

C. CONSENT AGENDA

***7. 01/23/23 PC Meeting Minutes**

Kenai Peninsula Borough Planning Commission

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

January 23, 2023
7:30 P.M.
UNAPPROVED MINUTES

AGENDA ITEM A. CALL TO ORDER

Chair Brantley called the meeting to order at 7:30 p.m.

AGENDA ITEM B. ROLL CALL

Commissioners Present

Pamela Gillham, District 1 – Kalifornsky
Blair Martin – District 2, Kenai
John Hooper, District 3 – Nikiski
Michael Horton, District 4 - Soldotna
Jeremy Brantley, District 5 – Sterling/Funny River
Virginia Morgan – District 6, East Peninsula
David Stutzer, District 8 – Homer
Franco Venuti, City of Homer
Diane Fikes, City of Kenai
Troy Staggs, City of Seward
Charlene Tautfest, City of Soldotna

With 11 members of a 12-member seated commission in attendance, a quorum was present.

Staff Present

Samantha Lopez, Acting Planning Director
Marcus Mueller, Land Management Officer
Walker Steinhage, Deputy Borough Attorney
Vince Piagentini, Platting Manager
Julie Hindman, Platting Specialist
Ann Shirnberg, Planning Administrative Assistant
Rhonda Foster-Deskins, Land Management Administrative Assistant

AGENDA ITEM C. CONSENT & REGULAR AGENDAS

***3. Plats Granted Administrative Approval**

- a. Bear Lahai Roi Subdivision Sockeye Run View Addition; KPB File 2022-074

***6. Commissioner Excused Absences**

- a. Dawson Slaughter, District 9 – South Peninsula
- b. City of Seldovia, Vacant
- c. District 7 – Central, Vacant

***7. Minutes**

- a. January 9, 2023 Planning Commission meeting minutes.

Chair Brantley asked Ms. Shirnberg to read the consent agenda items into the record.

Chair Brantley asked if anyone wished to speak to any of the items on the consent agenda.

Seeing and hearing no one wishing to comment, Chair Brantley brought it back to the commission for a motion.

MOTION: Commissioner Gillham moved, seconded by Commissioner Tautfest to approve the regular and consent agendas.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 11	Brantley, Fikes, Gillham, Hooper, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent - 1	Slaughter

AGENDA ITEM E. NEW BUSINESS

Chair Brantley asked Ms. Shirnberg to read into the record the procedures for public hearings.

**ITEM 1 – BIDARKI CREEK NO. 5
PRELIMINARY PLAT RECONSIDERATION**

KPB File No.	2022-160
Planning Commission Meeting:	January 23, 2023
Applicant / Owner:	McKennen and Rachael Lamb and Kristen Lamb Reilly all of Provo, Utah
Surveyor:	Tom Latimer / Orion Surveys
General Location:	Near mile 171 Sterling Highway, City of Homer

Parent Parcel No.:	175-250-12 and 175-250-13
Legal Description:	Tracts 1 and 2, Bidarki Creek No. 4, Plat HM 2012-27
Assessing Use:	Residential
Zoning:	Rural Residential District
Water / Wastewater	City

Staff report given by Platting Manager Vince Piagentini.

Chair Brantley opened the item for public comment.

Tom Latimer, Orion Surveys; P.O. Box 15025, Fritz Creek, AK 99603: Mr. Latimer is the surveyor on this project and spoke in support of granting preliminary approval for this plat. He noted that in the meeting packet was a response he sent in, which addressed the concerns and code citations from the members of the public who requested the review. He noted the plat meets all code requirements. While the City of Homer Planning & Zoning Commission recommended to deny preliminary approval, they did not attach any findings to support their denial, nor did they give any recommendation on how to remedy any issues.

Kristen Lamb; 2585 Timpview Drive, Provo, UT, 84604: Ms. Lamb is one of the petitioners and spoke in support of granting preliminary approval for this plat.

McKennen Lamb; P.O. Box 3183, Homer, AK, 99603: Mr. Lamb is one of the petitioners and spoke in support of granting preliminary approval for this plat.

Mark Sass; 1641 Hillside Place, Homer, AK 99603: Mr. Sass is a neighboring landowner and spoke in opposition to this plat. The density of the proposed development is not in line with the neighborhood.

