



MEMORANDUM

Ordinance 23-21(S)(A), An Ordinance of the City Council of Homer, Alaska Amending Homer City Code Section 22.10.050 to Specify that Preliminary Plats Approved by the City Shall Include all Development Commitments Made to the City. Davis/Erickson.

Item Type: Action Memorandum
Prepared For: Mayor Castner and Homer City Council
Date: September 15, 2023
From: Ryan Foster, AICP, City Planner
Through: Rob Dumouchel, City Manager

Ordinance 23-21(S)(A) was introduced at the June 26, 2023 regular Council meeting and was sent to the Homer Planning Commission for comment and input. Since the text amendments in Ordinance 23-21(S)(A) is relevant to Public Works, the City Planner forwarded the Ordinance to Jan Keiser, City Engineer and Public Works Director, for review and comment. At the August 16, 2023 regular meeting, Jan Keiser took the Planning Commission through the subdivision process and highlighted weaknesses and recent changes in code, and in the current process, and noted how they could be improved. A work session was held on September 6, 2023 to discuss further and consider draft comments, with the final comments approved at the regular meeting that evening.

Key Findings of the Planning Commission

- The intent of the ordinance is that there is a concern that there were improvements being missed in the subdivision process and the text change is intended to rectify it.
- A flow chart has been created to visually represent the entire subdivision process based on Jan Keiser' memos and explanation of the process in detail at the August 16, 2023 regular meeting.
- Public Works Director Keiser provided information on the following topics:
 - Was under the belief that a developer could not sell lots within the subdivision until construction of improvements, but can be done with a final plat and subdivision agreement.
 - Kenai Peninsula Borough in accordance with State laws can release a preliminary plat if an agreement is made between the Developer and the City and recorded even when no improvements have been constructed and the Developer can then sell the lots – this is uncommon, but currently City Code as written allows it.

- It has been the practice of Homer Public Works that the Borough would be notified when improvements are completed and then the KPB issue a final plat for recording.
- City Council recently adopted an ordinance requiring a performance guarantee of 150% of the estimated costs of improvements outlined in the Subdivision Agreement.
- The use of Construction Agreements in the past 10 years over Subdivision Agreements
 - Language in the Subdivision Agreement is more defined
 - Includes performance guarantee requirements and provided options for the developer to choose from to provide a requirement
 - Includes specific remedies if the developer defaults
- Council is requiring commitments that are not codified or captured in the Subdivision Agreement
 - It is believed that the City does not have the legal ability to hold developers to requirements that are not in city code or the signed agreement
- Preliminary, Construction and Asbuilts Drawings
 - In the beginning of the process construction drawings are developed by an Engineer, included in the Subdivision Agreement. Inspections are done pursuant to those drawings. Substantial Completion is based on completion of the work contained in those drawings.
 - Final Acceptance and the Warranty Bond is based on the completion of work in the drawings
 - Final Acceptance results in the delivery of the Asbuilts
 - Asbuilts depict all the work that was done, where construction drawings show what is planned to be built. There are always deviations of some kind in the construction process. Waiting until the project is done until recording a plat is contrary to State and City Code.
- Subdivision Agreements are not submitted to the Kenai Borough for review or approval
 - The Borough is supportive of the City of Homer requirements of adding the comments related to requiring a subdivision agreement, drainage, improvements, etc., on the preliminary plat.
 - This presents a good relationship in as much as the Borough will tell the applicant that they will not issue a final plat until the City notifies them that all the improvements have been met per Kenai Peninsula Borough Subdivisions Code 20.60.080 Improvements-Installation agreement required.
- Preliminary Plats now have a time limit of two years to be finalized.
 - The Borough does allow two extensions allowing up to an additional four years, for a total of six years to finalize a plat.
 - If not completed in that timeframe, the entire process must begin again.
- City Attorney has reviewed the Public Works Director's analysis of the process and concurred

The Planning Commission would like to thank the City Council for bringing forth the issue, as it has been beneficial to review the subdivision process, and would like to present the following recommendations for Ordinance 23-21:

1. Recommend an effort to reconcile the Homer City Code for development processes including cross references or consolidation of subdivisions and platting which takes place in Title 22 and construction of subdivisions which takes place in Title 11 and clean-up work and reconciliation of language in the city code.
2. Recommend utilizing the following agreements for their intended purpose and define in Homer City Code:
 - a. Subdivision Agreement: requirements for subdivision improvements
 - b. Construction Agreement: constructing infrastructure such as roads and utilities, where the lot lines are not changing
 - c. Installation Agreement: connecting to city water and sewer
3. Recommendation to ensure preliminary plat considerations by the Homer Planning Commission include comments referencing when subdivision, construction or installation agreements are required and sent to the Kenai Peninsula Borough.
4. Recommendation to provide information and training on the subdivision development process to City Council and other relevant city commissions.
5. Create and implement a preliminary plat application form.
6. Request City Council withdraw Ordinance 23-21(S)(A).

RECOMMENDATION:

Staff recommends City Council approve the recommended comments of the Planning Commission on Ordinance 23-21 Title 22 Subdivision text amendment.

ATTACHMENTS:

Memorandum dated August 7, 2023 (updated September 6, 2023) from Jan Keiser, City Engineer and Public Works Director

Memorandum dated August 9, 2023 from Jan Keiser, City Engineer and Public Works Director

City of Homer Subdivision Development Process Flow Chart