



City of Homer

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Planning

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Staff Report PL 20-07

TO: Homer Advisory Planning Commission
FROM: Rick Abboud AICP, City Planner
DATE: January 2, 2020
SUBJECT: Kenai Peninsula Borough Draft Ordinance Adopting KPB 20.80,
Subdivision Private Streets and Gated Subdivision

Introduction

A substitute ordinance is up for consideration at the borough. In addition to the substitute, Assembly members Dunne and Assembly President Cooper have proposed amendments. The Commission and Council are asked to provide input to the Borough by January 30, 2020 for review by the Borough Planning Commission on February 10th and the Borough Assembly on February 25th.

Review

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.

Subdivision construction requirements remain unaffected by this ordinance and through street connections can still be required based on Homer's adopted plans. The proposals general standard addresses:

- All provision of borough subdivision code apply excluding requirements for rights-of-way dedication and justification currently used for exceptions
- Must use borough code for naming street and addressing
- Must create a turnaround for those denied entry
- Private streets are considered a separate lot and must be marked as 'private'
- No Borough maintenance – **check with legal to see if the City needs such a statement**
- Private construction and maintenance of streets
- Road standards must be met if converted back to public ROW in the future
- Local emergency services approval of proposed gate access
- Approach and departure areas must be constructed by an engineer and allow proper emergency access
- Owners must maintain and service gate
- Gate may not be in ROW

Converting public streets to private streets

- Vacation of ROW requirements are applicable as found in code
- The proposal shall not cause a discontinuity of the current or proposed street system
- Must accept road "as-is"
- Must indemnify government regarding the proposal
- Cannot convert CIP or RIAD financed roads w/l ten years – **Check with legal to see if the City needs a similar provision. LOOKING FOR COMMISSION INPUT HERE!**

Converting private streets to ROW

- Must comply with current design requirements at expense of the owner(s)

Analysis

The ordinance provides for guidance to create a gated subdivision out of undeveloped parcels, conversion of existing streets/ROW's, and conversion of private streets back to public.

In an instance of consideration for an undeveloped parcel, there is nothing specifically prohibiting a gated subdivision from being proposed until the parcel needs to be subdivided. Now they would be required to provide legal access by dedicating ROW. Of course, our development requirements would still apply.

A planned development of an undeveloped parcel seems to be more acceptable than the conversion of roads that may have been taxpayer funded. It is quite possible that you may feel that this sort of thing is not in Homers best interest whether or not existing city streets are involved. One thing that gets my support is the policy of accepting only ROW that meet current road standards in the event that a conversion from private to public is necessary.

Amendments

Willy Dunne, Memorandum dated November 21, 2019

- *All public streets may not be converted if it provide access to any form of public easement*
 - o I am fine with this concept. Perhaps it could use language to state ***unless equal or superior access is provided***
- *A cost to convert*
 - o I would think that it is up to us to put a price on conversion or Homer roads with additional Homer code. I do believe that some ROW is valued quite differently than others. Perhaps we are more than glad to freely turnover or at least reduce the cost of the nonconforming street.
- *All previously public ROW's must be returned when converting back to public from private*
 - o There could be many differing situation that might warrant this, but I am not sure that is it best for all circumstances. Concerns include:
 - the ability of land owners to bring all substandard roads to current spec
 - the desired reconfiguration of poorly designed subdivisions
 - previous dedications might be reconfigured to provide better service or design and it would not be desirable to revert back to a poor design.

- Previous public ROW could be put into different uses if it is decided to abandon for a superior design

Kelly Cooper (first amendment)

- *All must be part of HOA unless they did not sign petition and those will not have to participate in HOA or pay dues.*
 - I do not have a strong opinion about this and am looking for Commissioner perspectives. This is most likely more of an issue for the conversion of existing development. Now you would have a land owner that has no say in how the HOA is managed and has no input, seems really messy.
 - Should 70% of the landowners force the other 30% to refuse city services and be subject to an HOA in which they have no interest?
 - Again it feels like this is a measure most likely associated with the previously developed lands.

