



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

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Memorandum 19-142

TO: MAYOR CASTNER AND HOMER CITY COUNCIL

FROM: MELISSA JACOBSEN, MMC, CITY CLERK

DATE: OCTOBER 23, 2019

SUBJECT: MEMORANDUM TO KENAI PENINSULA BOROUGH MAYOR PIERCE AND THE
BOROUGH ASSEMBLY REGARDING KPB ORDINANCE 2019-24

A memorandum has been drafted providing comments regarding KPB Ordinance 2019-24 Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivision.

RECOMMENDATION:

Approve the memorandum from Mayor and City Council to Mayor Pierce and the Borough Assembly regarding KPB Ordinance 2019-24



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Homer City Council

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Memorandum

TO: Mayor Pierce and Kenai Peninsula Borough Assembly Members

THROUGH: Homer Planning Commission

FROM: Mayor Castner and Homer City Council

DATE: October 28, 2019

SUBJECT: Kenai Peninsula Borough Ordinance 2019-24 to Amend KPB Code 20.80, Subdivision Private Streets and Gated Subdivisions

After a presentation from the borough Planning Director and Platting Manager, the Homer Planning Commission forwarded the attached memo to the borough and made a list of concerns they had about the subject. The City Planner along the Commission concluded that if the borough were to adopt a policy regarding gated subdivision, the City of Homer, regardless of support or opposition, will have to respond to local concerns with an ordinance.

Since this concept was never envisioned in any city policy or document, it will take a robust process to give proper attention to the subject. Any process to formulate a regulatory response to the proposal will have to begin after the ordinance is in final draft and adopted. Due to schedule and process restraints, it would be best to extend the effective date of the ordinance to allow the formulation and adoption of Homer's response.

In order to have time to create a well-reasoned policy regarding the possible provision or prohibition of the policy, the effective date for the City of Homer should be delayed for a 120 days from adoption. The delay in the effective date will allow time for the city to address concerns with concept. Without a delay of the effective date, a proposal could be submitted and the city may not have enough time to respond to the application in the statutory timeframe of 49 days.

The Homer City Council respectfully requests a delay in the effective date applicable to the City of Homer for 120 days after adoption and encourages the Kenai Peninsula Borough Assembly to review the materials attached to this memo for additional information.

Attachments

1. Homer PC memo to KPB
2. Staff report PI19-81
3. PC minutes 10.2.19
4. Kenai Peninsula Borough Planning Commission Desk Packet Excerpt 9/23/2019
5. KPB PC Regular meeting packet excerpt 9/23/2019
6. KPB PC Memorandum from 8/26/19 meeting



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Memorandum

TO: KENAI PENINSULA BOROUGH PLANNING COMMISSION
KEANI PENINSULA BOROUGH LANDS COMMITTEE

CC: MAX BEST, KENAI PENINSULA BOROUGH PLANNING DIRECTOR
DIL UHLIN, KENAI PENINSULA BOROUGH ROADS DIRECTOR

FROM: HOMER PLANNING COMMISSION

THRU: RENEE KRAUSE, MMC, DEPUTY CITY CLERK

DATE: OCTOBER 8, 2019

SUBJECT: KENAI PENINSULA ORDINANCE 2019 –XX TO AMEND KPB CODE 20.80
SUBDIVISION PRIVATE STREETS AND GATED SUBDIVISIONS

The Planning Commission reviewed the proposed ordinance from the Kenai Peninsula Borough to Adopt KPB 20.80, Subdivision Private Streets and Gated Subdivisions at a worksession and regular meeting on October 2, 2019. Following is a statement and ensuing recommendations from the Homer Planning Commission and related minutes of that meeting.

The Homer Planning Commission has general concerns with the City's ability to respond to this ordinance once it is approved by the Assembly with the predominant apprehension to have Section 3 becoming effective immediately.

The Homer Planning Commission recommends that Section 3 be amended to delay or prohibit enactment until the City can respond with a municipal policy. Items of specific concern are the following:

- City Code Changes
- Comprehensive Plan Amendments
- Transportation Plan
- Stormwater Issues
- Emergency Services
- Public Works
- Provision of Utilities
- Easements
- Hazard concerns

The Commission also heard public comment at the worksession that was conducted prior to the regular meeting on concerns regarding the following:

- Annexation issues - if in the future the City of Homer annexed an area with a gated community
- Maintaining Pedestrian and Section Line Easements and that there will be a separate vacation process to effect that vacation.
- Retroactive establishment of gated communities
- Maintaining connectivity in multiple sectors and aspects of our community

Excerpt from the Unapproved October 2, 2019 Meeting Minutes

NEW BUSINESS

A. Staff Report 19-81, Kenai Peninsula Borough Draft Ordinance Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivision

Chair Venuti introduced the item by reading of the title into the record. He noted that the Commission discussed this thoroughly at the worksession prior to the meeting.

City Planner Abboud reviewed Staff Report 19-81. He noted that he has not had a response from the Fire or Police Departments on the proposed ordinance. He suggested that the Commission can make a list of concerns. His concern would be that it does not interfere with any adopted plans that the city has currently especially transportation and public safety.

The Commission expressed concerns and questioned how the establishment of gated communities and handling of basic services such as maintenance of utilities, roads, etc., would be governed and that this proposed legislation was not crafted for Homer. They also discussed their recommendation to the Borough did not address what the city would enact but just advisory to the Borough on their actions but this did bring it before them the possibility of it happening in the city limits and they currently have no regulations governing this type of actions.

DAVIS MOVED THAT THE COMMISSION FORWARD A RECOMMENDATION TO THE KENAI PENINSULA BOROUGH THAT THEY ADOPT A POLICY THAT THE HOME OWNERS ASSOCIATION THAT BENEFITS FROM THE VACATION OF A GRANTING THEM OWNERSHIP OF A ROAD THAT WAS IMPROVED WITH PUBLIC FUNDS BE REQUIRED TO REIMBURSE THE LOCAL AUTHORITY FOR THE VALUE OF THAT IMPROVEMENT.

Chair Venuti asked for a second before any discussion.

The motion failed for lack of a second.

Commissioner Bentz recommended drafting recommendations and having staff put them into a memorandum to forward to the Borough.

Further discussion ensued on clarification of the actions that the Commission on behalf of the city could recommend at this point. It was explained that the Commission could submit a recommendation to the Borough to tweak their regulations before making this effective.

Commissioner Smith suggested including a recommendation that the Borough should include language that if there is an applicant within the city limits of Homer that it allows for the Planning Commission to create language to give structure to the development of gated communities.

Commissioner Bentz suggested that Section 3 of the proposed ordinance be amended to contain language that allows or postpones enactment to provide cities the time to develop tandem code and or policy that applies to gated subdivisions in their respective communities.

She stated that since the existing ordinance is approved at the Borough level and a resident of the city submitted an application to create a gated subdivision the city has no regulations or policy in place to deal with that application.

There was a brief discussion on that delay for the enactment of the ordinance on the Borough level would then allow the other municipalities to institute their own regulations and debated asking for a 90 day or up to six month delay as a reasonable enactment date. A 90 day time frame would be the minimal time needed. It was pointed out that according to Assembly member Cooper this ordinance was scheduled to be on the agenda for October 8, 2019. Further information on the presentation and approval schedule by the Borough Assembly and Planning Commission.

Deputy City Clerk Krause provided input on the process for submitting their recommendations to the Borough Planning Department via memorandum at the request of Commissioner Bentz.

The Commission further discussed the requirement to submit their recommendations to the Borough through City Council. City Planner Abboud explained that the Commission can respond to the Borough and that they will need to submit all code changes through Council when that come up but they can submit the recommendations to the Borough on the ordinance.

