our subdivision activity, the 60 ft requirement will simply lead to more problems of substandard roads within the "future" 60 ft ROW.

The panhandle is for the purpose of providing driveway access to a building lot. If that panhandle is dedicated to any width ROW, it will become a defacto substandard road which the Borough will continue to receive calls about maintaining, etc. Also the adjoiners would be able to subdivide their property and legally use the now dedicated panhandle as access. This is the kind of problem we need less of.

I am positive that we can show through examples where this proposed ordinance would be a great mistake.

If the propose of the panhandle is to provide access, and a width of 20-40 ft is adequate, then the additional width is simply a taking of property. The government must compensate the land owner. This is not BS, this is not conservative falderral, this is simply what the constition of the US states under the 5th amendment.

I think that this proposal goes beyond simple "house keeping" or "tweaking" of the Subd Code. It is an expansion of the current policy of the Planning Dept. I must say that over the years, many surveyors and individuals have expressed the desire to make some changes to the code. However, it would be much more appropriate to hold a work session(s) with those people who are familiar with the workings of the process than to fire off proposals one at a time that must be dealt with in the manner we are dealing with this one (2009-4). Namely, public hearings, arguments, and so forth. It would be much more constructive to sit down with informed parties, which would include the professional surveyors, planning commssion members, Bor staff, experienced members of the community, and come up with a list of suggestions to be proposed to the formal planning commission.

Therefore I urge the Planning Commission to send a strong message of rejection to the assembly on this matter and if there are problems with the ordinance, let's sit down and go through it the correct and responsible way.

Thanks,  
Roger Imhoff, RLS



## City of Homer Planning & Zoning

491 East Pioneer Avenue  
Homer, Alaska 99603-7645

Web Site

Telephone (907) 235-8121

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E-mail [Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

[www.ci.homer.ak.us](http://www.ci.homer.ak.us)

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### MEMORANDUM

**TO:** Max Best, KPB Planning Director

**FROM:** Rick Abboud, City Planner *RA*  
Carey Meyer, Public Works Director *CSM*

**DATE:** January 30, 2009

**SUBJECT:** Ordinance 2009-04 amending KPB Chapter 20.20 to require a minimum lot width of 60 feet.

The Planning Office and the Public Works Department of the City of Homer support ordinance 2009-04. The subdivision of land without an adjoining ROW that is eligible for City maintenance may present health and safety issues. Incorporating a requirement of minimum of 60ft. connecting to a dedicated street would certainly help ensure future compliance to City and Borough road standards as well as improve access for emergency vehicles.

Adopting Ord. 09-04 will:

- Ensure adequate width for emergency vehicles to access all lots along the "flag-pole."
- Alleviate access problems that result when flag lots are further subdivided creating subdivisions behind subdivisions, all of which use a narrow right-of-way that does not meet KPB or the City of Homer's road maintenance standards.
- Align the right-of-way requirements for both the platting and road maintenance codes per KPB 14.06.100(a)(1).
- Ensure legal access for future subdivisions via a KPB and/or City of Homer right-of-way.

401 E. Pioneer Avenue  
Homer, AK 99603  
(907) 235-3108  
(907) 235-3118 FAX

**City of Homer  
Planning/Zoning**

# Fax

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**To:** Max Best, KPB Planning                      **From:** Shelly Rosencrans

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**Fax:** 1-907-714-2378                                      **Pages:** 2

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**Phone:**    **Date:** January 30, 2009

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**Re:** Ordinance 09-04, Minimum Lot Width              **CC:**

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Urgent       For Review       Please Comment       Please Reply       Please Recycle

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Please include this in your next packet. Thank you!

Shelly

## **Hartley, Patricia**

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**From:** debral@ptialaska.net  
**Sent:** Friday, February 06, 2009 9:25 AM  
**To:** Planning Dept.; millimom@xyz.net; rims@ptialaska.net; hvsmalley@yahoo.com  
**Cc:** bsmith@xyz.net; gsuperman@gci.net; psprague@acsalaska.net; akjfischer@hotmail.com; cpierce@gci.net; pa12gary@hotmail.com  
**Subject:** ordinae 4-2009

Regarding ordinance 2009-4

To Whom It May Concern:

I would ask you to take time to reconsider this ordinance and take the time to do the right thing. Often in government the intention is good but the regulation or rules passed don't serve the high and lofty goals of the original concept.