Kelly's second amendment

- *Final approval shall be subject to approval by the assembly*
 - I do not have any issue with the concept but do have some concerns surrounding the subject matter.
 - There are a few actions that are acted upon separately in order get approval of a gated subdivision.
 - Already dedicated ROW's will need to be vacated first with a final veto given to our Council to deny and apparently again to the Borough after gaining the vacation and completing the rest of the process.
 - Likely these processes done in parallel
 - In any event, both will have there own due process
 - The issue here is that borough code regarding vacations is vague and would be difficult to defend, since code fails to set the expectations for approval or denial well enough (think the 4 standards for a variance or all the criterion for CUP approval), especially the "veto" which has absolutely no standards listed, so it would be up to a judge to determine the appropriate standard(s) that serves a legitimate governmental purpose.
 - Standards should be developed for the veto

I still recognize that upon approval of such an ordinance, the City will have to formulate some code to respond to local concerns, whether that be a prohibition of sorts or any sort of policy regarding developed or undeveloped utilities or any other local concern. Thanks to Commissioner Bentz's amendment, we will have 180 days to work it out after adoption, as that is the effective date of the ordinance.

Staff Recommendation

Consider your support for the ordinance itself and/or any provisions listed above. Remember that regardless of what we may support or not, we will have to formulate or own code to reflect our local concerns outside of the framework provided by the borough.

Attachments

1. Kenai Peninsula Borough Substitute Ordinance 2019-24
2. KPB Assembly Memorandum from Willy Dunne
3. KPB Assembly Memorandum from Assembly President Copper (first)
4. KPB Assembly Memorandum from Assembly President Copper (titled "Second Amendmen[t]")

Introduced by: Mayor
Date: 9/3/19
Hearing: 12/3/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
SUBSTITUTE ORDINANCE 2019-24**

**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 2, Focus Area: Land Use and Changing Environment, Objective A of the 2019 Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; 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 November 19, 2019 recommended unanimous approval of this ordinance; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on November 12, 2019 recommended approval by majority vote;

**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. In accordance with the requirements of this chapter, a subdivision with private streets and gated access may be created either at the time of subdivision by the owner of the parcel being subdivided or by the owners of the parcels along a public street(s).

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. All private streets will comply with street naming and street addressing per KPB 14.10 and 14.20.
- 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. 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. If borough maintenance of a turnaround is requested, then the turnaround must: (1) remain a public right-of-way; (2) be constructed with a minimum radius of 30 feet with a grade of 4 percent or less per KPB 14.06.160(D); and (3) be accepted into the borough’s road maintenance program. The owner(s) of an approved gated subdivision shall be responsible for providing maintenance to all private streets and unmaintained turnarounds.
- D. Private streets shall be contained within a separate lot which meets the 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.
- E. The borough shall not pay for or contribute to any cost to construct, improve, or maintain a private street.
- F. 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.

G. 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.
2. When located within a city, a final plat of a subdivision with a private street must comply with KPB 20.60.080 – Improvements – Installation agreement required.

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. The approach and departure areas for the gate(s) must 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 may 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(s) 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.

- C. A public street constructed or improved with borough funds, either through a Capital Improvement Project (CIP) or Road Improvement Assessment District (RIAD), cannot be converted to a private street within ten (10) years of the CIP or RIAD completion date for that street.

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 the private tract owner(s). 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 180 days after its enactment.

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

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Willy Dunne, Assembly Member (V.M.) for W.D.

DATE: November 21, 2019

RE: Amendments to Ordinance 2019-24 Mayor Substitute, Adopting KPB 20.80, Subdivision Private Streets and Gated Communities (Mayor)

In the event the assembly amends ordinance 2019-24 by substitution, following are some proposed amendments to the substitute ordinance 2019-24 for your consideration. The first amendment would prohibit conversion of a public street to a private street if there exists any form of public access easement accessible by any public street being vacated and converted to private property.

The second amendment would impose fees on the property owners prior to conversion of a public street to private property. These are based on discussions with local road contractors and the borough road service area director.

The third amendment would require that as a part of converting private streets to public streets in a gated subdivision, all rights of way that were public when the gated subdivision was formed shall also be dedicated to the public.

[Please note the underlined bold language is new and the bold strikeout language in brackets is to be deleted.]

- In Section 1 amend KPB 20.80.020 by inserting a new subparagraph G.3 as follows:

20.80.020 – Requirements

Private streets in subdivisions shall meet the following requirements:

...

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

...

- 3. A public street may not be converted to a private street under this chapter if it provides public access to any form of a public access easement.**

- In Section 1 amend KPB 20.80.040 by inserting a new subparagraph D as follows:

20.80.040. – Converting to gated subdivision.

...

D. Prior to approval of a gated subdivision in which any public streets are vacated and converted to private property, the subdivision property owners must pay to the borough a fee of:

- a. \$200 per linear foot for unpaved roads; or**
- b. \$250 per linear foot for paved roads; and**
- c. Fair market value of acreage for any undeveloped rights-of-way.**

- In Section 1 amend KPB 20.80.050 by inserting a new subparagraph B as follows and re-lettering the remaining subparagraphs:

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

...