Commissioner Smith offered the following recommendation for consideration: Homer Planning Commission recommends the following language be added to KPB Ordinance 20.80 to allow first class cities to develop their own code language prior to the allowance of specific applications for gated communities within these cities.

Additional comments were offered by the City Planner and Commissioners on adding or prohibiting applications until cities have a chance to respond.

Commissioner Bentz advocated for generalized concerns since there could be problems with submitting the incorrect legalese to the Borough. She then requested some of their direct concerns that should be included.

Commissioners and City Planner Abboud provided their concerns.

Commissioner Bentz then stated that she would like to provide a concise statement for Staff to be able to craft the memorandum effectively with minimal wordsmithing.

The Homer Planning Commission has general concerns with the City's ability to respond to this ordinance once it is approved by the Assembly with the predominant apprehension to have Section 3 becoming effective immediately.

The Homer Planning Commission recommends that Section 3 be amended to delay or prohibit enactment until the City can respond with policy commensurate or municipal policy. Items of specific concern are the following:

- City Code Changes
- Comprehensive Plan Amendments
- Transportation Plan

- Stormwater Issues
- Emergency Services
- Public Works
- Provision of Utilities
- Easements
- Hazard concerns

Commissioner Bentz also noted that they heard public comment at the worksession on concerns regarding the following:

- Annexation issues - if in the future the City of Homer annexed an area with a gated community
- Maintaining Pedestrian and Section Line Easements and that there will be a separate vacation process to effect that vacation.
- Retroactive establishment of gated communities
- Maintaining connectivity in multiple sectors and aspects of our community

The Commission agreed by consensus to forward a memorandum to the Kenai Peninsula Borough in response to the proposed ordinance KPB 2019-xx containing the recommendations.



City of Homer

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Planning

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Staff Report PL 19-81

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud AICP, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: October 2, 2019
SUBJECT: Kenai Peninsula Borough Draft Ordinance Adopting KPB 20.80,
Subdivision Private Streets and Gated Subdivision

Introduction

The Kenai Peninsula Borough has introduced an ordinance to allow for gated subdivisions and private roads within the subdivision process. The timeframe for review on this ordinance is fairly quick; currently it is scheduled for KPB Assembly action on October 8th. (This may be postponed.)

Please read through the KPB desk packet of 9/23/19. Scott Huff, Borough Platting Manager will be attending our work session to talk about the ordinance and answer questions.

Planners Abboud and Engebretsen had a teleconference with Mr. Huff and Borough Planner Director Max Best on 9/24/19. Borough staff stated that the City's requirements for construction, and the Borough requirement for an installation agreement would still stand. Additionally, the connections in our adopted plans for road and trails would still be binding, as they are now.

Planning staff has provided the ordinance to the City Fire and Police Departments for their comments.

Analysis

The ordinance would allow private, gated subdivisions. The road to each individual lot would not be a public dedication as is required now. Instead, the Home Owners Association (HOA) would bear all responsibility for the road, and the road would be its own separate parcel, owned collectively by the HOA. There are provisions for blocking public access by gating the private road, if desired. Upon initial reading it appears the ordinance covers emergency access concerns.

Staff was concerned that a developer could avoid building the infrastructure within the development – roads, water, sewer, electricity, etc, and that Homer could end up with a gated

community in an area where an adopted plan shows a through street connection. After speaking with Borough staff, staff learned that the subdivision construction requirements remain unaffected by this ordinance, and that through street connections can still be required based on Homer's adopted plans.

In the limited time staff has had for analysis, it's possible that Homer City Code would need to be amended to address things like setback requirements along the private road. However these are Homer City Code issues, not Kenai Peninsula Borough platting concerns.

Staff Recommendation

1. Use work session to gain enough information to formulate a response to forward to the Kenai Peninsula Borough at the regular meeting.
2. If the ordinance is adopted by the Kenai Peninsula Borough, revisit the topic and interactions with Homer City code in the near future.

Attachments

1. Kenai Peninsula Borough Planning Commission Desk Packet Excerpt 9/23/2019
2. KPB PC Regular meeting packet excerpt 9/23/2019
3. KPB PC Memorandum from 8/26/19 meeting

MEMORANDUM

TO: KPB Planning Commission
THRU: Max Best – Planning Director *mb*
FROM: Scott Huff – Platting Manger *sth*
DATE: September 18, 2019
RE: Ordinance 2019- 24, Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor)

At the August 26th Planning Commission meeting, Ordinance 2019- 24 Adopting KPB 20.80 Subdivision Private Streets and Gated Subdivision was introduced. The commissioners requested Staff to gather additional information and reviews.

On September 9th e-mails were sent to the following, with a request to review the proposed ordinance and submit any comments.

- Dil Uhlin – KPB Roads Director
- Dan Nelson – Senior Manager, Office of Emergency Management, KPB
- Chief Roy Browning – KPB CES
- Mary Kay Grenier – KPB Assessing, Title Officer
- Mary Broderick – First American Title
- Chris Hough – Stewart Title of Kenai Peninsula Borough
- Kathy Hemstreet – Kachemak Bay Title Agency

No comments were received.

The ordinance was also sent to the Kenai, Soldotna, Homer, and Seward for review and comments. The City of Soldotna and Homer replied and requested KPB Staff meet with the city Staff and/or attend a city planning commission meeting to explain the ordinance and answer any questions.

KPB staff has continued to review the proposed ordinance. **Staff recommends** the following corrections/edits be made to the ordinance and introduced to the assembly.

Date September 19, 2019
To: Planning Commission
RE: Ordinance 2019-_____, Subdivision Private Streets and Gated Subdivisions

1. Revise 20.80.020.A to read, 'All provisions of KPB Title 20, excluding 20.30.210, must be met and/or shall apply.'
2. Revise 20.80.020.B by removing, 'and KPB 20.30'.
3. Revise 20.80.020.C by removing, 'with having to backup'.
4. Revise 20.80.020.D to read, 'A homeowners' association (HOA is required for approval of private streets within a subdivision. All property owners to be served by the private streets must be in the HOA. The HOA shall own and be responsible for the maintenance of the private streets and appurtenances.
5. Remove 20.80.020.H.1.
6. Remove 20.80.020.H.3
7. Revise 20.80.030.A into two items, remove a portion of 20.80.030.C and combine the remaining code back into 20.80.030.A to read as follows.
 - A. The fire and emergency services provider that serves the proposed gated subdivision must approve the fire and emergency services access plan for each gate prior to installation. The fire and emergency services provider, borough assessing department, borough planning department, and law enforcement shall be provided access.
 - B. The entrances to all private streets shall be marked with a sign stating that it is a private street.
8. Remove 20.80.030.F and 20.80.030.H.
9. Replace a portion of 20.80.040.A with 20.70.040 to follow the same requirements for application submittal as required for right of way vacations. This portion will read as follows

Application – Petition required.

A platted right of way may not be vacated, except upon petition by resolution of the governing body from a municipality in which the property is located or by the owners of the majority of land fronting or abutting the right of way to be vacated. The petition shall be filed with the

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Date September 19, 2019

To: Planning Commission

RE: Ordinance 2019-_____, Subdivision Private Streets and
Gated Subdivisions

planning commission. The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.

An updated ordinance is attached. Proposed deletions are ~~strike through~~, and proposed additions are [bracketed].