Linda Rourke; 1587 Hillside Place, Homer, AK 99603: Ms. Rourke is a neighboring landowner and spoke in opposition to this plat. The density of the proposed development is not in line with the neighborhood.

John Faulkner; 4021 West Hill Road, Homer, AK 99603: Mr. Faulkner is a neighboring landowner and spoke in opposition to this plat. The density of the proposed development is not in line with the neighborhood.

Laura Karstens; 1634 Sterling Highway, Homer, AK 99603: Ms. Karstens is a neighboring landowner and spoke in opposition to this plat. The density of the proposed development is not in line with the neighborhood.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Staggs moved, seconded by Commissioner Stutzer to grant preliminary approval to Bidarki Creek No. 5, based on staff recommendations and compliance with borough code.

Commissioner Venuti noted that he has sat through numerous public hearings, where the public is not in support of a proposed project. He understands that change is difficult, and that most people do not like change. In the past, the commission has heard a great deal of testimony against gravel pits from the public. He has seen how the commission has often favored an issue based on a bureaucratic rule without giving adequate consideration to the public's concerns. The commission's decisions can negatively affect a surrounding community. He is familiar with this neighborhood and he knows how the residents value their way of life. He wonders what is the value of a public hearing when it can basically be ignored. He believes that it is important to listen to the neighbors and to take into consideration their concerns.

Commissioner Stutzer noted that the commission is being asked to grant preliminary approval without having all the plans. The surveyor and petitioners have made reference to their plans but those plans have not been supplied to the commission. He has questions about the driveways for these lots and that information is not shown on the plat. To him it seems like the commission is being asked to make a decision without having all the information. He noted that this development is within the city limits of Homer, and that the Homer Planning & Zoning Commission recommended denial. He understands that the Homer Planning & Zoning Commission is only making a recommendation. When this plat initially came before the Plat Committee, we chose to ignore the city's recommendation and granted preliminary approval to the plat. He is now struggling with that decision. He has concerns related to the grades of these lots and how that will affect snow removal. With a 12% grade he is pretty sure that the plow folks will drive uphill and push the snow down the hill into the cul-de-sac. That is going to create issues and he does not know how the city plans to deal with it. The terrain of these lots will make it very difficult for the landowners to plow the snow and then store it somewhere. Most likely it will be stored on the city-maintained road, and it is his understanding that is not allowed. He believes the current design of the plat will result in the landowners breaking city code. He definitely is struggling with feeling like he doesn't have all the information needed to make this decision. We have heard how this plat meets all the borough code requirements. The commission is the human element in the decision process. Is the commission's role to just go through the code, and then make a decision that it meets code? That is what the planning department does, it ensures that the plat meets all borough codes. The commission has the ability to grant exceptions to the code. As an example, last year the commission approved an encroachment permit for a landowner who accidentally built his house in the setback. It was stated that the road in that area would not ever be developed, and based on that information, the commission granted an exception to code and approved the permit. This is a perfect example of the commission going against code. If the plat meets code, but the design doesn't make sense because the terrain is too steep, which will create snow removal issues, why does the commission have to approve it? In his experience if you just go by code, you are just meeting the minimum. Just building something to the minimum doesn't mean you have built something good.

Commissioner Fikes stated that she shares the same concerns as Commissioner Stutzer regarding the grade and snow removal issues. She would also like to see some kind of emergency plan addressing the issue of turnaround for emergency vehicles. To her it appears that the petitioners are just trying to use a shoehorn to make everything fit. At the end of the day will this design actually work? She is a delivery person and has some negative experiences with trying to use the drives of flag lots. She has concerns with the designs of these lots. She believes the landowners have the right to develop their lot and that they want to take advantage of an opportunity. The commission does not have the information in front of them on how this lot will be developed which is a concern. The City of Homer Planning & Zoning commission weighed in on this design and they were not happy with it. Based on the testimony she has

heard tonight she will be voting against approving this plat.

