



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

PHONE: (907) 714-2200 • **FAX:** (907) 714-2378

Toll-free within the Borough: 1-800-478-4441, Ext. 2200

www.borough.kenai.ak.us

DAVID R. CAREY
BOROUGH MAYOR

MEMORANDUM

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

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

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

DATE: January 28, 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 January 26, 2009 meeting. A motion to postpone action until brought back by staff (tentatively scheduled for the February 9, 2009 Planning Commission meeting) passed by majority consent. (Bryson, Yes; Carluccio, No; Collins, Absent; Foster, No; Gross, Yes; Isham, Yes; Johnson, Yes; Lockwood, Yes; Martin, Yes; McClure, Yes; Murphy, No; Petersen, Yes; Tauriainen, Yes)

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

AGENDA ITEM F. PUBLIC HEARINGS

2. 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 Mary Toll

PC Meeting: 1/26/09

There is no prohibition or regulation regarding flag lots in the borough's platting code. A flag lot is located behind other lots in a subdivision with access to the street via a narrow stem or pole. If the "flag" portion of the lot is large enough to be further subdivided, the stem may be too narrow to accommodate the additional traffic caused by the increased number of lots. In such cases, dedication of the stem may not be possible and access to the new lots will be difficult, resulting in access concerns for residents and the general public as well as emergency vehicles. It makes sense to require the stems of flag lots to be at least 60 feet in width which is the required width for a right-of-way under both the platting and road maintenance codes. If further subdivision of the flag portion of the lot occurs, platting will then have the ability to require dedication of the stem, which will also meet the minimum width requirements for borough road maintenance. Staff felt this was a housekeeping measure in order to conform to the platting and road service area standards for right-of-way and to alleviate future access problems for flag lots which may be further subdivided.

This ordinance would still allow exceptions under 20.24. Staff would look at subdivision on a case by case basis to determine if the lots could be further subdivided. For instance, there might be a 20 or 30 foot panhandle going up to a 10 acre lot but that lot may be 1 acre of upland and 9 acres of swamp. In a case like that staff would not apply the 60 foot requirement.

The Platting Division provided several illustrations showing examples of plats or flag lots where further subdivision could be or has been a problem as a result of a narrow access "stem" or "pole."

Staff asks for the Planning Commission's support of this ordinance. Thank you.

END OF MEMORANDUM

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 Gross moved, seconded by Commissioner Isham to recommend enactment of Ordinance 2009-04; amending KPB Chapter 20.20, Subdivision Design Requirements to Require a Minimum Width of 60 feet for Platted Lots.

Commissioner Johnson referred to a letter from Roger Imhoff who was strongly opposed the proposed ordinance. At this meeting, Commissioner Johnson was not in favor of the ordinance and would not vote in favor of the motion at this time.

Commissioner Gross expressed concern if she had a 2 acre lot and was suppose to put in a 60 foot driveway. She asked if there could be a minimum acreage that could be exempt from the requirement. Ms. Toll replied that was where the exceptions would come into play. In a case like that, a landowner would provide justification for an exception. She felt there could be quite a few cases with the smaller lots where granting an exception would be justified. The smaller lots could be required to have a 40 foot flag lot which would allow 2 flag lots to be created in the future with 20 foot flags.

Commissioner Foster stated he was prepared to vote on the proposed ordinance. He has seen a lot problems within the city as well as potential problems where the lots are now connected to a small private driveway. Commissioner Foster knew of one plat in Homer where three houses share one small driveway. There is room for the owners to subdivide even further when sewer and water was installed. He was surprised to see a realtor was against the ordinance since he heard that a few realtors stated that it was problematic with all the neighbors sharing one driveway. Commissioner Foster was prepared to vote in favor of the ordinance considering it had the potential for the exception requests.

Commissioner Murphy supported the adoption of the ordinance. Unless there is a standard in the Code then when someone comes to the commission with a 20 or 40 acre parcel that could only be accessed by a driveway then they are not going to say that a 60 foot driveway would need to be built because there is nothing in the Code to guide them. She felt they have always been fair in granting exceptions to the Code when requested and when it seemed reasonable to do so. Commissioner Murphy stated she supported the passage of the ordinance.

Chairman Bryson gave the example from the City of Kenai where a subdivision had developed in several phases. The first phase constructed a storm drain which was just outside the property that was being platted. It followed what was projected to be a 20 foot utility easement. There was a 20 foot difference in elevation between the front of the lot and the back of the lot. Subsequent developments of that subdivision platted that area, which was previously indicated as a utility easement, into a flag lot for accessing a wet large tract. Now the people want access. The property is up for sale but access is virtually impossible. He stated the owner would have to get an easement to cross the adjacent neighbor's property to obtain access. Chairman Bryson stated there was also the issue of the storm drain in the middle of the driveway. He felt there are real bad situations that can occur in some areas.

Commissioner Johnson asked if every flag lot was approved because there was nothing in the Code pertaining to flag lot development. Ms. Toll stated that staff works with surveyors and can usually obtain a wider flag than what was originally proposed. For instance, a 10 foot flag is not reasonable for driveway access. It might support one car but would not support two cars. There would need to be room for snow storage on long flags. If it was accessing a large parcel then staff would tell the surveyor that they would not be able to subdivide further and get a right of way if they don't get more right of way from them at the time. She felt it was easier when they had the 50 foot right of way allowance in the Code but now there is a minimum 60 foot requirement in the Code. There is currently nothing in the Code to back staff up to request a certain size.

Commissioner Johnson felt the Commission needed to hear from more surveyors. He recommended postponement until the next meeting.

MOTION: Commissioner Johnson moved, seconded by Commissioner Isham to postpone action until brought back by staff.

Ms. Toll stated this ordinance is up for hearing and adoption at the February 17, 2009 Assembly meeting. This could be heard again at the February 9, 2009 Planning Commission meeting. She stated notice has been sent to the surveyor's society that this ordinance was up for review.

(Clerk's note: It is tentatively scheduled for to be heard again at the February 9, 2009 Planning Commission meeting.)

Commissioner Petersen agreed with Commissioner Johnson and felt more comments should be solicited from the surveyors.

Commissioner Carluccio stated she would vote against postponement.

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

VOTE: The postponement motion passed by majority consent.

BRYSON YES	CARLUCCIO NO	COLLINS ABSENT	FOSTER NO	GROSS YES	ISHAM YES	JOHNSON YES
LOCKWOOD YES	MARTIN YES	MCCLURE YES	MURPHY NO	PETERSEN YES	TAURIAINEN YES	9 YES 3 NO 1 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS

Hartley, Patricia

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

Hartley, Patricia

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

Blankenship, Johni

From: debral@ptialaska.net
Sent: Friday, February 06, 2009 9:26 AM
To: Blankenship, Johni
Subject: ordinance 2009-4

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

Debra K Leisek
Broker
Bay Realty
907-235-6183
www.BayRealtyAlaska.com