Introduced by: Mayor
Date: 9/3/19
Hearing: 10/8/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-**

**AN ORDINANCE ADOPTING KPB 20.80, SUBDIVISION PRIVATE
STREETS AND GATED SUBDIVISIONS**

- WHEREAS,** privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions; and
- WHEREAS,** Goal 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land; and
- WHEREAS,** private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access; and
- WHEREAS,** there is a need for designated standards and requirements and establishment of procedures for creating gated communities; and
- WHEREAS,** designating standards, requirements and procedures for establishing private streets within subdivisions with gated access will address residents as well as the public’s privacy, security, and access concerns; and
- WHEREAS,** the Kenai Peninsula Borough Road Service Area board at its meeting held on August 13, 2019, recommended unanimous approval of this ordinance; and
- WHEREAS,** the Kenai Peninsula Borough Planning Commission at its meeting held on August 26, 2019, recommended _____;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI
PENINSULA BOROUGH:**

SECTION 1. That KPB Chapter 20.80, entitled “Private Streets and Gated Communities” is enacted as follows:

20.80.010. - Purpose.

This chapter provides standards and requirements for the establishment of private streets in subdivisions in the borough. A subdivision with private streets and gated access may be created at the time of subdivision by the owner of the parcel being subdivided or, where streets have been previously dedicated to the public which access lots in different ownerships, by the owners of those parcels in accordance with the provisions of this chapter.

20.80.020. – Requirements.

Private streets in subdivisions shall meet the following requirements:

- A. ~~The general p~~ [P]rovisions of KPB Title 14 ~~and 20~~ [, excluding 20.30.210 must be met and/or apply] ~~as they relate to development, streets and utilities shall apply, except as otherwise provided for in this chapter.~~
- B. Private streets shall conform to the same standards regulating the design and construction of streets, street naming and street addressing in KPB 14.06, 14.10, 14.20 ~~and KPB 20.30.~~
- C. A public vehicular turn around shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit[.] ~~without having to backup.~~
- D. A homeowners' association (HOA) is required for approval of private streets within a subdivision. All property [owners] to be served by the private streets must be members in ~~or part of~~ the HOA. The HOA shall own and be responsible for the maintenance of the private streets and appurtenances.
- E. Private streets shall be contained within a separate lot owned by the HOA.
- F. The borough shall not pay for or contribute to any cost to construct, improve, or maintain a private street.
- G. The subdivision final plat and HOA documents shall note that borough maintenance shall not be provided on any private streets.
- H. Gated subdivisions and private streets may be approved, provided they meet the following criteria:

- ~~1. Internal streets shall conform to the requirements of KPB 20.30, Subdivision Design Requirements, except as otherwise allowed in this section;~~
- ~~2. Emergency services shall be provided access to deliver services within the private subdivision. Approval by the fire and emergency services provider with jurisdiction in the area of the gated subdivision is required. The fire and emergency services provider must be satisfied that fire and emergency services providers will have safe access into and within the gated subdivision;~~
- ~~3. The requirements of KPB title 20 are met because alternate legal access to adjoining properties is available and that access is constructible in accordance with KPB 20.30, Subdivision Design Requirements and KPB 14.06, Road Standards;~~
- ~~4. There shall be a note on the plat that the streets are not public and are subject to private construction and maintenance;~~
- ~~5. The HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA shall indemnify, defend, and hold and save the borough, its elected and appointed officers and officials, agents and employees, hereinafter collectively referred to as "agents," harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA's acts or omissions related to its private streets and gates in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.~~
- ~~6. The HOA and all of the HOA's subcontractors, if any, shall be responsible for the purchase and maintenance of all insurance required by law and any other insurance the HOA deems necessary or appropriate.~~

20.80.030. – Gates

If a gate is installed to prevent public access to a subdivision with private streets the gate shall conform to the following requirements:

- ~~A. Each gate must be approved prior to installation by the fire and emergency services provider that serves the proposed gated subdivision. The entrances to all private streets shall be marked with a sign stating that it is a private street. [The fire and emergency services provider that serves the proposed gated subdivision must~~

approve the fire and emergency services access plan for each gate prior to installation. The fire and emergency services provider, borough assessing department, borough planning department, and law enforcement shall be provided access.]

[B. The entrances to all private streets shall be marked with a sign stating that it is a private street.]

[C.]B. Gates, approach and departure areas shall be designed by a licensed professional civil engineer.

C. — In order to allow access for the provision of emergency services, each security gate designed and installed shall be equipped so that access is by a radio operated controller or keypad. The fire and emergency services provider serving the gated subdivision, borough assessing department, borough planning department, and law enforcement shall be provided either radio controlled or keypad access to the subdivision.

D. Approach and departure areas on both sides of a gated entrance must provide adequate setbacks and proper alignment to allow free and unimpeded passage of emergency vehicles through the entrance area.

E. After installation, all emergency access systems must be approved by the fire and emergency services providers serving the gated subdivision. The HOA must maintain all components of the gate system in a normal operating condition and have them serviced on a regular basis, as needed, to ensure proper gate operation. A proper power supply shall be provided and maintained to all electrical components at all times. Each electrical vehicular gate must be provided with a fail-open device to open during power failures and be equipped for emergency access.

F. — A public vehicular turn around shall be provided to allow vehicles that have been denied entry the ability to exit without having to backup.

G.[F.] No part of the gate system shall be placed in a public right-of-way.

H. — The HOA is responsible for the gate, its signage and its costs, and shall be responsible for any violations of this section.

20.80.040. – Converting to gated subdivision.

- A. A subdivision HOA may seek to convert a subdivision to a gated community with private street(s) and restrict public access by filing a replat and vacation petition with the planning director, which shall be considered a request to vacate public street(s) and/or right-of-way(s), as well as replat the subdivision. [A platted right of way may not be vacated, except upon petition by resolution of the governing body from a municipality in which the property is located or by the owner of the majority of land fronting or abutting the right of way to be vacated.] The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.
- B. Upon determination by the planning director that the replat application is complete, the request shall be subject to review and approval by the borough planning commission regarding whether the gated subdivision requirements and procedures have been met, as set out in this chapter. The borough planning commission decision is subject to appeal to the hearing officer pursuant to KPB 21.20.
- C. Converting public street to private street – standards.
1. Vacation of the public right-of-way shall be in accordance with the criteria set forth in KPB 20.70.
 2. The proposed gated subdivision shall not cause discontinuity in the existing or proposed public street system or distribute an unacceptable amount of traffic through an existing neighborhood than would otherwise result if public streets were used. Converted private streets may not unduly impair access to public facilities, including schools, parks and libraries. Utilities proposed for vacation must not provide service to customers outside the proposed gated subdivision boundary.
 3. The proposed gated subdivision must not cause discontinuity in the existing or proposed road system to any property owner in the proposed gated subdivision with frontage on the public right-of-way that is to be vacated.
 4. Prior to recording the final plat the property owners abutting the vacated public street shall file with the borough fully executed deeds conveying their interest in the vacated street to the HOA.
 5. Prior to recording the HOA shall accept the road “as-is” in its present condition and shall agree to indemnify, hold harmless, and defend the borough against any claims arising

from the HOA's ownership, maintenance and control of the converted street.

6. HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA shall indemnify, defend, and hold and save the borough, its elected and appointed officers, officials, agents and employees, hereinafter collectively referred to as "agents", harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA's acts or omissions related to its private streets and gates in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.

20.80.050. – Converting private streets to public streets in gated subdivision.

- A. The owners of a private street may petition to dedicate the private street through the platting process. The street must meet the design criteria set forth in KPB 20.30 and KPB 14.06.
- B. A civil engineer at the HOA's expense shall determine whether the private streets meet KPB Title 14 and Title 20 standards for street design and construction. If the streets do not meet borough standards the dedication shall be denied.
- C. The borough may also require, at the HOA's expense, the removal of any improvements, access control devices, gates, landscaping or other aesthetic amenities associated with the private street.