Commissioner Horton stated that he does not believe that approving this plat is simply a bureaucratic decision. He does apply his own personal view point when making decisions. As a landowner if you meet all the code requirements why should you not be able to develop your land as you choose. Personally, he would have a problem with neighbors being able to tell him what he can and cannot do with his land. In this case, the petitioners have gone above and beyond in meeting all existing code requirements. He does not believe that the commission should be influenced by the neighbors being upset about how the landowner is legally developing their property. Regarding the request for supplemental engineering plans, as a landowner I am not going to invest in engineering plans until I know that my proposed plat design is approved. Engineering plans are expensive. The supplemental plans being requested are not required by code for plat approval. He then stated that he will be voting in favor of granting preliminary approval.

Commissioner Staggs stated that he agrees with Commissioner Horton. When the plat initially came before the plat committee he was listening to the discussion. The committee's decision to grant preliminary approval was based on code and not emotions. While emotions are real and important, the commission should base their decision on what code says.

Commissioner Stutzer stated he is not saying this plat does not meet code, nor is he saying that the neighbors should have the right to tell the landowner how to develop their property. His points of concern have to do with the grade of the terrain and potential snow removal issues. He thinks that the plat's current design is problematic. He would like to see his concerns addressed before granting approval. He believes there is a solution to make multiple lots for this particular piece of property. He just believes what has been presented tonight is not a good solution. He supports the petitioners right to develop their property as they want to. He just thinks this plat could be designed better.

Chair Brantley asked staff, whatever decision the commission makes tonight, that decision can still be appealed to a hearing officer. Platting Specialist Hindman replied that is correct. If an individual is a party of record, meaning that they have submitted written or public testimony, then they would have the right to request a review of the decision by a hearing officer. Borough Attorney Steinhage also noted that the petitioners have a right to appeal a decision as well.

Commissioner Tautfest stated that she shares the same concerns as Commissioner Stutzer. She noted that she will be voting no, based on the potential snow removal issues and the City of Homer Planning & Zoning Commission's recommendation of denial.

Chair Brantley reminded the commission that this is a quasi-judicial matter and the commission needs to follow code. If this subdivision is denied, those who voted no will need to be ready to come up with findings of fact, based in code, to support their decision. He feels pretty sure that a decision to deny would be appealed to a hearing officer. He noted that the hearing officer will base their decision in code. If the findings of fact are not rooted in code the decision could be overturned and it would look like we are not doing our job. He noted the commission holds public hearings on quasi-judicial matters to discover findings of fact. A finding of fact like snow removal is not something we will find in code. He then stated that he pushes a lot of snow and in his opinion, there are a lot of places that snow could be put. He noted it is illegal to push snow into the road and if you do, you will be fined.

Commissioner Venuti asked if the plat is denied, would they need to come up with findings tonight? Chair Brantley replied he will let the borough attorney answer the question, but he believed they could attach the findings at a later date. Borough Attorney Sherwood replied that Chair Brantley was correct, the commission would not have to attach the findings tonight. Commissioner Venuti then asked what would be the timeframe to come up with the findings. Borough Attorney Sherwood replied that code did not give a timeframe. Chair Brantley asked if it would be acceptable to come up with the findings by the next meeting. Borough Attorney Sherwood replied that would be appropriate.

Commissioner Gillham stated that reading through all the material in preparation for tonight's meeting she found nothing that did not meet code. All the issues that have been brought up against approving this subdivision are not addressed in code. Many of the issues raised are addressed by other entities and are not issues addressed by the planning commission. She noted that she will be voting in favor of approving this plat because she cannot find a reason in code to deny it.

Commissioner Morgan stated that she appreciates the comments from the public. She has been in a similar situation with having development happen next to her home that she was not pleased about. In her situation, what was being developed on the property next to hers' was allowed by borough code. When we find situations where land is being developed in a way that doesn't feel quite right, it is a sign that it is something that needs to be addressed in code. The commission cannot deny development that meets code. If we feel like the code needs to change, then we need to talk to our city councils or the borough assembly and encourage them to change it. Until the code is changed, the commission is bound by the code. She believes that the public process is important. She agrees with the sentiments expressed by Commissioner Horton and noted that she will be voting in favor of approving this subdivision. She believes a lot of thought has gone into this development and that their subdivision design meets code requirements

Chair Brantley stated that it was important to hear all these comments. When the assembly changes code, the public gets a say. These types of discussions are often taken into consideration when changing code.