As a Realtor I believe in the rights of private ownership. We the People, under the laws of the United States, are given the right of full enjoyment of our property. While you may not think this ordinance oversteps those rights, I would argue this ordinance is taking land without compensation for unnecessary government mandate.

I would also think that as a thoughtful governing board you would want to look at the whole picture, talk to the experts, surveyors, developers and borough experts to gauge the actual effectiveness of this ordinance versus other more effective, less land grabbing methods. If the purpose is access look at the facts and make plans that are true and will be acceptable without the taking of so much land from the owner.

There are problems with this ordinance as it stands. Take the time to fix this and do the right thing for the people who own land and therefore pay taxes. I think the taxpayers deserve for the elected borough officials to take the time to do the right thing...Don't you?

I appreciate your consideration in this matter

Debra Leisek  
Broker  
Bay Realty  
331 E Pioneer Ave #101  
Homer AK 99603  
907-235-6183

**Hartley, Patricia**

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**From:** Henson, Carrie  
**Sent:** Sunday, February 08, 2009 5:38 AM  
**To:** Hartley, Patricia  
**Subject:** Comment on Ordinance 2009-04

I am in favor of Ordinance 2009-04. Coming from the perspective of emergency response flag lots can be a health and safety issue. Often the stem or pole of a flag lot constitutes a long driveway which usually is fairly costly to construct, therefore the property owner does not construct the driveway to a fair enough standard for emergency vehicles. Also it is difficult to know what exactly is down a long driveway. In the event of an emergency, responders may have trouble finding a home if there is no address indication at the start of a long driveway, which is often the case. If the flag lot is further subdivided and more structures are constructed down the long driveway this only exacerbates these issues for emergency responders. A substandard 20ft roadway is not sufficient for large emergency vehicles especially when maintenance and snow removal are inadequate.

Regards,  
Carrie Henson  
E911 Addressing Officer  
Kenai Peninsula Borough

# MULLIKIN SURVEYS

P.O. Box 790, Homer, AK 99603-0790

Ph. & Fax: (907) 235-8975

February 10, 2009

Kenai Peninsula Borough Planning Commission  
Kenai Peninsula Borough  
144 N. Binkley St.  
Soldotna, AK 99669

Re: Proposed Ordinance 2009-04 (Flag Lots)

Dear Sirs:

My name is Don Mullikin, a Professional Land Surveyor, with 30 years experience in platting statewide. I am opposed to the mandatory requirement of a 60 ft. width for flag lots. We only rarely use the flag lot design and there is usually a compelling reason for only a 30 ft. width.

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Sincerely,



Donald E. Mullikin, P.L.S.

DEM:jvm

2-09-09

Dear KPB Planning Dept and Planning Commission

RE Proposed KPB 2009-4

I am writing to explain why many of us on the Peninsula believe that the Proposed Borough Ord 2009-4 should NOT be added to our KPB Subdivision Code.

For the most part, fair and reasonable rules are accepted and followed by the public. However, there are several major problems, questions, and concerns with this proposal.

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Not only that but KPB will make the "setaside strip" a required condition for plat recording. In this case, that requirement comprises an obvious taking. KPB 20.20.020



Reserved Strips Prohibited - Exception. (The <reserve strip> must be placed under the jurisdiction of the Bor. under conditions specified by the Commission and attached to the final plat).

Therefore, I think that if this ordinance is passed, it will surely result in court action against the Borough. The Courts would surely order the Borough to justly compensate for the action. So, to me, the question becomes "Is the Borough Assembly willing to open up the purse to pay for this unnecessary Ordinance?" I think not and I don't think the public would stand for such nonsense.

Thanks, I hope to come up to the PC Meeting on Monday to offer testimony.

Sincerely, Roger Imhoff, RLS

PO Box 2588 Homer Ak