20.80.060. – Enforcement.

Violations of this chapter shall be in accordance with KPB 20.10.030 and KPB 21.050,

SECTION 2. That KPB Chapter 20.90, entitled "Definitions is amended as follows:

20.90.010. – Definitions generally.

In this title, unless otherwise provided, or the context otherwise requires, the following definitions shall apply.

...
“Gated subdivision” means a residential subdivision consisting of five (5) or more parcels of land where vehicular and/or pedestrian access by the general public from a public street and street(s) within the gated community and/or public right-of-way(s) is restricted as a result of a barrier that may include, but is limited to gates, security personnel, fences or walls. This definition does not include gates or other barriers limiting access to an individual parcel or lot.

...
“Private street” is defined as a vehicular access way shared by and serving two or more lots, which is not publicly maintained, but maintained by a homeowners’ association. The term “private street” shall be inclusive of alleys. The term “street” also includes the term “street” as used in KPB title 14.

SECTION 3. That this ordinance shall become effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
_____ DAY OF _____, 2019.

Wayne Ogle, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk


E. UNFINISHED BUSINESS


- 2. Ordinance 2019-24; An Ordinance Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions.**

***Postponed from the August 26, 2019 Planning Commission meeting.
Motion on floor.***

MEMORANDUM

TO: Wayne Ogle, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor
Dil Uhlin, Roads Director 

FROM: Max Best, Planning Director 

DATE: August 22, 2019

RE: Ordinance 2019-_____, Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor)

Goal 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land. Privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions. Private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access.

There is a need for standardization, criteria, and establishment of procedures for creating both subdivisions with private streets and gated subdivisions. This ordinance codifies the requirements and procedures for creating these types of subdivisions.

This matter is scheduled to come before the KPB Road Service Area Board's at its August 13, 2019 meeting and the KPB Planning Commission at its August 26, 2019 meeting. The recommendations of both boards will be presented to the assembly prior to the final hearing on this ordinance.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Date: 9/3/19
Hearing: 10/8/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-**

**AN ORDINANCE ADOPTING KPB 20.80, SUBDIVISION PRIVATE
STREETS AND GATED SUBDIVISIONS**

WHEREAS, privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions; and

WHEREAS, Goal 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land; and

WHEREAS, private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access; and

WHEREAS, there is a need for designated standards and requirements and establishment of procedures for creating gated communities; and

WHEREAS, designating standards, requirements and procedures for establishing private streets within subdivisions with gated access will address residents as well as the public’s privacy, security, and access concerns; and

WHEREAS, the Kenai Peninsula Borough Road Service Area board at its meeting held on August 13, 2019, recommended unanimous approval of this ordinance; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on August 26, 2019, recommended _____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB Chapter 20.80, entitled “Private Streets and Gated Communities” is enacted as follows:

20.80.010. - Purpose.

This chapter provides standards and requirements for the establishment of private streets in subdivisions in the borough. A subdivision with private streets and gated access may be created at the time of subdivision by the owner of the parcel being subdivided or, where streets have been previously dedicated to the public which access lots in different ownerships, by the owners of those parcels in accordance with the provisions of this chapter.

20.80.020. – Requirements.

Private streets in subdivisions shall meet the following requirements:

- A. The general provisions of KPB Title 14 and 20 as they relate to development, streets and utilities shall apply, except as otherwise provided for in this chapter.
- B. Private streets shall conform to the same standards regulating the design and construction of streets, street naming and street addressing in KPB 14.06, 14.10, 14.20 and KPB 20.30.
- C. A public vehicular turn around shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit without having to backup.
- D. A homeowners' association (HOA) is required for approval of private streets within a subdivision. All property to be served by the private streets must be members in or part of the HOA. The HOA shall own and be responsible for the maintenance of the private streets and appurtenances.
- E. Private streets shall be contained within a separate lot owned by the HOA.
- F. The borough shall not pay for or contribute to any cost to construct, improve, or maintain a private street.
- G. The subdivision final plat and HOA documents shall note that borough maintenance shall not be provided on any private streets.
- H. Gated subdivisions and private streets may be approved, provided they meet the following criteria:

1. Internal streets shall conform to the requirements of KPB 20.30, Subdivision Design Requirements, except as otherwise allowed in this section;
2. Emergency services shall be provided access to deliver services within the private subdivision. Approval by the fire and emergency services provider with jurisdiction in the area of the gated subdivision is required. The fire and emergency services provider must be satisfied that fire and emergency services providers will have safe access into and within the gated subdivision;
3. The requirements of KPB title 20 are met because alternate legal access to adjoining properties is available and that access is constructible in accordance with KPB 20.30, Subdivision Design Requirements and KPB 14.06, Road Standards;
4. There shall be a note on the plat that the streets are not public and are subject to private construction and maintenance;
5. The HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA shall indemnify, defend, and hold and save the borough, its elected and appointed officers and officials, agents and employees, hereinafter collectively referred to as “agents,” harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys’ fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA’s acts or omissions related to its private streets and gates in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.
6. The HOA and all of the HOA’s subcontractors, if any, shall be responsible for the purchase and maintenance of all insurance required by law and any other insurance the HOA deems necessary or appropriate.

20.80.030. – Gates

If a gate is installed to prevent public access to a subdivision with private streets the gate shall conform to the following requirements:

- A. Each gate must be approved prior to installation by the fire and emergency services provider that serves the proposed gated subdivision. The entrances to all private streets shall be marked with a sign stating that it is a private street.

- B. Gates, approach and departure areas shall be designed by a licensed professional civil engineer.
- C. In order to allow access for the provision of emergency services, each security gate designed and installed shall be equipped so that access is by a radio operated controller or keypad. The fire and emergency services provider serving the gated subdivision, borough assessing department, borough planning department, and law enforcement shall be provided either radio controlled or keypad access to the subdivision.
- D. Approach and departure areas on both sides of a gated entrance must provide adequate setbacks and proper alignment to allow free and unimpeded passage of emergency vehicles through the entrance area.
- E. After installation, all emergency access systems must be approved by the fire and emergency services providers serving the gated subdivision. The HOA must maintain all components of the gate system in a normal operating condition and have them serviced on a regular basis, as needed, to ensure proper gate operation. A proper power supply shall be provided and maintained to all electrical components at all times. Each electrical vehicular gate must be provided with a fail-open device to open during power failures and be equipped for emergency access.
- F. A public vehicular turn around shall be provided to allow vehicles that have been denied entry the ability to exit without having to backup.
- G. No part of the gate system shall be placed in a public right-of-way.
- H. The HOA is responsible for the gate, its signage and its costs, and shall be responsible for any violations of this section.

20.80.040. – Converting to gated subdivision.

- A. A subdivision HOA may seek to convert a subdivision to a gated community with private street(s) and restrict public access by filing a replat and vacation petition with the planning director, which shall be considered a request to vacate public street(s) and/or right-of-way(s), as well as replat the subdivision. The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.

B. Upon determination by the planning director that the replat application is complete, the request shall be subject to review and approval by the borough planning commission regarding whether the gated subdivision requirements and procedures have been met, as set out in this chapter. The borough planning commission decision is subject to appeal to the hearing officer pursuant to KPB 21.20.