B. To convert a private street back to a public street under this section, all rights of way in the subdivision that were public rights of way immediately before the gated subdivision was formed, whether developed or undeveloped, must also be dedicated to the public.

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly
FROM: Kelly Cooper, Assembly President
DATE: December 2, 2019
RE: Amendment to Ordinance 2019-24, Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions [Mayor]

This is a proposed amendment to Ordinance 2019-24. The ordinance, as written, requires gated subdivisions to comply with all requirements of KPB 20.60.190, including certification of the final plat by “all parties having an interest of record in land being subdivided.”

This requirement could lead to a single owner in a subdivision stopping the development of a gated subdivision, even if all other owners in the subdivision wish to proceed. It is foreseeable that this issue could arise in a variety of circumstances, such as an out-of-state landowner who may not be available for signature, or who may not recognize and understand the safety concerns that residents actually living in a neighborhood experience on a daily basis.

The amendment proposes an approach similar to both the Utility Special Assessment District (USAD) and Road Improvement Assessment District (RIAD) codes, which require a supermajority of property owners to proceed with those projects. The proposed amendment requirements are measured by the land, not the number of proposed owners. This is similar, for example, to the method used for petitions to vacate rights-of-way. Neither Alaska statutes nor regulations restrict the Assembly’s ability to determine the requirements for final platting with regards to certification by landowners.

Additionally, KPB 20.80 is amended to note that only those property owners who approve the change will be responsible for paying dues, fees or assessments to the homeowners’ association for conversion and maintenance of the private street.

[Please note the underlined bold language is new and the bold strikethrough language in brackets is to be deleted.]

➤ Amend **Section 1** as follows:

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

...

20.80.020(D). A homeowners’ association (HOA) is required for approval of private streets within a subdivision. All property owners voting in favor of the conversion to private street(s) [to be served by the private streets] must be members in or part of the HOA, in

accordance with KPB 20.80.050(D) and KPB 20.60.190(1)(b). The HOA shall own and be responsible for the maintenance of the private streets and appurtenances.

...

20.80.050(D). If approved, only those property owners in the subdivision voting in favor of converting to a gated community with private street(s) will be responsible to pay any dues, fees or assessments to the homeowners' association for conversion and maintenance of the private street and any appurtenances. The homeowners' association documents and final replat document shall note the limitation of financial responsibility of those voting no on conversion.

- Add **SECTION 3.** That KPB 20.60.190, entitled “Certificates, statements, and signatures required” is amended as follows:

20.60.190. - Certificates, statements, and signatures required.

A final plat submitted for review and approval shall bear the following certificates with signatures of appropriate parties signed with permanent black ink:

1(a). All parties having an interest of record in land being subdivided shall sign a certificate of ownership and dedication printed on the plat, affixed thereto, or by separate affidavit. If such title interest is vested in other than named individuals, including but not limited to corporations, partnerships, limited liability companies, trusts or homeowner's associations, the certificate shall be signed and acknowledged by an individual(s) under written authority granted by its board of directors or shown by official documentation appropriate to the entity. Documentation of such authority shall be submitted with the final plat.

1(b). When the plat or replat is specific to a gated community created under KPB chapter 20.80, the parties having an interest of record in a supermajority (70%) of the land being subdivided shall sign a certificate of ownership and dedication printed on the plat, affixed thereto, or by separate affidavit. If such title interest is vested in other than named individuals, including but not limited to corporations, partnerships, limited liability companies, trusts or homeowner's associations, the certificate shall be signed and acknowledged by an individual(s) under written authority granted by its board of directors or shown by official documentation appropriate to the entity. Documentation of such authority shall be submitted with the final plat.

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly
FROM: Kelly Cooper, Assembly President
DATE: December 2, 2019
RE: Second Amendment to Ordinance 2019-24, Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions [Mayor]

This is a second proposed amendment to Ordinance 2019-24. The ordinance, as written, requires approval of gated subdivision replats by the planning commission, with appeal to a hearing officer.

An application to convert to a gated subdivision seeks to vacate the public right-of-way and create a private right-of-way. As such, the approval of a gated subdivision should be handled more like a right-of-way vacation than a typical plat or replat approval, which generally involves reconfiguration of lot lines or similar reorganization of land ownership. It is more appropriate for the Assembly to consent to the approval of a gated subdivision than the planning commission.

[Please note the underlined bold language is new and the bold strikethrough language in brackets is to be deleted.]

- Amend Section 1 as follows:

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

...

20.80.040(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.]

Upon approval of the replat by the planning director, 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 review and approval by the assembly.

...

