



City of Homer

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Memorandum

TO: MAYOR CASTNER AND CITY COUNCIL

FROM: PLANNING COMMISSION

THRU: RENEE KRAUSE, MMC, DEPUTY CITY CLERK

DATE: JANUARY 6, 2020

SUBJECT: KENAI PENINSULA ORDINANCE 2019 –24 TO AMEND KPB CODE 20.80
SUBDIVISION PRIVATE STREETS AND GATED SUBDIVISIONS

The Planning Commission reviewed the proposed substitute ordinance from the Kenai Peninsula Borough to Adopt KPB 20.80, Subdivision Private Streets and Gated Subdivisions at a worksession and regular meeting on January 2, 2020. Following are ensuing recommendations from the Planning Commission and related minutes of that meeting.

The Planning Commission has concerns with the proposed amendments related to:

- Percentage Requirements for owners of record when creating a gated community
 - o It is the recommendation of the Homer Planning Commission that it should be a 100% of record property owners before any vacation of public streets since having a 70/30 supermajority would deprive those owners of records who did not sign the petition, of city or borough services, even if those same record owners did not pay HOA fees.
- Significant issues with converting existing neighborhoods and properties into gated subdivisions and private streets
 - o Homer Planning Commission would pursue methods within municipal policy to reduce the capability of the conversion of public streets into private streets within city limits.
- In the event of a transition from a private, gated community to public
 - o Homer Planning Commission recommends including the reference to city requirements in tandem to KPB 20.80.020

The Planning Commission appreciated the recognition by the Kenai Peninsula Borough Assembly of their concerns by amending Section 3 to 180 days until enactment to allow communities to respond with a municipal policy.

The Planning Commission expressed ongoing concerns with items that were outlined in their previous memorandum dated October 8, 2019 concerning the following:

- City Code Changes
- Comprehensive Plan Amendments
- Transportation Plan
- Stormwater Issues

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

Excerpt from the Unapproved January 2, 2020 Meeting Minutes
NEW BUSINESS

A. Staff Report 20-07, Kenai Peninsula Borough Gated Subdivision Ordinance

Chair Venuti introduced the item by reading of the title into the record.

City Planner Abboud provided a summary of Staff Report 20-07 for the Commission. He commented on the following:

- Private Streets are a separate parcel
- Must provide turnaround for those denied entry/access
- No Borough maintenance – he is checking this out with the City Attorney
- Converting public streets to private streets – this will be an issue to handle locally there is concern with the city's vacation code
- Cannot convert a road improved or created with government funds for 10 years – Will require legal input to see if the city should have a similar requirement.
- Cost to convert will have to be looked at locally
- Converting back to public from private
- Not sure if the proposed amendment of those not voting for the action do not have to pay dues or participate.
- Council can veto but the Borough has no standards on or for a veto when it concerns the vacation of dedicated rights of way

Commissioner Bentz suggested taking the previous memorandum that was sent to the Borough since it contained the general concerns for the city and they could add to that and not have to rehash those points. She then addressed the current amendments proposed by Kelly Cooper and Willy Dunne:

- On the first amendment proposed by Ms. Cooper regarding the HOA, she believed that there was a requirement of 100% participation. She did not believe that they had to address this.
- The second amendment there may be complications and not sure how to address this since the Borough has platting authority.
- Previously public ROW's being returned if they added equal or superior access to address those concerns of previous designs, would be acceptable and a direction to deal with those.
- The city may be able to limit the conversion of existing neighborhoods by not allowing it if there were CIP or RIAD roads/projects involved.

Commissioner Petska-Rubalcava requested clarification that the ordinance included in the packet was an amended ordinance and that the proposed amendments by Cooper and Dunne were to further amend the ordinance.¹

City Planner Abboud responded that he believed that it was originally at 100% but Ms. Cooper is recommending changing to a majority approval.

City Planner Abboud responded to Chair Venuti regarding submitting a recommendation of non-support of the ordinance but since the Borough has platting authority he was not sure how that would be effective. He would have to confer with the City Attorney on the best action and if it would be allowed to prohibit properties that are on the maintenance map from converting to a gated community. The city may be able to use that regulation.

Further comments by the commission and staff included the following:

- Proposed amendment reflected the 70% supermajority who have an interest of record
- Prohibit gated communities in Homer since it did not appear to reflect Homer values
- The Borough has platting authority over everything it would mean that the City would have to take that responsibility over.
- City regulations would be applied if a property was within city limits. The city could implement rules that would be recognized within the Borough subdivision rules.
- The term of snobbery when referencing gated communities was unfair as some of the residents in Homer that winter outside consider it a safer situation for their homes.
- residents can put a gate across there driveway or fence their property
- it would be unfair to disallow a property owner because they were out of state at the time or unavailable to sign a petition
- The 30% would not be required to pay for the services if they do not sign off on the HOA
- Keeping the 100% property owner participation was preferable since allowing even a supermajority as described in the ordinance would not allow the 30% the benefit of city (or borough) services
- Gated communities are very common in the Lower 48 in many states.
- Limiting gated communities to new development
- Lack of success for subdivisions in Homer
- The ability to care and preserve city infrastructure was a big concern
- Too divisive and not suitable for established neighborhoods

City Planner Abboud confirmed that the Commission's role tonight was to offer comment on the proposed ordinance and the City will have six months to create regulations within the city. He did not think the Borough will be concerned with the city infrastructure. He provided some process on the possibility of what would need to be done if someone wanted to create a gated community in the city.

Chair Venuti call for a recess at 8:11 p.m. to allow the Clerk to access and print off the prior memorandum for the Commission. The meeting was called back to order at 8:18 p.m. after the Commission reviewed the previous memorandum that was submitted to the Kenai Peninsula Borough Assembly regarding the proposed regulations in October 2019.

¹ Note for Clarification: KPB Ordinance 2019-24 was referenced as a Substitute. Ms. Cooper and Mr. Dunne proposed amendments, if adopted, would amend the substitute ordinance.

Commissioner Petska-Rubalcava departed the meeting at 8:11 p.m. due to illness.

Chair Venuti requested recommendations from the Commission after review of the memorandum.

BENTZ/BOS MOVED TO DRAFT A NEW MEMORANDUM TO THE CITY COUNCIL INCLUDE PORTIONS OF THE PREVIOUS MEMORANDUM OUTLINING THE GENERAL CONCERNS OF THE CITY AND INCLUDE LANGUAGE REGARDING THE CONCERNS FOR THE PROPOSED AMENDMENTS.

There was a brief discussion on the necessity to copy the Borough Planning Commission.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

There was a brief discussion by the Commission and staff on the memorandum being drafted and ready for the Planning Commission review at the next meeting and then forwarded to Council in a timely manner to be submitted to the Borough by the deadline.

Commissioner Bentz suggested content for the memorandum as follows:

The Homer Planning Commission has concerns with the ordinance amendments related to:

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There was no dissent expressed by the Commission on the recommendations as stated by Commissioner Bentz.