C. Converting public street to private street – standards.

1. Vacation of the public right-of-way shall be in accordance with the criteria set forth in KPB 20.70.
2. The proposed gated subdivision shall not cause discontinuity in the existing or proposed public street system or distribute an unacceptable amount of traffic through an existing neighborhood than would otherwise result if public streets were used. Converted private streets may not unduly impair access to public facilities, including schools, parks and libraries. Utilities proposed for vacation must not provide service to customers outside the proposed gated subdivision boundary.
3. The proposed gated subdivision must not cause discontinuity in the existing or proposed road system to any property owner in the proposed gated subdivision with frontage on the public right-of-way that is to be vacated.
4. Prior to recording the final plat the property owners abutting the vacated public street shall file with the borough fully executed deeds conveying their interest in the vacated street to the HOA.
5. Prior to recording the HOA shall accept the road “as-is” in its present condition and shall agree to indemnify, hold harmless, and defend the borough against any claims arising from the HOA’s ownership, maintenance and control of the converted street.
6. HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA shall indemnify, defend, and hold and save the borough, its elected and appointed officers, officials, agents and employees, hereinafter collectively referred to as “agents”, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys’ fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA’s acts or omissions related to its private streets and gates in any way whatsoever. This

defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.

20.80.050. – Converting private streets to public streets in gated subdivision.

- A. The owners of a private street may petition to dedicate the private street through the platting process. The street must meet the design criteria set forth in KPB 20.30 and KPB 14.06.
- B. A civil engineer at the HOA’s expense shall determine whether the private streets meet KPB Title 14 and Title 20 standards for street design and construction. If the streets do not meet borough standards the dedication shall be denied.
- C. The borough may also require, at the HOA’s expense, the removal of any improvements, access control devices, gates, landscaping or other aesthetic amenities associated with the private street.

20.80.060. – Enforcement.

Violations of this chapter shall be in accordance with KPB 20.10.030 and KPB 21.050,

SECTION 2. That KPB Chapter 20.90, entitled “Definitions is amended as follows:

20.90.010. – Definitions generally.

In this title, unless otherwise provided, or the context otherwise requires, the following definitions shall apply.

...

“Gated subdivision” means a residential subdivision consisting of five (5) or more parcels of land where vehicular and/or pedestrian access by the general public from a public street and street(s) within the gated community and/or public right-of-way(s) is restricted as a result of a barrier that may include, but is limited to gates, security personnel, fences or walls. This definition does not include gates or other barriers limiting access to an individual parcel or lot.

...

“Private street” is defined as a vehicular access way shared by and serving two or more lots, which is not publicly maintained, but maintained by a homeowners’ association. The term “private street” shall be inclusive of alleys. The term “street” also includes the term “street” as used in KPB title 14.

SECTION 3. That this ordinance shall become effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS _____ DAY OF _____, 2019.

Wayne Ogle, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

Commissioner Venuti wanted to know if Ms. Wade had the opportunity to read the letter from the Kachemak Bay Conservation Society. Ms. Wade read it briefly right before the meeting. Commissioner Venuti wanted to know what she thought of the recommendations and if they were feasible to add into the plan. Ms. Wade felt that they could and did not see anything that contradicted the values that have been shared through this process.

Commissioner Ecklund wanted to discuss the process for the plan. She wanted to know if it could be brought back after some of the suggestions are made so they can review it. She felt they did not need the whole plan again but would like to see the changes. She also wanted to know if they had to make motions for each recommendation or if some could be grouped. Mr. Wall said that they could instruct staff to make some changes and bring it back and then they will have a new draft to review and adopt.

Chairman Martin said that he would like it to be time specific on when to review the plan.

Commissioner Ruffner wanted to try to summarize the wishes of the Commission for Ms. Wade. Update the census tables for the agriculture data from 2012 to 2017; incorporate the five recommendations from the Kachemak Bay Conservation Society, and a specific timeline for review instead of periodic update.

Chairman Martin noted from his agriculture perspective that the cannabis statistics are significant even if the benefits are not local relatively speaking. Commissioner Carluccio noted that we do get sales tax. Mr. Wall said the sales tax does go to the Borough.

Commissioner Ruffner wanted to know if staff needed more information. Mr. Wall felt that what was given was sufficient direction. He does have concerns about item one on the Kachemak Bay Conservation Society list. It deals directly with the Hazard Mitigation Plan. That is something that the Commission has already forwarded to the Assembly. He would recommend items two through five on the list.

Commissioner Ecklund noted that Kachemak Bay Conservation Society amendments do not get specific enough for alternative energy or the solar and wind farmland use. She would like to see more about alternative energy.

Ms. Wade said there were two things she did not hear Commissioner Ruffner cover in his summary and the alternative energy was one. The other was related to it, the educational and training opportunities tied to growth industries. Tying it back to those alternative energy and others discussed. Commissioner Ruffner wanted to clarify that those suggestions would also be looked at. Ms. Wade confirmed.

Commissioner Ruffner asked if staff wanted to the postponement to be date certain or brought back by staff. Mr. Best asked what Ms. Wade's ability would be to have the changes made. Ms. Wade said she would like to have the changes made within the next two weeks. After hearing the public input and with it already being a two-year process, she felt sooner was better. Mr. Best said that brought back by staff would be best.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Ecklund, to postpone the review of the Comprehensive Plan until brought back by staff.

MOTION PASSED: seeing and hearing no objection or discussion, the motion passed by unanimous consent.

AGENDA ITEM F. PUBLIC HEARINGS

- 2. Ordinance 2019-___; Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions.

Staff Report Given by Max Best

PC Meeting: 8/26/19

This ordinance is to allow people to have gated or private subdivisions within the Borough. If all of the requirements of the Borough Platting code are met, a road can be vacated and made into a tract of land creating a gated private community.

Some requirements are that Title 14 and 20, as they relate to development, would need to apply. Utility requirements, road width, etc. would have to apply in case the tract is dedicated as a public right-of-way and ceases being private.

There are requirements to get to and through the gates. There must be a turnaround before the gate and adequate access. All of the requirements go through fire and emergency services to determine that they could access the subdivision if needed. They would have a clicker or code that would allow them access to the subdivision.

This was created by staff to address those subdivisions that may potentially want private roads. This can be difficult but doable. There are situations where "to and through" the subdivision is not needed. Example would be a small cul-de-sac that accesses land that does not require streets to go around or through the subdivision. It would work in that situation.

END OF STAFF REPORT

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

MOTION: Commissioner Venuti moved, seconded by Commissioner Carluccio, to forward to the Assembly a recommendation to approve Ordinance 2019-___; an ordinance adopting KPB 20.80, Subdivision private streets and gated subdivisions.

Commissioner Whitney wanted to know if an existing subdivision could do this if the ordinance is adopted. Mr. Best said they could but the right-of-way would have to be vacated. One hundred percent of the property owners that abut the right-of-way would have to be a part of the process. It will take everyone in the area to agree to it.

Commissioner Ecklund noted that this is a brand new section of Borough Code. She did not think there was anything existing about gated communities or private streets in the code. Mr. Best said this is new. It can be done under existing code but it requires numerous exceptions to the code. Commissioner Ecklund wanted to know if there was a specific instance that had caused this to be drafted. Mr. Best said perhaps.