Commissioner Horton directed the commission to page E1-12 of the meeting packet. At the top of the page it states, *"It was also recommended in pre-submittal discussion with the owner/surveyor that they talk with DOT about the design proposed as well as the City of Homer regarding maintenance and snow removal. The surveyor indicated those conversations have been had and that there had been no negative response to the design. The design of the right-of-way will require acceptance by the City of Homer and they will be required to sign the final plat. This plat cannot be finalized without that signature."* He wanted to bring this information to the attention of the commission, as this information was in the staff report and he believes this addresses some of the issues that have been raised tonight.

Commissioner Stutzer agrees that after reading through the whole packet of information there is nothing that violates any code. He still is inclined to vote no, and recognizes that right now he has no basis in code to support the no vote. His frustration is that the staff reports states that the surveyor has had conversations with DOT and the city, why do they have to approve this before they see the final design? To him it seems like we are putting the cart before the horse. If he were to vote strictly by code, he would have to say yes. He voted yes when this came before him at the plat committee. However, after reviewing the information again, he believes that this design is not a good idea. He is on the fence about voting no. He believes that there is still information that they need, such as an assurance from the State that this design is good, before they approve this plat. He again noted that the commission has made exceptions to the code in the past by granting things like setback encroachment permits. He believes that standing on code is not the whole argument and that other information should be taken into consideration.

Borough Deputy Attorney Sherwood wanted to give additional information regarding Commissioner Venuti's earlier question. KPB 20.25.100 which speaks to the commission's approval authority it says: *"that if there is an approval, a statement of reason shall be included supporting the planning commission decision justify the denial, approval or conditional approval of the plat. If denied, the decision shall make reference to the specific section of this title with which the submitted plat does not comply. The commission, in its action, relies upon the report of the planning staff, the commission may vote to adopt the staff's findings and report as the findings and reasons for the planning commission decision. The planning commission may make additional or different findings from those in the staff report."* The motion on the floor does this. If this motion fails, he would recommend there be another motion to deny approval, which will need to be accompanied by specific reasons and code citations, in order to comply with borough code.

Commissioner Fikes stated she appreciated Commissioner Horton pointing out the information in the staff report. She also appreciates Commissioner Venuti's comment about approving gravel pits. She understands the neighbor's objections to this design. She also supports the landowner's right to develop their land as they so choose. She still has concerns with some of the elements of the design, particularly regarding the shared driveways. She would have to agree that after reviewing all the information she doesn't see anything that goes against borough code. She appreciates how tonight's discussion brings code back to the front and center regarding decision making. In all honesty, she cannot vote against this because she can find no code to cite.

Commissioner Tautfest wanted to confirm that if they vote no, they do not have to come up with the code citations tonight. She also wanted to double check whether or not the City of Homer cited any codes to support their denial. Chair Brantley replied that if the plat is voted down, they do not have to come up with their findings of fact tonight. He believes that they can attach those findings at the next planning

commission meeting. He also noted that the City of Homer Planning & Zoning Commission did not cite any findings in support of their denial. Borough Deputy Attorney Sherwood added that the key is to stay within the 60-day deadline.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY MAJORITY VOTE:

Yes - 8	Brantley, Fikes, Gillham, Hooper, Horton, Martin, Morgan, Staggs
No – 3	Stutzer, Taufest, Venuti
Absent - 1	Slaughter

AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Gillham reported the plat committee reviewed and granted preliminary approval to 4 plats.

AGENDA ITEM H. PUBLIC COMMENT/PRESENTATIONS

Chair Brantley asked if there was anyone from the public who would like to comment on anything not appearing on the agenda. No one wished to comment.

AGENDA ITEM J. COMMISSIONER COMMENTS

Commissioner Stutzer informed the commission that he will not be able to attend the February planning commission meetings as he will be out of state.

Commissioner Taufest informed the commission that she will be in Juneau for the February 13, 2023 planning commission meeting. She stated that she will try and attend the meeting via Zoom.

AGENDA ITEM K. ADJOURNMENT

Commissioner Staggs moved to adjourn the meeting at 9:11 PM.

Ann E. Shirnberg
Administrative Assistant