Commissioner Carluccio wanted to know if staff looked at other Boroughs or States that have gated communities to see how it worked for them. Mr. Best said they did a lot of research on how it worked in other municipalities. There are a lot of them in California, etc. The biggest concern was providing emergency services to people and making sure there is a way to adequately respond to people. It cannot just be a trail that emergency vehicles cannot use. Commissioner Carluccio followed up by asking if it would all have to be privately owned land, that there would be no easements or trails. Mr. Best said it would be a tract of land that is owned by all the abutting landowners. If it is done at the time of subdivision, it would be a tract owned by the Home Owners Association and the Association would own, operate, and maintain the road. Utility easements would be associated with it and building setbacks in case the Borough takes over the right-of-way. It has to meet all of title 14 and 20 for the Borough to take it. Non-conforming structures or things in the right-of-way would not allow the Borough to take the road. It must be built to Borough standards and met all the requirements the Borough has in place. Commissioner Carluccio asked if the best way to do this is to start with a tract of land and then subdivide to build the gated community. Mr. Best said this is generally for that situation. It will be difficult but possible for existing subdivisions to become a gated community.

Commissioner Venuti wanted to know if a local option zone could be a gated community and about emergency vehicle access. Mr. Best said that he did not know any reasons why a local option zone could not be a gated community. The Borough would have access anytime staff needed. Gates would have to

be approved by emergency service providers. There would be a code, a lock that can be cut, and a way to access the subdivision if needed even if the power is out. Emergency services would have free access and this ordinance reserves access for the Planning Department. Widths and heights of gates will be worked out with Emergency Services. Commissioner Venuti wanted to know if a how property rights will be handled. Mr. Best said that an HOA would have to own it and the Borough would not have property rights associated with the roadway. The HOA would also maintain the road.

Commissioner Ecklund is concerned about not having building setbacks incorporated into the ordinance due to safety standards for fires, etc. Mr. Best noted that building set backs are a provision of Chapter 20 so it would have to be in place.

Commissioner Whitney wanted to know if the Borough would be compensated for giving up a right-of-way in established subdivisions that form a gated community and turn the road into a private road. Mr. Best responded that if a municipality purchased land for a right-of-way they could be compensated during the vacation process. The Borough gets the right-of-ways mostly through dedicated fee land with no cost. Commissioner Whitney noted that the Borough may have been improving it and have money invested into the road. Mr. Best thought that the Roads Department would be willing to give up the maintenance on the road over what it costs to continue maintenance and improvements. Mr. Best noted that it was a good question that was not fully considered.

Commissioner Ruffner noted that when reading the proposal it is generally following all the subdivision requirements and Title 14 for road construction. That seems reasonable in the sense that it could wind up coming back to the Borough and it needs to be safe. The issue he sees is once a certain sized parcel is turned into a gated community the through traffic to get to future development seems to be a challenge. He wanted to know if there was any thought put into size limitations. There are block length requirements, but he wanted to know if there was something in this ordinance that talks about size. Mr. Best said that it must meet Chapter 20 requirements including the "to and through". It is not for every piece of property. There is no size requirement because many larger parcels require "to and through" easements or right-of-way dedications. Commissioner Ruffner noted that the exception to block length is given generously and he could see that becoming an issue.

Chairman Martin wanted to know if there would be any legal complications if the Borough owns a parcel inside a gated community after tax foreclosure. Mr. Best said that was discussed and it was determined that the borough would not be obligated to pay Home Owner fees for tax foreclosed properties. The Borough currently does not have those obligations for property acquired during tax foreclosure.

Commissioner Whitney wanted to know if the property owners in the gated community would still have to pay the road service mill rate. Mr. Best said they would. Commissioner Whitney said the owners would be doubling their cost because they would also pay the maintenance through the Home Owners Association. Mr. Best said that was correct.

Chairman Martin noted he likes to encourage more parks and open space within subdivisions. Currently there is no economic incentive for a developer to do that and the Borough does not want to own those parks. He wanted to know if this would help encourage that. Mr. Best said the developer or owners could designate a lot within the subdivision as an open space and the Home Owners Association can own it and utilize it as a park. This could possibly advance that type of situation. Chairman Martin noted they would still have to pay property tax on it. Mr. Best said they would.

Commissioner Ruffner said he did not have any issues if a developer wants to develop a gated community if it does not interfere with future development of the larger lands that are still out there. The Borough is still entitled to some State lands and the State is still entitled to some Federal lands. This is a big piece of code to introduce and vote on in the same meeting. He does not know if the public knows that this is out there. Everything he has heard sounds reasonable but is reluctant to vote on it.

Commissioner Ecklund wanted some clarification about section line easements that go through a parcel that wants to be a gated community. She wanted to know if the gate would go on the far side of the section

line easement so that public access is not blocked. Mr. Huff said that public access easements would have to stay open from point A to point B. The easement could pass through a subdivision but the public would not have the right to get onto the private access road. Commissioner Ecklund wanted to know if the property was to be gated if a pedestrian gate would have to be allowed on either side to allow people to walk through the section line easement. Mr. Huff stated that a legally a pedestrian or section line easement cannot be blocked. The gate would be on the road and the public could continue to use the section line easement to pass through the subdivision. Commissioner Ecklund followed up by stating that the owners could not put up a fence around the whole property from both sides of the gate and block the whole subdivision off if there is a section line easement through it. Mr. Huff said a fence could be put up on their property but the section line easement cannot be blocked.

Commissioner Whitney felt that many questions of had been raised and many answers were not available right now. He felt that there needed to be more research and clarification on what the parameters, rules and regulations would be for somebody to do this. Mr. Best asked Commissioner Whitney what specific questions he would like answered. Commissioner Whitney wanted to know what would happen to the street in an already formed subdivision. If that road has been built and maintained by the Borough who will pay for that investment.

Commissioner Fikes asked if there were any gated communities in the Borough at this time. Mr. Best said there are some. Commissioner Fikes asked how they are operated. Mr. Best said it is similar to this ordinance. Kenai River Keys is one and the emergency service providers have clickers to get access and a gate that can be clipped and opened at any time. It has been a private subdivision with private roads since about 1972.

Commissioner Ruffner he would like some more thought on size limitations and tie it to block length. Maybe two time the block length or something similar would be a limitation. It can get more complicated than that when looking at the surrounding lands. A block length could be met but forcing the only other access into a wetland that cannot be developed. He would like to see some rules that limit size and feasibility for construction around the subdivision. Mr. Best said that they could look into it more. The ordinance is being introduced to the Assembly on September 3 and will be heard on October 8. The Planning Commission will have a meeting between those dated so more information can be given to the Commission before they vote.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Carluccio to postpone until brought back by staff.

Commissioner Ecklund wanted to ask about the management of the new ordinance. She wanted to know the Planning Commissioner or Assembly will be making the decisions on private subdivisions. Mr. Best said it would be the Planning Commission and their decision would not be forwarded to the Assembly.

Commissioner Fikes said if this were coming back, she would like to see or hear some feedback from Emergency Services if there have been any complaints or issues. In addition, if the utility companies have had problems with access, or complaints from people that live in a current gated community regarding services. Mr. Best said that there have been no complaints that the Borough is aware of because they make the subdivision must be access available. Kenai Keys has had a special assessment done and had gas put into the community. During a flood event, the gate is locked open so that people can come and go to escape any flood issues. Commissioner Fikes was concerned about seasonal people or those that are on the slope. If an emergency arises when they are not there, where would the protection and responsibility lie, with the Borough or Home Owners Association?

Commissioner Ecklund said this brings to mind when a staff report says that the different groups say no comment or no objection. She wanted to know if that could be included in a staff report for this item. It may be helpful to know that others have reviewed it.

MOTION PASSED: Seeing and hearing no objection or discussion, the motion passed by unanimous consent.



At 9:07 p.m. Chairman Martin called for five minute break.

Chairman Martin called the meeting back to order at 9:13.

Chairman Martin asked for the Planning Commission's consent to move item I1 to be next on the agenda. There was no opposition.

SPECIAL CONSIDERATIONS

AGENDA ITEM I. SPECIAL CONSIDERATIONS

1. Building Setback Exception
 Carver Subdivision Part 3 Lot 8 Block 6
 KPB File 2019-098; Resolution 2019-29
 Location: On Carver Drive and Gene Avenue, Ridgeway area

Staff Report given by Scott Huff

PC Meeting: 8/26/19

Petitioner: Paul J. Flanagan of Kenai, Alaska.

Submittal (summarized): The owner recently obtained an as-built of the property that revealed 6.2 foot encroachment into the building setback of a bedroom/garage addition. The owner purchased the property in the summer of 2004 and hired a contractor to build the addition in the fall so that he could have the extra bedroom for his three children before winter. Unbeknownst to the owner, the contractor built the addition in the building setback. Both Carver Drive and Gene Avenue have had extensive work recently done to them (Fall 2017). The roadwork was done in the area of the property (44290 Gene Ave). Both have been raised, widened, draining improvements (including all new culverts installed), trees removed, plus new easier sloped grades at the corner of Gene and Carver.

Staff Discussion: The encroaching structure for which the exception is being sought is shown on the as-built survey dated August 9, 2019. The as-built survey indicates the structure encroaches 6.2 feet into the building setback of Carver Drive which is a 60 foot wide right of way. The portion of the Carver Drive right-of-way adjoining Lot 8 Block 6 is straight, with bends shortly before and after. Lot 8 Block 6 is located on the corner of Carver Drive and Gene Avenue. The Carver Drive and Gene Avenue intersection is approximately 100 feet from the encroachment.

KPB GIS mapping indicates Carver Drive has a gentle slope adjacent to Lot 8 Block 6, with an approximately 8% uphill grade sloping to the southeast. KPB GIS 4-foot contours indicate the encroaching structure is approximately four feet below the constructed road level of Carver Drive.

KPB GIS mapping indicates Lot 8 Block 6 is not within a mapped flood hazard zone and is not within the Anadromous Habitat Protection District.

Sight distance does not appear to be impacted by the encroaching structure.

Per KPB GIS mapping, Carver Drive is constructed and maintained by the KPB Road Service Area. KPB RSA reviewed the building setback exception request and has no objection to the request.

Findings:

1. The parent plat, Carver Subdivision Part 3, KN 77-73, granted a 20-foot building setback from all street rights-of-way.
2. KPB GIS 4-foot contours indicate Carver Drive adjacent to Lot 8 Block 6 has a gentle slope.
3. Per Kenai Watershed Forum 2013 Cook Inlet Wetlands Mapping, Carver Drive is not affected by low wet areas.
4. The as-built survey dated August 9, 2019 shows the structure encroaches 6.2 feet into the building setback.

MEMORANDUM

TO: Wayne Ogle, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor
Dil Uhlin, Roads Director

FROM: Max Best, Planning Director

DATE: August 22, 2019

RE: Ordinance 2019-_____, Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor)

Goal 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land. Privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions. Private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access.

There is a need for standardization, criteria, and establishment of procedures for creating both subdivisions with private streets and gated subdivisions. This ordinance codifies the requirements and procedures for creating these types of subdivisions.

This matter is scheduled to come before the KPB Road Service Area Board's at its August 13, 2019 meeting and the KPB Planning Commission at its August 26, 2019 meeting. The recommendations of both boards will be presented to the assembly prior to the final hearing on this ordinance.

Your consideration of this ordinance is appreciated.

City Planner Abboud provided clarification on the easement referenced in the report for Commissioner Smith.

BENTZ/RUBALCAVA – MOVED TO ADOPT STAFF REPORT 19-82 AND RECOMMEND APPROVAL OF AA MATTOX APLIN 2019 REPLAT PRELIMINARY PLAT WITH COMMENTS 1-3.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PENDING BUSINESS

NEW BUSINESS

A. Staff Report 19-81, Kenai Peninsula Borough Draft Ordinance Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivision

Chair Venuti introduced the item by reading of the title into the record. He noted that the Commission discussed this thoroughly at the worksession prior to the meeting.

City Planner Abboud reviewed Staff Report 19-81. He noted that he has not had a response from the Fire or Police Departments on the proposed ordinance. He suggested that the Commission can make a list of concerns. His concern would be that it does not interfere with any adopted plans that the city has currently especially transportation and public safety.

The Commission expressed concerns and questioned how the establishment of gated communities and handling of basic services such as maintenance of utilities, roads, etc., would be governed and that this proposed legislation was not crafted for Homer. They also discussed their recommendation to the Borough did not address what the city would enact but just advisory to the Borough on their actions but this did bring it before them the possibility of it happening in the city limits and they currently have no regulations governing this type of actions.

DAVIS MOVED THAT THE COMMISSION FORWARD A RECOMMENDATION TO THE KENAI PENINSULA BOROUGH THAT THEY ADOPT A POLICY THAT THE HOME OWNERS ASSOCIATION THAT BENEFITS FROM THE VACATION OF A GRANTING THEM OWNERSHIP OF A ROAD THAT WAS IMPROVED WITH PUBLIC FUNDS BE REQUIRED TO REIMBURSE THE LOCAL AUTHORITY FOR THE VALUE OF THAT IMPROVEMENT.

Chair Venuti asked for a second before any discussion.

The motion failed for lack of a second.

Commissioner Bentz recommended drafting recommendations and having staff put them into a memorandum to forward to the Borough.

Further discussion ensued on clarification of the actions that the Commission on behalf of the city could recommend at this point. It was explained that the Commission could submit a recommendation to the Borough to tweak their regulations before making this effective.

Commissioner Smith suggested including a recommendation that the Borough should include language that if there is an applicant within the city limits of Homer that it allows for the Planning Commission to create language to give structure to the development of gated communities.

Commissioner Bentz suggested that Section 3 of the proposed ordinance be amended to contain language that allows or postpones enactment to provide cities the time to develop tandem code and or policy that applies to gated subdivisions in their respective communities. She stated that since the existing ordinance if approved at the Borough level and a resident of the city submitted an application to create a gated subdivision the city has no regulations or policy in place to deal with that application.

There was a brief discussion on that delay for the enactment of the ordinance on the Borough level would then allow the other municipalities to institute their own regulations and debated asking for a 90 day or up to six month delay as a reasonable enactment date. A 90 day time frame would be the minimal time needed. It was pointed out that according to Assembly member Cooper this ordinance was scheduled to be on the agenda for October 8, 2019. Further information on the presentation and approval schedule by the Borough Assembly and Planning Commission.

Deputy City Clerk Krause provided input on the process for submitting their recommendations to the Borough Planning Department via memorandum at the request of Commissioner Bentz.

The Commission further discussed the requirement to submit their recommendations to the Borough through City Council. City Planner Abboud explained that the Commission can respond to the Borough and that they will need to submit all code changes through Council when that come up but they can submit the recommendations to the Borough on the ordinance.

Commissioner Smith offered the following recommendation for consideration: Homer Planning Commission recommends the following language be added to KPB Ordinance 20.80 to allow first class cities to develop their own code language prior to the allowance of specific applications for gated communities within these cities.

Additional comments were offered by the City Planner and Commissioners on adding or prohibiting applications until cities have a chance to respond.

Commissioner Bentz advocated for generalized concerns since there could be problems with submitting the incorrect legalese to the Borough. She then requested some of their direct concerns that should be included.

Commissioners and City Planner Abboud provided their concerns.

Commissioner Bentz then stated that she would like to provide a concise statement for Staff to be able to craft the memorandum effectively with minimal wordsmithing.

The Homer Planning Commission has general concerns with the City's ability to respond to this ordinance once it is approved by the Assembly with the predominant apprehension to have Section 3 becoming effective immediately.

The Homer Planning Commission recommends that Section 3 be amended to delay or prohibit enactment until the City can respond with policy commensurate or municipal policy. Items of specific concern are the following:

- City Code Changes
- Comprehensive Plan Amendments
- Transportation Plan
- Stormwater Issues
- Emergency Services
- Public Works
- Provision of Utilities
- Easements
- Hazard concerns

Commissioner Bentz also noted that they heard public comment at the worksession on concerns regarding the following:

- Annexation issues - if in the future the City of Homer annexed an area with a gated community
- Maintaining Pedestrian and Section Line Easements and that there will be a separate vacation process to effect that vacation.
- Retroactive establishment of gated communities
- Maintaining connectivity in multiple sectors and aspects of our community

The Commission agreed by consensus to forward a Memorandum to the Kenai Peninsula Borough in response to the proposed ordinance KPB 2019-xx

INFORMATIONAL MATERIALS

- A. City Manager's Report for the August 26, 2019 Homer City Council Meeting

Introduced by: Mayor
Date: 9/3/19
Hearing: 10/8/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-**

**AN ORDINANCE ADOPTING KPB 20.80, SUBDIVISION PRIVATE
STREETS AND GATED SUBDIVISIONS**

WHEREAS, privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions; and

WHEREAS, Goal 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land; and

WHEREAS, private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access; and

WHEREAS, there is a need for designated standards and requirements and establishment of procedures for creating gated communities; and

WHEREAS, designating standards, requirements and procedures for establishing private streets within subdivisions with gated access will address residents as well as the public's privacy, security, and access concerns; and

WHEREAS, the Kenai Peninsula Borough Road Service Area board at its meeting held on August 13, 2019, recommended unanimous approval of this ordinance; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on November 12, 2019 recommended _____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB Chapter 20.80, entitled "Private Streets and Gated Communities" is enacted as follows:

20.80.010. - Purpose.

This chapter provides standards and requirements for the establishment of private streets in subdivisions in the borough. A subdivision with private streets and gated access may be created at the time of subdivision by the owner of the parcel being subdivided or, where streets have been previously dedicated to the public which access lots in different ownerships, by the owners of those parcels in accordance with the provisions of this chapter.

20.80.020. – Requirements.

Private streets in subdivisions shall meet the following requirements:

- A. Provisions of KPB Chapter 20, excluding 20.30.210 and 20.50, apply and must be met.
- B. When constructed, private streets shall generally conform to the same standards regulating the design and construction of streets per KPB 14.06.
- C. All private streets will comply to street naming and street addressing per KPB 14.10 and 14.20.
- D. A public vehicular turn around shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit. An unrestricted turn around, located within the private street, shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit. The turnaround requirements shall be reviewed and approved by the Road Service Area Board. KPB Maintenance of the turnaround is not required but can be provided at the discretion of the Roads Director.
- E. Private streets shall be contained within a separate lot which meets right of way requirements of Chapter 20. The entrances to all private streets will be marked with a sign stating that it is a private street in compliance with KPB 14.06.200.
- F. The borough shall not pay for or contribute to any cost to construct, improve, or maintain a private street.
- G. The following notes are required on the subdivision final plat
 - 1. Borough maintenance shall not be provided on any private streets.

2. Private streets are not public and are subject to private construction and maintenance.
3. To convert private streets back to a public right of way, the requirements of KPB 14.06 – Road Standards, must be met.

H. Gated subdivisions and private streets may be approved, provided they meet the following criteria:

1. Emergency services shall be provided access within the private subdivision. Approval by the fire and emergency services provider, with jurisdiction in the area of the gated subdivision, is required. The fire and emergency services provider must be satisfied that fire and emergency services providers will have safe access into and within the gated subdivision;

20.80.030. – Gates

If a gate is installed to prevent public access to a subdivision with private streets the gate must conform to the following requirements:

- A. The fire and emergency services provider that serves the proposed gated subdivision must approve the fire and emergency services access plan for each gate prior to installation. The fire and emergency services provider should consider access for emergency vehicles into, and within, the private streets and gated subdivision.
- B. Gates, approach and departure areas shall be designed by a licensed professional civil engineer.
- C. Approach and departure areas on both sides of a gated entrance must provide adequate setbacks and proper alignment to allow free and unimpeded passage of emergency vehicles through the entrance area.
- D. After installation, all emergency access systems must be approved by the fire and emergency services providers serving the gated subdivision. The owner(s) of the private street parcel must maintain all components of the gate system in a normal operating condition and have them serviced on a regular basis, as needed, to ensure proper gate operation.
- E. No part of the gate system will be placed in a public right-of-way.

20.80.040. – Converting to gated subdivision.

- A. A platted right of way may not be vacated, except upon petition by resolution of the governing body from a municipality in which the property is located or by the owner of the majority of land fronting or abutting the right of way to be vacated. The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.
- B. Converting public street to private street – standards.
1. Vacation of the public right-of-way shall be in accordance with the criteria set forth in KPB 20.70.
 2. The proposed gated subdivision shall not cause discontinuity in the existing or proposed public street system for adjoining lands.
 3. The proposed gated subdivision must not cause discontinuity in the existing or proposed road system to any property owner within the proposed gated subdivision that fronts on the public right-of-way that is to be vacated.
 4. Prior to recording, the private tract owner(s) shall accept the road “as-is” in its present condition and shall agree to indemnify, hold harmless, and defend the borough against any claims arising from the private ownership, maintenance and control of the converted street.
 5. The private tract owner(s) shall execute a defense and indemnification agreement in favor of the borough in the following form: The private tract owner(s) shall indemnify, defend, and hold and save the borough, its elected and appointed officers, officials, agents and employees, hereinafter collectively referred to as “agents”, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys’ fees. The private tract owner(s) shall be responsible under this clause for any and all legal actions or claims of any character arising from the private tract owner(s) or the private tract owner(s) acts or omissions related to its private streets and gates in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.

20.80.050. – Converting private streets to public right of way in gated subdivision.

- A. The owner(s) of a private street may petition to dedicate the private street through the platting process. The plat must comply with KPB Chapter 20.
- B. The private street to be dedicated to a public right of way must meet the design criteria set forth in KPB 20.30 and KPB 14.06.
- C. At the expense of the private street tract owner(s), a civil engineer will determine whether the private streets meet KPB Title 14 and Title 20 standards for street design and construction. If the streets do not meet borough standards the dedication shall be denied.
- D. The borough may also require, at the private street tract owner’s expense, the removal of any improvements, access control devices, gates, landscaping or other aesthetic amenities associated with the private street.

20.80.060. – Enforcement.

Violations of this chapter shall be in accordance with KPB 20.10.030 and KPB 21.50,

SECTION 2. That KPB Chapter 20.90, entitled “Definitions is amended as follows:

20.90.010. – Definitions generally.

In this title, unless otherwise provided, or the context otherwise requires, the following definitions shall apply.

...

“Gated subdivision” means a residential subdivision consisting of multiple parcels of land where vehicular and/or pedestrian access by the general public from a public street and street(s) within the gated community and/or public right-of-way(s) is restricted as a result of a barrier that may include, but is not limited to gates, security personnel, fences or walls.

...

“Private street” is defined as a vehicular access way shared by and serving two or more lots, which is not publicly maintained, but maintained by a homeowners’ association. The term “private street” shall be inclusive of alleys. The term “street” also includes the term “street” as used in KPB title 14.

SECTION 3. That this ordinance shall become effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
_____ DAY OF _____, 2019.

, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk